5–15–06 Monday
Vol. 71 No. 93 May 15, 2006

Pages 27945–28226

Federal Register

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Washington, DC 20002

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Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Executive Order 13402 of May 10, 2006

Strengthening Federal Efforts To Protect Against Identity Theft

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to strengthen efforts to protect against identity theft, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to use Federal resources effectively to deter, prevent, detect, investigate, proceed against, and prosecute unlawful use by persons of the identifying information of other persons, including through:

(a) increased aggressive law enforcement actions designed to prevent, investigate, and prosecute identity theft crimes, recover the proceeds of such crimes, and ensure just and effective punishment of those who perpetrate identity theft;

(b) improved public outreach by the Federal Government to better (i) educate the public about identity theft and protective measures against identity theft, and (ii) address how the private sector can take appropriate steps to protect personal data and educate the public about identity theft; and

(c) increased safeguards that Federal departments, agencies, and instrumentalities can implement to better secure government-held personal data.

Sec. 2. *Establishment of the Identity Theft Task Force.*

(a) There is hereby established the Identity Theft Task Force.

(b) The Task Force shall consist exclusively of:

(i) the Attorney General, who shall serve as Chairman of the Task Force;

(ii) the Chairman of the Federal Trade Commission, who shall serve as Co-Chairman of the Task Force;

(iii) the Secretary of the Treasury;

(iv) the Secretary of Commerce;

(v) the Secretary of Health and Human Services;

(vi) the Secretary of Veterans Affairs;

(vii) the Secretary of Homeland Security;

(viii) the Director of the Office of Management and Budget;

(ix) the Commissioner of Social Security;

(x) the following officers of the United States:

(A) the Chairman of the Board of Governors of the Federal Reserve System;
(B) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation;
(C) the Comptroller of the Currency;
(D) the Director of the Office of Thrift Supervision;
(E) the Chairman of the National Credit Union Administration Board; and
(F) the Postmaster General; and

(xi) such other officers of the United States as the Attorney General may designate from time to time, with the concurrence of the respective heads of departments and agencies concerned.

(c) The Chairman and Co-Chairman shall convene and preside at the meetings of the Task Force, determine its agenda, direct its work and, as appropriate, establish and direct subgroups of the Task Force that shall consist exclusively of members of the Task Force. Such subgroups may address particular subject matters, such as criminal law enforcement or private sector education and outreach. The Chairman and Co-Chairman may also designate, with the concurrence of the head of department, agency, or instrumentality of which the official is part, such other Federal officials as they deem appropriate for participation in the Task Force subgroups.

(d) A member of the Task Force, including the Chairman and Co-Chairman, may designate, to perform the Task Force or Task Force subgroup functions of the member, any person who is a part of the member's department, agency, or instrumentality and who has high-level policy or operational duties or responsibilities related to the mission of the Task Force.

Sec. 3. *Functions of the Task Force.* The Task Force, in implementing the policy set forth in section 1 of this order, shall:

(a) review the activities of executive branch departments, agencies, and instrumentalities relating to the policy set forth in section 1, and building upon these prior activities, prepare and submit in writing to the President within 180 days after the date of this order a coordinated strategic plan to further improve the effectiveness and efficiency of the Federal Government's activities in the areas of identity theft awareness, prevention, detection, and prosecution;

(b) coordinate, as appropriate and subject to section 5(a) of this order, Federal Government efforts related to implementation of the policy set forth in section 1 of this order;

(c) obtain information and advice relating to the policy set forth in section 1 from representatives of State, local, and tribal governments, private sector entities, and individuals, in a manner that seeks their individual advice and does not involve collective judgment or consensus advice and deliberation and without giving any such person a vote or a veto over the activities or advice of the Task Force;

(d) promote enhanced cooperation by Federal departments and agencies with State and local authorities responsible for the prevention, investigation, and prosecution of significant identity theft crimes, including through avoiding unnecessary duplication of effort and expenditure of resources; and

(e) provide advice on the establishment, execution, and efficiency of policies and activities to implement the policy set forth in section 1:

(i) to the President in written reports from time to time, including recommendations for administrative action or proposals for legislation; and

(ii) to the heads of departments, agencies, and instrumentalities as appropriate from time to time within the discretion of the Chairman and the Co-Chairman.

Sec. 4. *Cooperation.* (a) To the extent permitted by law and applicable presidential guidance, executive departments, agencies, and instrumentalities shall provide to the Task Force such information, support, and assistance as the Task Force, through its Chairman and Co-Chairman, may request to implement this order.

(b) The Task Force shall be located in the Department of Justice for administrative purposes, and to the extent permitted by law, the Department of Justice shall provide the funding and administrative support the Task Force needs to implement this order, as determined by the Attorney General.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

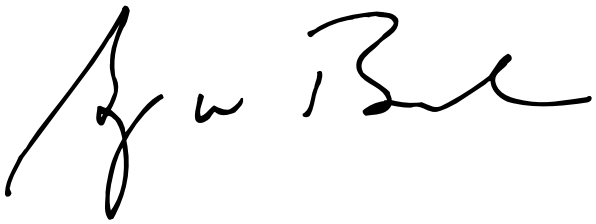
(i) authority granted by law to an executive department, agency, or instrumentality or the head thereof; and

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 6. *Termination.* Unless the Task Force is sooner terminated by the President, the Attorney General may terminate the Task Force by a written notice of its termination published in the **Federal Register**.



THE WHITE HOUSE,
May 10, 2006.

[FR Doc. 06–4552
Filed 5–12–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 71, No. 93
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22529; Directorate Identifier 2005–NM–099–AD; Amendment 39–14592; AD 2006–10–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 767–200, –300, and –300F series airplanes. That AD currently requires repetitive inspections of the lubrication passage and link assembly joint in the inboard and outboard flaps of the trailing edge for discrepancies, and corrective action if necessary. This new AD requires new inspections for cracking or severe wear of the bearings of the link assembly, inspections of any link assembly not previously inspected for damage, and corrective actions if necessary. This AD also ends the existing repetitive inspections for certain airplanes, and extends the repetitive interval for the existing repetitive inspections and the compliance time for the corrective action on certain other airplanes. This AD also provides an optional terminating action. This AD results from additional reports indicating fractured bearings of the link assembly joint in the inboard and outboard flaps of the trailing edge. We are issuing this AD to prevent failure of the bearings in the link assembly joint, which could result in separation of the inboard or outboard flap and consequent loss of control of the airplane.

DATES: This AD becomes effective June 19, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 19, 2006.

On February 14, 2002 (67 FR 4328, January 30, 2002), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 767–27A0167, dated December 7, 2000.

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

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

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 supersedes AD 2002–01–15, amendment 39–12609 (67 FR 4328, January 30, 2002). The existing AD applies to certain Boeing Model 767–200, –300, and –300F series airplanes. That NPRM was published in the **Federal Register** on September 27, 2005 (70 FR 56383). That NPRM proposed to require the following actions:

- Repetitive inspections of the lubrication passage and link assembly joint in the inboard and outboard flaps of the trailing edge for discrepancies, and corrective action if necessary.
- New inspections for cracking or severe wear of the bearings of the link assembly, and corrective actions if necessary.
- Inspections of any link assembly not previously inspected for damage, and replacement with a new assembly if necessary.

That NPRM also proposed to end the existing repetitive inspections for certain airplanes, and extend the repetitive interval for the existing repetitive inspections and the compliance time for the corrective action on certain other airplanes. That NPRM also provided an optional terminating action that would end the repetitive inspections.

Comments

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

Support for the Proposed AD

One commenter, US Airways, supports the NPRM.

Request To Clarify Compliance Times

Boeing requests that we clarify a compliance time stated in paragraph (g)(2) of the NPRM. For an airplane on which the lubrication passage was blocked but no fractured bearing or loose or damaged joint was found, paragraph (g)(2) of the NPRM would require doing the actions in Part 2 of Boeing Alert Service Bulletin 767–27A0167 within 24 months after doing the initial inspection in accordance with Part 1 of the service bulletin. The commenter notes that the relevant point in time is the most recent inspection in accordance with Part 1 of the service bulletin, which is not necessarily the time of the initial inspection. The commenter requests that we revise paragraph (g)(2) to require doing the actions in Part 2 of the service bulletin within 24 months after the most recent inspection in accordance with paragraph (a) of AD 2002–01–15.

We agree with the request and have revised paragraph (g)(2) of this AD for the reasons that Boeing states. For clarification, we have also included references to repetitive inspections performed in accordance with

paragraph (b)(1) of AD 2002–01–15 and inspections performed in accordance with paragraph (f) of this AD.

Similarly, Boeing requests that we clarify the compliance time in paragraph (h) of the NPRM. Paragraph (h) of the NPRM states a compliance time of ''24 months after the most recent inspection in accordance with paragraph (b)(1) of AD 2002–01–15.'' The commenter notes that paragraph (b)(1) of AD 2002–01–15 states only the repetitive inspection interval. It is possible that the most recent inspection may have been the initial inspection in accordance with paragraph (a) of AD 2002–01–15.

We agree. We have revised paragraph (h) of this AD to state a compliance time of ''24 months after the most recent inspection in accordance with paragraph (a) or (b)(1) of AD 2002–01–15, or paragraph (f) of this AD, as applicable.''

Request To Clarify Appropriate Source of Service Information

The Air Transport Association (ATA), on behalf of one of its members, Delta Airlines (Delta), requests that we revise paragraphs (f) and (g) of the NPRM, which restate paragraphs (a) and (b) of AD 2002–01–15. The commenter would like us to remove references to Boeing Alert Service Bulletin 767–27A0167, dated December 7, 2000, in those paragraphs. Delta feels that the reference to the original issue of the service bulletin is confusing and should be deleted from paragraphs (f) and (g) of the NPRM, in light of the fact that these paragraphs state ''After the effective date of this AD, only Revision 2 of the service bulletin may be used.''

We do not agree. We are restating the requirements of AD 2002–01–15, including the references to the original issue of Boeing Alert Service Bulletin 767–27A0167, to ensure that operators who have previously done required actions in accordance with that service bulletin are still in compliance with the AD. If we remove the reference to the original issue of Boeing Alert Service Bulletin 767–27A0167 and refer to only Revision 2 of that service bulletin, then operators who previously did the required actions in accordance with the original issue of the service bulletin would be out of compliance as of the effective date of the new AD. We find that inspections that have been done before the effective date of this AD in accordance with the instructions in the original issue of the service bulletin will provide an acceptable level of safety until the newly required actions are done. We have not changed the AD in this regard.

Request To Revise Compliance Time for Restated Actions

Boeing requests that we revise the compliance time for the initial inspection in paragraph (f) of the NPRM. Paragraph (f) of the NPRM specifies compliance ''within 90 days after February 14, 2002 (the effective date of AD 2002–01–15), or within 36 months after date of manufacture of the airplane, whichever is later.'' The commenter requests that we change this compliance time to ''within 90 days after the effective date to this AD, or within 6 months after the most recent inspection in accordance with paragraph (a) of AD 2002–01–15, whichever is later.'' The commenter states that airplanes will be out of compliance upon the effective date of the new AD, even if the inspections in accordance with Part 1 of Boeing Alert Service Bulletin 767–27A0167 are currently being done.

We do not agree. As explained previously, paragraph (f) of this AD restates the initial inspection requirements of paragraph (a) of AD 2002–01–15. Our research indicates that inspections in accordance with paragraph (a) of that AD should have been accomplished on affected airplanes no later than 2004, considering that the last affected airplane was manufactured in 2000. We find that any affected airplane currently on the U.S. Register is already required to be in compliance with the requirements of paragraph (f) of this AD. Further, because the compliance time for these requirements has passed, the inspections required by paragraph (f) of this AD would have to be accomplished on any airplane that is not currently on the U.S. Register before that airplane could be added to the Register. We have not changed the AD in this regard.

Request To Rearrange Paragraphs

ATA, on behalf of UPS, requests that paragraph (g) of the NPRM be included under the heading ''NEW REQUIREMENTS OF THIS AD,'' and that paragraph (h) of the NPRM be restated as paragraph (g)(1). UPS states that the requirements of paragraph (g) do not reflect the requirements of paragraph (b) of AD 2002–01–15.

We acknowledge that paragraph (g) of this AD is different than paragraph (b) of AD 2002–01–15. Compliance times for certain actions specified in paragraph (g) have been extended beyond the compliance times that are currently required by paragraph (b) of AD 2002–01–15. Also, the repetitive inspection requirement has been removed for airplanes on which no discrepancy was found during the initial inspection. However, we consider paragraph (g) of this AD to be a restatement of the requirements of paragraph (b) of AD 2002–01–15 because the actions remaining in paragraph (g) are essentially the same as those in paragraph (b), and the changes to the compliance times are relieving, giving affected operators more time to comply with the existing requirements or obviating the need to continue repetitive inspections. We have revised the heading that precedes paragraph (g) of this AD to acknowledge that we have changed the compliance times in that paragraph from the times specified in AD 2002–01–15. We find that no further change to the AD is necessary in this regard.

Request To Extend Compliance Times

ATA, on behalf of UPS, requests that we extend the compliance time for doing Part 2 of the service bulletin from 24 months after the initial or most recent inspection in accordance with AD 2002–01–15, as applicable (as stated in paragraphs (g)(2) and (h) of the NPRM), to 24 months after the effective date of the new proposed AD. The commenter states that this change would ensure an acceptable level of safety and alleviate potential scheduling burdens. The commenter did not provide data supporting its position.

We do not agree. The compliance time of 24 months since the most recent inspection in accordance with AD 2002–01–15 is based on service history of bearing failure, as well as recommendations by the manufacturer based on extensive testing. We measure the compliance time from the most recent inspection to preserve the existing inspections and prevent a lapse in maintenance. This compliance time represents the maximum compliance time allowable to adequately ensure safety. Revising the compliance time to 24 months after the effective date of the AD may inadvertently extend the compliance time by as long as 18 months. We find that this would not adequately ensure safety. We have not changed the AD in this regard.

Request To Allow Continued Repetitive Inspections Until Extended Compliance Time

ATA, on behalf of UPS, requests that we allow repetitive inspections in accordance with Part 1 of the service bulletin to continue at the 6-month interval specified in paragraph (b) of AD 2002–01–15, until Parts 2 and 3 of the service bulletin are done. (This request is related to the same commenter's request, discussed previously, to extend

the compliance time for Part 2 to 24 months after the effective date of this AD.) The commenter states that allowing repetitive inspections to continue would ensure an acceptable level of safety.

We do not agree. As we explained in the preamble of the NPRM, there have been numerous additional findings of fractured bearings of the link assembly joint since we issued AD 2002–01–15. These findings occurred during accomplishment of Part 2 of the service bulletin, providing evidence that the bearings of the link assembly joint may fail even when they are properly lubricated, and the inspections in Part 1 are not adequate to detect fractured bearings. We have not changed the AD in this regard.

Request To Extend Grace Period for Part 3 of Service Bulletin

ATA, on behalf of UPS, requests that we extend the grace period for doing Part 3 of the service bulletin from 18 months after the effective date of the AD (as stated in paragraphs (i)(1) and (i)(2) of the NPRM) to 24 months after the effective date of the AD. The commenter indicates that these grace periods would alleviate scheduling burdens associated with the 18-month compliance time. The commenter provides no justification for its request.

We do not agree. Though the service bulletin does not provide a grace period for doing the actions in Part 3 of the service bulletin, we have included a grace period of 18 months. In establishing this grace period, we considered the manufacturer's recommendation, typical operators' maintenance schedules, and the degree of urgency associated with the subject unsafe condition. We also considered the small number of airplanes included in Group 2 in the service bulletin. Based on these factors, we find that the 18-month grace period will not create scheduling burdens because the actions in Part 3 of the service bulletin are required at 72 months after accomplishing the Part 2 inspection (for Group 1 airplanes), or 72 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness (for Group 2 airplanes); or 18 months after the effective date of the AD. We have not changed the AD in this regard.

Request To Clarify Meaning of ''Initial Inspection''

ATA, on behalf of UPS, requests that we revise paragraph (i)(2) of the NPRM to more specifically define that the ''initial'' inspection specified for Group 2 airplanes in that paragraph means the inspection in accordance with Part 3 of Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004. We infer that the commenter is concerned about the potential for misunderstanding the difference between the ''initial inspection'' specified in paragraph (f) of the NPRM and the inspection in accordance with Part 3 of the service bulletin that is specified in paragraph (i) of the NPRM.

We agree with the commenter's request. We have revised the wording of paragraph (i)(2) to remove the words, ''Do the initial inspection.'' This change results in the wording of paragraph (i)(2) now paralleling the wording of paragraph (i)(1).

Conclusion

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

Costs of Compliance

There are about 855 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $65 per work hour.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Part 1 of Boeing Alert Service Bulletin 767–27A0167 (required by AD 2002–01–151).	6	$390 [1]	332 [1]	$129,480.[1]
Part 2 of Boeing Alert Services Bulletin 767–27A0167 (new requirement [2]).	17	$1,105	Up to 332 [2]	Up to $366,860. [2]
Part 3 of Boeing Alert Service Bulletin 767–27A0167 (new requirement).	8	$520, per inspection cycle	371	$192,920, per inspection cycle.

[1] Repetitive Part 1 inspections are required only on condition, and only until Part 2 of Boeing Alert Service Bulletin 767–27A0167 has been done.

[2] Applies to airplanes on which Part 2 has not been previously accomplished: not all airplanes will be subject to this action.

The optional terminating action provided in this AD, if accomplished, would take about 23 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $3,885 per airplane. Based on these figures, the estimated cost of the optional terminating action specified in this AD is $5,380 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 removing amendment 39–12609 (67 FR 4328, January 30, 2002) and by adding the following new airworthiness directive (AD):

2006–10–08 Boeing: Amendment 39–14592. Docket No. FAA–2005–22529; Directorate Identifier 2005–NM–099–AD.

Effective Date

(a) This AD becomes effective June 19, 2006.

Affected ADs

(b) This AD supersedes AD 2002–01–15.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes; certificated in any category; identified in Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004.

Unsafe Condition

(d) This AD results from additional reports indicating fractured bearings of the link assembly joint in the inboard and outboard flaps of the trailing edge. We are issuing this AD to prevent failure of the bearings in the link assembly joint, which could result in separation of the inboard or outboard flap and consequent 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.

Requirements of AD 2002–01–15

Initial Inspection

(f) For airplanes having line numbers 1 through 819 inclusive, on which Part 2 of Boeing Alert Service Bulletin 767–27A0167 has not been done: Within 90 days after February 14, 2002 (the effective date of AD 2002–01–15), or within 36 months after date of manufacture of the airplane, whichever is later, do detailed inspections of the lubrication passage and link assembly joint in the inboard and outboard flaps of the trailing edge for discrepancies (*e.g.*, lubrication passage blocked, fractured bearing, loose or damaged joint); per Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, dated December 7, 2000; or Revision 2, dated October 7, 2004. After the effective date of this AD, only Revision 2 of the service bulletin may be used.

Repetitive Inspections/Corrective Action With New Compliance Times

(g) For airplanes having line numbers 1 through 819 inclusive, on which Part 2 of Boeing Alert Service Bulletin 767–27A0167 has not been done: Do the actions required by paragraph (g)(1), (g)(2), or (g)(3) of this AD, as applicable, at the time specified, per the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, dated December 7, 2000; or Revision 2, dated October 7, 2004. After the effective date of this AD, only Revision 2 of the service bulletin may be used.

(1) If the lubrication passage is not blocked and no fractured bearing or loose or damaged joint is found, do paragraph (h) of this AD.

(2) If the lubrication passage is blocked and no fractured bearing or loose or damaged joint is found, repeat the inspection required by paragraph (f) of this AD at intervals not to exceed 60 days, and within 24 months after the most recent inspection required by paragraph (a) or (b)(1) of AD 2002–01–15, or paragraph (f) of this AD, as applicable, do the actions required by paragraph (g)(3) of this AD.

(3) If any fractured bearing or loose or damaged joint is found, before further flight, do the corrective action (including removal of the link assembly, inspection for damage, and replacement with a new assembly if damaged), as specified in Part 2 of the Accomplishment Instructions of the service bulletin.

New Requirements of This AD

(h) For airplanes having line numbers 1 through 819 inclusive, on which the lubrication passage has not been found blocked and no fractured bearing or loose or damaged joint has been found, and on which Part 2 of Boeing Alert Service Bulletin 767–27A0167 has not been done: Within 24 months after the most recent inspection in accordance with paragraph (a) or (b)(1) of AD 2002–01–15, or paragraph (f) of this AD, as applicable, remove the link assembly, perform a detailed inspection of the link assembly for damage, and reinstall the undamaged link or replace it with a new link assembly that has been inspected and found to be free of damage or other discrepancy, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004.

Detailed Inspection of Bearing Ball and Outer Race

(i) For all airplanes: Remove the link assembly, and perform a detailed inspection for cracking of the bearing ball, and for severe wear of the outer race of the bearing, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004. Do this action at the time specified in paragraph (i)(1) or (i)(2) of this AD, as applicable. Then, repeat this action at intervals not to exceed 72 months. If any cracking or severe wear is found during any inspection required by this paragraph: Before further flight, do the corrective action in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004, or do paragraph (j) of this AD.

(1) For airplanes identified in the service bulletin as being in Group 1: Within 72 months after doing Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, dated December 7, 2000; or Revision 2, dated October 7, 2004, or within 18 months after the effective date of this AD, whichever is later.

(2) For airplanes identified in the service bulletin as being in Group 2: Within 72 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 18 months after the effective date of this AD; whichever is later.

Optional Terminating Action

(j) For all airplanes: Replacing the existing link assemblies of the trailing edge flaps with new, improved or modified assemblies that contain new bearings, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–27–0196, dated April 21, 2005, ends the repetitive removal/inspections required by paragraph (g), (h), and (i) of this AD, as applicable.

Actions Accomplished Previously

(k) Inspections and corrective actions done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0167, Revision 1, dated June 6, 2002, are acceptable for compliance with the corresponding actions required by this AD.

No Reporting Requirement

(l) Although Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004, specifies to submit certain information

to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 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, and the approval must specifically refer to this AD.

(4) AMOCs approved previously according to AD 2002–01–15 are approved as AMOCs for the corresponding provisions of this AD.

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 767–27A0167, dated December 7, 2000; or Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. If you accomplish the optional terminating action, you must use Boeing Service Bulletin 767–27–0196, dated April 21, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 767–27A0167, Revision 2, dated October 7, 2004; and Boeing Service Bulletin 767–27–0196, dated April 21, 2005; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On February 14, 2002 (67 FR 4328, January 30, 2002), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 767–27A0167, dated December 7, 2000.

(3) 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 May 4, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–4423 Filed 5–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30493; Amdt. No. 3166]

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 May 15, 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 May 15, 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 May 5, 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 08 June 2006*

Magnolia, AR, Magnolia Muni, NDB RWY 36, Amdt 1, CANCELLED
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 27R, Amdt 4
Pittsfield, MA, Pittsfield Muni, LOC RWY 26, Amdt 7
St. Louis, MO, Lambert St. Louis Intl, RNAV (GPS) RWY 11, Orig
St. Louis, MO, Lambert St. Louis Intl, RNAV (GPS) RWY 12L, Amdt 1
Cleveland, OH, Burke Lakefront, Takeoff Minimums and Textual DP, Amdt 4

** * * Effective 03 August 2006*

Destin, FL, Destin-Fort Walton Beach, RADAR–1, Amdt 8, CANCELLED
Picayune, MS, Picayune Muni, NDB RWY 18, Orig, CANCELLED
Picayune, MS, Picayune Muni, NDB RWY 36, Orig, CANCELLED
St George, UT, St George Muni, RNAV (GPS) RWY 34, Amdt 1

[FR Doc. 06–4474 Filed 5–12–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 25 approved new animal drug applications (NADAs) and 16 approved abbreviated new animal drug applications (ANADAs) for Type A medicated articles and feed use combinations from Intervet, Inc., to Huvepharma AD.

DATES: This rule is effective May 15, 2006.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 29160 Intervet Lane, Millsboro, DE 19966, has informed FDA that it has transferred ownership of, and all rights and interest in, the following 25 approved NADAs and 16 approved ANADAs for Type A medicated articles and feed use combinations to Huvepharma AD, 33 James Boucher Blvd., Sophia 1407, Bulgaria:

Application No.	Trade Name(s)
NADA 044–759	FLAVOMYCIN (bambermycins) Type A medicated article
NADA 095–543	AMPROL HI–E / FLAVOMYCIN
NADA 095–547	AMPROL HI–E / FLAVOMYCIN / 3–NITRO
NADA 095–548	AMPROL / 3–NITRO / FLAVOMYCIN
NADA 095–549	AMPROL PLUS / 3–NITRO / FLAVOMYCIN
NADA 098–340	FLAVOMYCIN / MONENSIN
NADA 098–341	FLAVOMYCIN / 3–NITRO / COBAN
NADA 101–628	FLAVOMYCIN / 3–NITRO / ZOALENE
NADA 101–629	FLAVOMYCIN / ZOALENE
NADA 130–185	FLAVOMYCIN / AMPROLIUM
NADA 130–661	FLAVOMYCIN / CARB–O–SEP
NADA 130–951	STENOROL (halofuginone hydrobromide)

Application No.	Trade Name(s)
NADA 137–483	FLAVOMYCIN / STENOROL
NADA 139–473	STENOROL / STAFAC
NADA 140–339	FLAVOMYCIN / NICARB
NADA 140–340	STENOROL / LINCOMIX
NADA 140–533	STENOROL / 3–NITRO / BMD
NADA 140–584	STENOROL / BMD
NADA 140–824	STENOROL Type A medicated article
NADA 140–843	MONTEBAN / FLAVOMYCIN / 3–NITRO
NADA 140–845	FLAVOMYCIN / MONTEBAN
NADA 140–918	STENOROL / FLAVOMYCIN
NADA 140–919	STENOROL / BMD
NADA 141–034	GAINPRO (bambermycins) Type A medicated article
NADA 141–129	AVATEC / FLAVOMYCIN
ANADA 200–075	SACOX (salinomycin sodium) Type A medicated article
ANADA 200–080	SACOX / 3–NITRO / FLAVOMYCIN
ANADA 200–081	SACOX / 3–NITRO / BMD
ANADA 200–082	SACOX / BMD
ANADA 200–083	SACOX / FLAVOMYCIN
ANADA 200–086	SACOX / ALBAC / 3–NITRO
ANADA 200–089	SACOX / BACIFERM
ANADA 200–090	SACOX / LINCOMIX / 3–NITRO
ANADA 200–091	SACOX / 3–NITRO / AUREOMYCIN
ANADA 200–092	SACOX / STAFAC
ANADA 200–093	SACOX / LINCOMIX
ANADA 200–094	SACOX / STAFAC / 3–NITRO
ANADA 200–095	SACOX / AUREOMYCIN
ANADA 200–096	SACOX / TERRAMYCIN
ANADA 200–097	SACOX / 3–NITRO
ANADA 200–143	SACOX / 3–NITRO / BACIFERM

Accordingly, the agency is amending the regulations in 21 CFR 558.55, 558.58, 558.95, 558.120, 558.265, 558.311, 558.355, 558.363, 558.366, 558.450, 558.550, and 558.680 to reflect the transfer of ownership and a current format.

In addition, Huvepharma AD has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

Also, FDA has found that the April 1, 2005, edition of Title 21, parts 500 to 599 of the Code of Federal Regulations (CFR) does not accurately reflect the use limitations for amprolium in single-ingredient, medicated broiler chicken feeds. The existing entry erroneously includes limitations normally associated with the use of arsenicals in feed. At this time, the regulations are being amended in § 558.55 to correct this error. FDA is also taking this opportunity to consolidate entries for similar combination medicated feeds in the same section of part 558, and to eliminate duplicate entries. These actions are being taken to improve the accuracy and readability of the regulations.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1) alphabetically add an entry for ''Huvepharma AD''; and in the table in paragraph (c)(2) numerically add an entry for ''016592'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Huvepharma AD, 33 James Boucher Blvd., Sophia 1407, Bulgaria	016592
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
016592	Huvepharma AD, 33 James Boucher Blvd., Sophia 1407, Bulgaria
* * * * *	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.55 [Amended]

■ 4. Amend § 558.55 as follows:

■ a. In the table in paragraph (d)(2)(ii), in the ''Limitations'' column in the entry for ''Amprolium 72.6 to 113.5 grams per ton'', remove the first sentence;

■ b. In the table in paragraph (d)(2)(iii), in the ''Limitations'' column in the entry for ''Bambermycins 1 to 3 plus roxarsone 22.8 to 34.1 (0.0025% to 0.00375%)'', remove ''057926'' and add in its place ''016592''; and in the ''Sponsor'' column add ''016592'' and

■ c. In the table in paragraph (d)(2)(iii), in the ''Limitations'' column and ''Sponsor'' column in the entry for

''Bambermycins 1 to 4'', remove ''057926'' and add in its place ''016592''.

■ 5. Amend § 558.58 as follows:

■ a. Revise paragraph (a);

■ b. Redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e);

■ c. Add new paragraph (b);

■ d. In the table in newly redesignated paragraph (e)(1)(i), add an entry for ''Bambermycins 1 to 3 plus roxarsone 22.8 to 34.1'';

■ e. In the table in newly redesignated paragraph (e)(1)(ii), in the ''Limitations'' column in the entries for ''Bambermycins 2 to 3 plus roxarsone 22.8 to 34.1'', remove ''057926'' and add in its place ''016592''; and in the ''Sponsor'' column add ''016592''; and

■ f. In the table in newly redesignated paragraph (e)(1)(iii), in the ''Limitations'' column in the entries for ''Bambermycins 1 to 3'' and ''Bambermycins 1 to 3 plus roxarsone 22.8 to 34.1'', remove ''057926'' and add in its place ''016592''; and in the ''Sponsor'' column add ''016592''.

The revisions and additions read as follows:

§ 558.58 Amprolium and ethopabate.

(a) *Specifications.* Type A medicated articles containing:

(1) 25 percent amprolium and 8 percent ethopabate or 5 percent amprolium and 1.6 percent ethopabate;

(2) 25 percent amprolium and 0.8 percent ethopabate or 5 percent amprolium and 0.16 percent ethopabate.

(b) *Approvals.* See No. 050604 in § 510.600(c) of this chapter.

* * * * *

(e) * * *

(1) * * *

Amprolium and ethopabate in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(i) Amprolium 113.5 (0.0125%) and ethopabate 3.6 (0.0004%).	* *	* *	*	*
	Bambermycins, 1 to 3; plus roxarsone, 22.8 to 34.1	Broiler chickens: As an aid in the prevention of coccidiosis; and for increased rate of weight gain, improved feed efficiency, and improved pigmentation.	Feed continuously as the sole ration; as sole source of amprolium and organic arsenic; withdraw 5 d before slaughter; roxarsone provided by No. 046573, bambermycins by No. 016592 in § 510.600(c) of this chapter.	016592
* * * * * *				

* * * * *

■ 6. Amend § 558.95 as follows:

■ a. In paragraphs (a)(1), (a)(2), and (a)(5), remove ''057926'' and add in its place ''016592'';

■ b. Remove and reserve paragraph (d)(1)(ii);

■ c. Remove paragraphs (d)(1)(iii) through (d)(1)(xiv) and paragraphs (d)(3)(iii) and (d)(3)(iv); and

■ d. Revise paragraph (d)(5).

The revision reads as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) Bambermycins may also be used in combination with:

(i) Amprolium alone or with roxarsone as in § 558.55.

(ii) Amprolium and ethopabate alone or with roxarsone as in § 558.58.

(iii) Diclazuril as in § 558.198.

(iv) Halofuginone as in § 558.265.

(v) Lasalocid alone or with roxarsone as in § 558.311.

(vi) Monensin alone or with roxarsone as in § 558.355.

(vii) Narasin alone or with nicarbazin or roxarsone as in § 558.363.

(viii) Nicarbazin as in § 558.366.

(ix) Salinomycin alone or with roxarsone as in § 558.550.

(x) Zoalene alone or with roxarsone as in § 558.680.

■ 7. In § 558.120, add paragraph (d)(1)(iv) and remove paragraph (d)(2)(iii) to read as follows:

§ 558.120 Carbarsone (not U.S.P.).

* * * * *

(d) * * *

(1) * * *

(iv) *Grams per ton.* 227 carbarsone, plus 1 or 4 grams per ton bambermycins.

(*a*) *Indications for use.* As an aid in the prevention of blackhead; and for increased rate of weight gain (4 grams per ton bambermycins) or improved feed efficiency (1 gram per ton bambermycins).

(*b*) *Limitations.* Feed continuously 2 weeks before blackhead is expected and continue as long as prevention is needed. Withdraw 5 days before slaughter. As sole source of organic arsenic. Bambermycins provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

■ 8. In § 558.265, revise paragraph (a); redesignate paragraphs (b) and (c) as paragraphs (c) and (d); and add new paragraph (b) to read as follows:

§ 558.265 Halofuginone hydrobromide.

(a) *Specifications.* Type A medicated articles containing 6 grams of halofuginone hydrobromide per kilogram.

(b) *Approvals.* See No. 016592 in § 510.600(c) of this chapter.

* * * * *

■ 9. Amend § 558.311 as follows:

■ a. In the table in paragraph (e)(1)(ii) in the entry in the ''Combination in grams per ton'' column for ''Roxarsone 45.4 plus bambermycins 1'', in the ''Limitations'' column remove ''012799'' and add in its place ''016592'';

■ b. In the table in paragraph (e)(1)(ii) following the entry in the ''Combination in grams per ton'' column for ''Roxarsone 45.4 plus bambermycins 1'', add an entry for ''Bambermycins 1 to 2''; and

■ c. Remove and reserve paragraph (e)(5)(ii).

The addition reads as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(1) * * *

Lasalocid in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	* * *	*	*
(ii) 68 (0.0075 pct) to 113 (0.0125 pct).	* *	* *	*	
*	*	* * *	*	*
	Bambermycins 1 to 2	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Bambermycins provided by No. 016592 in § 510.600(c) of this chapter.	016592
*	*	* * *	*	*

* * * * *

■ 10. In § 558.355, in paragraphs (b)(10), (f)(2)(v)(*b*), and (f)(2)(vi)(*b*), remove ''057926'' and add in its place ''016592''; and revise paragraphs (f)(1)(vi), (f)(1)(vii), and (f)(1)(xvii) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(1) * * *

(vi) *Amount per ton*. Monensin, 90 to 110 grams; plus bambermycins, 1 to 2 grams.

(*a*) *Indications for use*. For increased rate of weight gain and improved feed efficiency; and as an aid in the prevention of coccidiosis caused by *E. necatrix*, *E. tenella*,*E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*.

(*b*) *Limitations*. Feed continuously as sole ration; do not feed to laying chickens. Bambermycins provided by No. 016592 in § 510.600(c) of this chapter.

(vii) *Amount per ton*. Monensin, 90 to 110 grams; plus bambermycins, 1 gram; plus roxarsone, 22.7 to 45.4 grams

(*a*) *Indications for use*. For increased rate of weight gain and improved feed efficiency; and as an aid in the prevention of coccidiosis caused by *E. necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*.

(*b*) *Limitations*. Feed continuously as sole ration; use as sole source of organic arsenic; withdraw 5 d before slaughter; do not feed to laying chickens. Bambermycins provided by No. 016592 in § 510.600(c) of this chapter; roxarsone provided by No. 046573.

* * * * *

(xvii) *Amount per ton*. Bambermycins, 1 to 2 grams plus monensin, 90 to 110 grams plus roxarsone, 22.7 to 45.4 grams.

(*a*) *Indications for use*. For increased rate of weight gain; and as an aid in prevention of coccidiosis caused by *E. necatrix*, *E. tenella*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*.

(*b*) *Limitations*. Feed continuously as sole ration; use as sole source of organic arsenic; withdraw 5 d before slaughter; do not feed to laying chickens. Bambermycins provided by No. 016592 in § 510.600(c) of this chapter; roxarsone provided by No. 046573.

* * * * *

■ 11. Amend § 558.363 as follows:

■ a. In paragraphs (a)(4), (a)(5), and (d)(1)(vii)(B), remove ''057926'' and add in its place ''016592'';

■ b. In paragraph (d)(1)(iv)(B) add a new sentence at the end of the paragraph; and

■ c. Remove paragraph (d)(1)(xii).

The addition reads as follows:

§ 558.363 Narasin.

* * * * *

(d) * * *

(1) * * *

(iv) * * *

(B) * * * Narasin as provided by No. 000986; bambermycins by No. 016592 in § 510.600(c) of this chapter.

* * * * *

■ 12. In the table in paragraph (d) of § 558.366, alphabetically add new entries for ''Narasin 27 to 45, and bambermycins 1 to 2'' and ''Bambermycins 1 to 2'' to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(d) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	* *	* *	*
	Narasin 27 to 45, and bacitracin methylene disalicylate 50, and roxarsone 22.7 to 45.4	* *	* *	*

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Narasin 27 to 45, and bambermycins 1 to 2	Broiler chickens: As an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina*, *E. maxima*, *E. necatrix*, and *E. brunetti*) coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for coccidiosis; do not use in flushing mashes; do not feed to laying hens; withdraw 4 days before slaughter. Bambermycins provided by No. 016592; nicarbazin and narasin by No. 066104 in § 510.600(c) of this chapter..	000986
*	*	*	*	*	*	*
113.5 (0.0125 pct)	* *	* *	*	*	*	
	Bacitracin zinc 4 to 50	* *	*	*	*	
	Bambermycins 1 to 2	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Bambermycins provided by No. 016592 in § 510.600(c) of this chapter.	016592
*	*	*	*	*	*	*

■ 13. In the table in paragraph (d)(1)(vii) of § 558.450, remove the entry for ''Salinomycin 40 to 60 g/ton''; and add paragraph (d)(3)(v) to read as follows:

§ 558.450 Oxytetracycline.

* * * * *

(d) * * *

(3) * * *

(v) Salinomycin as in § 558.550.

■ 14. In § 558.550, in paragraphs (d)(1)(xv)(*c*) and (d)(1)(xvi)(*c*), remove ''057926'' and add in its place ''016592''; add paragraphs (d)(1)(xxiii) and (d)(1)(xxiv); and revise paragraphs (b)(2) and (d)(4) to read as follows:

§ 558.550 Salinomycin.

* * * * *

(b) * * *

(2) No. 016592 for use as in paragraphs (d)(1)(i), (d)(1)(iii) through (d)(1)(xvi), (d)(1)(xxiii) and (d)(1)(xxiv), (d)(2)(i), (d)(3)(i), and (d)(4) of this section.

* * * * *

(d) * * *

(1) * * *

(xxiii) *Amount per ton*. Salinomycin, 40 to 60 grams; plus bambermycins, 1 to 3 grams.

(*a*) *Indications for use*. Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*; and for improved feed efficiency.

(*b*) *Limitations*. Feed continuously as sole ration. Do not feed to laying chickens; not approved for use with pellet binders; may be fatal if accidentally fed to adult turkeys or horses. Salinomycin as provided by Nos. 046573 and 016592; bambermycins by No. 016592 in § 510.600(c) of this chapter.

(xxiv) *Amount per ton*. Salinomycin, 40 to 60 grams; plus bambermycins, 1 to 2 grams; plus roxarsone, 45.4 grams.

(*a*) *Indications for use*. Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, including some field strains of *E. tenella* that are more susceptible to roxarsone combined with salinomycin than salinomycin alone; and for improved feed efficiency.

(*b*) *Limitations*. Feed continuously as sole ration. Do not feed to laying chickens; as sole source or organic arsenic; withdraw 5 days before slaughter; not approved for use with pellet binders; may be fatal if accidentally fed to adult turkeys or horses; Salinomycin as provided by Nos. 046573and 016592; bambermycins by No. 016592; roxarsone by No. 046573 in § 510.600(c) of this chapter.

* * * * *

(4) *Chickens*: It is used in chicken feed as follows:

(i) *Amount per ton*. Salinomycin, 40 to 60 grams; plus oxytetracycline, 500 grams.

(*a*) *Indications for use*. For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*; and for reduction of mortality due to air sacculitis (air-sac-infection) caused by *Escherichia coli* susceptible to oxytetracycline.

(*b*) *Limitations*. Feed continuously for 5 days; do not feed to chickens producing eggs for human consumption; withdraw 24 hours before slaughter; in low calcium feeds withdraw 3 d before slaughter. Salinomycin as provided by Nos. 046573 and 016592; oxytetracycline as provided by No. 066104 in § 510.600(c) of this chapter.

(ii) [Reserved]

■ 15. In § 558.680, alphabetically add two entries to the table in paragraph (d)(1)(ii); and revise paragraph (d)(2) to read as follows:

§ 558.680 Zoalene.

* * * * *

(d) * * *

(1) * * *

Zoalene in grams per ton	Combination in grams per ton	Indications for use	Limitations
(ii) 113.5 (0.0125%).	* *	* *	* * *
	Bacitracin 100 to 500	* * *	* *
	Bambermycins 1	Broiler chickens: As an aid in the prevention and control of coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Do not feed to chickens over 14 weeks of age. Bambermycins as provided by No. 016592 in § 510.600(c) of this chapter.
	Bambermycins 1 plus roxarsone 22.7	Broiler chickens: As an aid in the prevention and control of coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Do not feed to chickens over 14 weeks of age; feed as sole source of organic arsenic; withdraw 5 days before slaughter. Bambermycins as provided by No. 016592, roxarsone by No. 046573 in § 510.600(c) of this chapter.
* *	*	* *	* *

(2) Zoalene may also be used in combination with roxarsone as in § 558.530.

Dated: May 3, 2006.

Steven D. Vaughn,

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

[FR Doc. 06–4505 Filed 5–12–06; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in June 2006. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective June 1, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in appendix C to part 4022).

This amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during June 2006, (2) adds to appendix B to part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during June 2006, and (3) adds to appendix C to part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during June 2006.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 6.20 percent for the first 20 years following the valuation date and 4.75 percent thereafter. These interest assumptions represent an increase (from those in effect for May 2006) of 0.30 percent for the first 20 years following the valuation date and are otherwise unchanged. These interest assumptions reflect the PBGC's recently updated mortality assumptions, which are effective for terminations on or after January 1, 2006. See the PBGC's final rule published December 2, 2005 (70 FR 72205), which is available at *http://www.pbgc.gov/docs/05-23554.pdf*. Because the updated mortality assumptions reflect improvements in mortality, these interest assumptions are higher than they would have been using the old mortality assumptions.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for May 2006) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for

determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during June 2006, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

Appendix B—[Amended]

■ 2. In appendix B to part 4022, Rate Set 152, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuity (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
152	6–1–06	7–1–06	3.25	4.00	4.00	4.00	7	8

Appendix C—[Amended]

■ 3. In appendix C to part 4022, Rate Set 152, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
152	6–1–06	7–1–06	3.25	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

Appendix B—[Amended]

■ 5. In appendix B to part 4044, a new entry for June 2006, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used to Value Benefits

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*	*	*	*	*	
June 2006	.0620	1–20	.0475	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of May 2006.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 06–4489 Filed 5–12–06; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 635

RIN 0702–AA52–U

Law Enforcement Reporting

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is publishing our rule concerning law enforcement reporting, to implement portions of Section 577(b)(5) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, October 28, 2004, Public Law 108–375, pertaining to reporting of sexual assaults. This rule also implements Department of Defense policy concerning sexual assault.

DATES: *Effective Date:* June 14, 2006.

ADDRESSES: Headquarters, Department of the Army, Office of the Provost Marshal General, ATTN: DAPM–MPD–LE, 2800 Army Pentagon, Washington, DC 20310–2800.

FOR FURTHER INFORMATION CONTACT: James Crumley, (703) 692–6721.

SUPPLEMENTARY INFORMATION:

A. Background

In the December 9, 2005 issue of the **Federal Register** (70 FR 73181) the Department of the Army published a proposed rule, amending 32 CFR part 635. This final rule amends 32 CFR part 635 to implement portions of Section 577(b)(5) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, October 28, 2004, Public Law 108–375, pertaining to reporting of sexual assaults. This revision also implements Department of Defense policy concerning sexual assault. The Department of the Army received no responses to the proposed rule.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this rule is not a significant regulatory action. As such, the rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this rule does not apply because it will not have a substantial 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.

Mark Darden,

Chief, Law Enforcement Policy Branch.

List of Subjects in 32 CFR Part 635

Crime, Law, Law enforcement, Law enforcement officers, Military law.

■ For reasons stated in the preamble the Department of the Army amends 32 CFR part 635 to read as follows:

PART 635—LAW ENFORCEMENT REPORTING

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 28 U.S.C. 534 note, 42 U.S.C. 10601, 18 U.S.C. 922, 42 U.S.C. 14071, 10 U.S.C. 1562, 10 U.S.C. Chap. 47, Pub. L. 108–375.

§§ 635.33 through 635.36 [Redesignated as §§ 635.34 through 635.37]

■ 2. Redesignate §§ 625.33 through 635.36 as §§ 635.34 through 635.37, respectively.

§§ 635.31 and 635.32 [Redesignated as §§ 635.32 and 635.33]

■ 3. Redesignate §§ 635.31 and 635.32 as §§ 635.32 and 635.33, respectively.

■ 4. A new § 635.31 is added to Subpart D to read as follows:

§ 635.31 Procedures for Restricted/Unrestricted Reporting in Sexual Assault Cases.

Active duty Soldiers, and Army National Guard and U.S. Army Reserve Soldiers who are subject to military jurisdiction under the UCMJ, can elect either restricted or unrestricted reporting if they are the victim of a sexual assault.

(a) *Unrestricted Reporting.* Unrestricted reporting requires normal law enforcement reporting and investigative procedures.

(b) Restricted reporting requires that law enforcement and criminal investigative organizations not be informed of a victim's identity and not initiate investigative procedures. The victim may allow Sexual Assault Response Coordinators (SARC), health care providers (HCP), or chaplains to collect specific items (clothing, bedding, etc.) that may be later used as evidence, should the victim later decide to report the incident to law enforcement. In sexual assault cases additional forensic evidence may be collected using the ''Sexual Assault Evidence Collection Kit,'' NSN 6640–01–423–9132, or a suitable substitute (hereafter, ''evidence kit''). The evidence kit, other items such as clothing or bedding sheets, and any other articles provided by the HCP, SARC, or chaplain will be stored in the installation provost marshal's evidence room separate from other evidence and property. Procedures for handling evidence specified in AR 195–5, Evidence Procedures, will be strictly followed.

(c) Installation Provost Marshals will complete an information report in COPS

for restricted reporting. Reports will be completed utilizing the offense code from the 6Z series. An entry will be made in the journal when the evidence kit or property (clothing, bedding, etc.) is received. The journal entry will be listed using non-identifying information, such as an anonymous identifier. An entry will not be made in the blotter. Restricted reporting incidents are not reportable as Serious Incident Reports. Property and the evidence kit will be stored for one year and then scheduled/suspensed for destruction, unless earlier released to investigative authorities in accordance with the victim's decision to pursue unrestricted reporting. Thirty days prior to destruction of the property, a letter will be sent to the SARC by the Provost Marshal, advising the SARC that the property will be destroyed in thirty days, unless law enforcement personnel are notified by the SARC that the victim has elected unrestricted reporting. Clothing, the evidence kit, or other personal effects may be released to the SARC for return to the victim. The information report will be updated when the evidence is destroyed, or released to investigative authorities.

(d) In the event that information about a sexual assault that was made under restricted reporting is disclosed to the commander from a source independent of the restricted reporting avenues or to law enforcement from other sources, but from a source other than the SARC, HCP, chaplain, or Provost Marshal, the commander may report the matter to law enforcement and law enforcement remains authorized to initiate its own independent investigation of the matter presented. Additionally, a victim's disclosure of his/her sexual assault to persons outside the protective sphere of the persons covered by the restricted reporting policy may result in an investigation of the allegations.

[FR Doc. 06–4511 Filed 5–12–06; 8:45 am]

BILLING CODE 3710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket No. EPA–R02–OAR–2005–NY–0001; FRL–8169–9]

Air Quality Redesignation for the 8-Hour Ozone National Ambient Air Quality Standards; New York State

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is redesignating the Syracuse metropolitan area from unclassifiable to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The counties comprising this area are Onondaga, Madison, Cayuga and Oswego in the State of New York. This redesignation to attainment is appropriate because the State of New York requested redesignation and the Syracuse area has attained the ozone health standard based on the most recent data available.

DATES: *Effective Date:* This rule will become effective on June 14, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Kelly at 212–637–4249 or by e-mail at *kelly.bob@epa.gov*.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R02–OAR–2005–NY–0001. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

In addition, copies of the state submittals are available at the following addresses for inspection during normal business hours:

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket, Room B–108, 1301 Constitution Avenue, (Mail Code 6102T) NW., Washington DC 20460.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

I. What Action Is EPA Taking?
II. What Is the Background for This Action?
III. What Are the Statutory and Regulatory Requirements for Designations and Redesignations?
IV. What Is EPA's Response to Comments on the Redesignation?
V. What Air Quality Information Shows That the Syracuse Area Attains the Ozone Standard?
VI. Conclusion
VII. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

Consistent with the applicable requirements in section 107(d)(3) of the Clean Air Act and the regulatory requirements in 40 CFR part 50, appendix I and based on the 8-hour ozone air quality data for the 2003 through 2005 time period, we are redesignating the Syracuse area, which is comprised of Onondaga, Madison, Cayuga, and Oswego Counties in New York from unclassifiable to attainment for the 8-hour ozone standard. The basis for this action is described in more detail below and in the July 7, 2005 proposed rule referenced below.

II. What Is the Background for This Action?

The EPA published a final rule (69 FR 23858; April 30, 2004) promulgating designations for the 8-hour ozone NAAQS. That action designated the four-county Syracuse metropolitan area as unclassifiable and provided that the designation was effective on June 15, 2004.

Our initial designation of the Syracuse area was based on a review of ozone data from 2001 through 2003. In that action, we stated that we would review all available information and make an attainment or nonattainment decision after reviewing the 2004 ozone data.

On December 14, 2004, the New York State Department of Environmental Conservation asked EPA to complete its planned review of 2004's air quality data and requested EPA to redesignate the Syracuse area to attainment of the 8-hour ozone standard. On July 7, 2005, after reviewing the air quality data for the 3-year period ending 2004, we published a proposal (70 FR 39215) to redesignate the Syracuse area from unclassifiable to attainment. We received two comments on the redesignation, which are addressed in the section ''What is EPA's Response to Comments on the Redesignation?''

III. What Are the Statutory Requirements for Designations and Redesignations?

Section 107(d) of the Clean Air Act sets forth the criteria and process for designations and redesignations. An explanation of statutory requirements

for the 8-hour ozone designations that became effective on June 15, 2004, and the actions EPA took to meet those requirements, can be found in the final rule that established the designations (69 FR 23858; April 30, 2004). In section 107(d)(3), the Clean Air Act addresses redesignations and provides that the Administrator or the Governor of a state may initiate the redesignation process. One of the bases for redesignation under that section is air quality data. To determine whether an area is attaining the 8-hour ozone NAAQS, we consider the most recent 3 consecutive years of data in accordance with 40 CFR part 50, appendix I, EPA's Guideline on Data Handling Conventions for the 8-Hour Ozone NAAQS (December 1998). For the purpose of this final rulemaking, we reviewed the ozone data from 2002 through 2004 and have examined the data for 2005 as well.

IV. What Is EPA's Response to Comments on the Redesignation?

EPA received two letters commenting on the proposed redesignation. One letter, from the American Lung Association of New York State, urged EPA to designate the Syracuse area as nonattainment for the 8-hour ozone standard, disagreeing with EPA's original designation of unclassifiable for the area. The American Lung Association also disagreed with EPA's method for determining the attainment status of the area, and asked EPA to wait and use data from 2005 before moving ahead with any redesignation to attainment.

The original designation of unclassifiable, was made by EPA on April 30, 2004 at 69 FR 23858. Any concerns regarding that action should have been raised in the context of that rulemaking action and/or in a challenge to that final action. EPA has not re-opened the issue of the area's initial designation in this ruling.

As for the American Lung Association's request that EPA use data from the 2005 ozone season, EPA notes New York State requested redesignation based on data from the 2002–2004 ozone seasons and that information formed the basis for our proposed approval of the redesignation request. However, we have examined the air quality data from 2005 and data from the 3-year period of 2003–2005 also indicate that the area is in attainment with the 8-hour ozone standard. Therefore, based on data from 2002 through 2004 and 2003 through 2005, using the method established by EPA for evaluating the attainment status of ozone monitors, all of the ozone monitors in the Syracuse area are attaining the ozone standard.

The other letter, from the Onondaga County Executive, supported EPA's proposed redesignation of the Syracuse area to attainment.

V. What Air Quality Information Shows That the Syracuse Area Attains the Ozone Standard?

As we proposed in July 2005, the air quality data submitted by New York in support of redesignation indicates that the Syracuse area was attaining the 8-hour ozone standard based on the three most recent years of data—2002–2004. More recent information continues to support redesignation to attainment of the Syracuse area. On January 25, 2006, the New York State Department of Environmental Conservation certified the air quality data for 2005 is complete, accurate and meeting EPA's quality assurance requirements. Based on our independent review of these data, which the State submitted to EPA's database, we agree with the State's assessment.

Consistent with 40 CFR part 50, appendix I, section 2.3, paragraph (d)(1), the 8-hour ozone standard is met if the design value is less than 0.085 parts per million (ppm). In Appendix I, the design value is defined as the average value of the annual fourth highest daily maximum that occurred over the most recent three year period. The design value for the monitors in the Syracuse area for the three year period 2002–2004 are: East Syracuse 0.079 ppm, Georgetown 0.077 ppm. In addition the design value for the most recent three years of data, 2003 to 2005 are: East Syracuse 0.074 ppm, Georgetown 0.073 ppm and Fulton 0.082 ppm. Note the Fulton monitor is new and did not have the three years of data required by EPA's guidance for air quality designations. Also, a monitor outside the Syracuse metropolitan area in Oneida County, which was set up as the downwind peak ozone monitor for the Syracuse area, had design values of 0.078 ppm for the three year period 2002–2004 and 0.072 ppm for the three year period 2003–2005. These monitored design values are less than the 0.085 ppm ozone standard set by EPA. Since the monitors are attaining the ozone standard using the most recent data, the eight-hour ozone NAAQS has been attained in the Syracuse area and we are redesignating the area to attainment.

VI. Conclusion

Because the Syracuse area has met all the requirements for redesignation to attainment, including meeting the 8-hour ozone health standard based on the latest data, we are redesignating the area, comprised of Onondaga, Madison, Cayuga, and Oswego Counties in New York, to attainment for the 8-hour ozone standard.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely designates an area for planning purposes based on air quality, and does not establish any new regulations. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The redesignation is an action which affects the status of a geographic area but does not impose any new requirements on governmental entities or sources. Therefore because it does not impose any additional enforceable duty, 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).

The Onondaga and Oneida Tribes are located within the Syracuse area. The redesignation of the Syracuse area from unclassifiable to attainment will not create any new or burdensome requirements upon the tribes. Therefore, this redesignation does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely establishes the attainment status, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive

Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 28, 2006.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.333, the table entitled ''New York-Ozone (8-Hour Standard)'' is amended by removing footnote \b\ and revising the entry for Syracuse to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK-OZONE (8-HOUR STANDARD)

Designation area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* *	*	*	*	* *
Syracuse, NY:				
Cayuga County	June 14, 2006	Attainment.		
Madison County	June 14, 2006.	Attainment.		
Onondaga County	June 14, 2006.	Attainment.		
Oswego County	June 14, 2006.	Attainment.		
* *	*	*	*	* *

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. 06–4517 Filed 5–12–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2006–23651]

RIN 2127–AJ81

Federal Motor Vehicle Safety Standards; Controls, Telltales and Indicators

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In a final rule of August 17, 2005, we updated our standard regulating motor vehicle controls, telltales and indicators. The standard specifies requirements for the location, identification, and illumination of these items. The rule extended the standard's telltale and indicator requirements to vehicles with a Gross Vehicle Weight Rating (GVWR) of 4,536 kg (10,000 pounds) and greater, updated the standard's requirements for multi-function controls and multi-task displays to make the requirements appropriate for advanced systems, and reorganized the standard to make it easier to read. In a document published on January 24, 2006, the effective date and compliance date for requirements applicable to vehicles under 4,536 kg (10,000 pounds) GVWR were extended to September 1, 2006.

In response to the August 17, 2005 final rule, we received four petitions for reconsideration, from three organizations. This final rule responds to those petitions.

DATES: *Effective Date:* The effective date of the rule amending 49 CFR 571.101 published at 70 FR 48295, August 17, 2005 was delayed until September 1, 2006 (at 71 FR 3786, January 24, 2006). The effective date of today's final rule is September 1, 2006.

Compliance date: The compliance date for the extension of the standard's telltale and indicator requirements to

vehicles with a GVWR of 4,536 kg (10,000 pounds) or greater is September 1, 2013. The compliance date for S5.4.3 ''Each symbol used for the identification of a telltale, control or indicator must be in a color that stands out clearly against the background'' is September 1, 2011. The compliance date for all other requirements is September 1, 2006. Voluntary compliance is permitted before those dates.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than June 29, 2006.

ADDRESSES: Petitions for reconsideration of the final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues you may call Ms. Gayle Dalrymple, Office of Crash Avoidance Standards at (202) 366–5559. Her FAX number is (202) 366–7002. For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820. You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

NHTSA issued the original version of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays,* in 1967 (32 FR 2408) as one of the initial FMVSSs. The standard applies to passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses. The purpose of FMVSS No. 101 is to assure the accessibility and visibility of motor vehicle controls and displays under daylight and nighttime conditions, in order to reduce the safety hazards caused by the diversion of the driver's attention from the driving task, and by mistakes in selecting controls.

At present, FMVSS No. 101 specifies requirements for the location (S5.1), identification (S5.2), and illumination (S5.3) of various controls and displays. It specifies that those controls and displays must be accessible and visible to a driver properly seated wearing his or her safety belt. Table 1, ''Identification and Illumination of Controls,'' and Table 2, ''Identification and Illumination of Displays,'' indicate which controls and displays are subject to the identification requirements, and how they are to be identified, colored, and illuminated.

A. August 17, 2005 Final Rule

In a final rule published in the **Federal Register** (70 FR 48295) on August 17, 2005, NHTSA amended FMVSS No. 101 by extending the standard's telltale and indicator requirements to vehicles of Gross Vehicle Weight Rating (GVWR) 4,536 kilograms (10,000 pounds) and over, updating the standard's requirements for multi-function controls and multi-task displays to make the requirements appropriate for advanced systems, and reorganizing the standard to make it easier to read. Table 1 and Table 2 continue to include only those symbols and words previously specified in the controls and displays standard or in another Federal motor vehicle safety standard. However, both Tables 1 and 2 were reorganized to make the symbols and words easier to find.

The final rule specified an effective date of February 13, 2006 for requirements applicable to passenger cars, multipurpose passenger vehicles, trucks and buses under 4,536 kg GVWR.

B. Extension of Effective Date

In a petition for reconsideration dated October 3, 2005, the Alliance of Automobile Manufacturers (Alliance) petitioned for a delay in the final rule's effective date to September 1, 2006 for new requirements applicable to passenger cars, multipurpose passenger vehicles, trucks and buses under 4,536 kg GVWR. After considering the petitioner's explanation for the need to maintain the status quo while NHTSA considered several petitions for reconsideration, NHTSA decided that it was in the public interest to grant the Alliance's petition. In a final rule published in the **Federal Register** (71 FR 3786) on January 24, 2006, NHTSA delayed the effective date of the final rule from February 13, 2006 to September 1, 2006.

II. Final Rule; Response to Petitions for Reconsideration

NHTSA received three petitions for reconsideration of the August 17, 2005 final rule, from the Truck Manufacturers Association (TMA), the Association of International Automobile Manufacturers (AIAM) and the Alliance. In general, the petitioners asked NHTSA to reconsider whether the words ''Trailer ABS'' or ''Trailer Antilock'' should be used in lieu of a symbol specified in Table 1, asked for reconsideration of whether symbols must have ''proportional dimensional characteristics,'' and for reconsideration of a requirement for color contrast between symbols and their backgrounds.

Reconsideration of interior illumination requirements was also requested. Finally, the Alliance raised issues about certain symbols and footnotes in Tables 1 and 2. The issues raised in the petitions, and NHTSA's response are addressed below.

A. Proportional Dimensional Characteristics for Identifiers

The August 17, 2005 final rule at S5.2.1 states: ''If a symbol is used, each symbol provided pursuant to this paragraph must have the proportional dimensional characteristics of the symbol as it appears in Table 1 or Table 2.'' The Alliance stated that the quoted S5.2.1 language is ''more restrictive'' than the previous requirement that the symbol be ''substantially similar in form'' to the one given in the table. The Alliance asked that NHTSA revert to the pre-August 17, 2005 description of the symbol.

NHTSA grants this part of the Alliance's petition. The final rule language was intended to preserve the aspect ratio of the graphic so that the graphic is identifiable in every vehicle. However, upon review, NHTSA has not seen examples of current vehicle models for which apparent differences between the ''proportional dimensional characteristics of the symbol'' requirement versus ''substantially similar in form'' requirement would raise issues. Since there are only 20 symbols in the amended Tables 1 and 2, we do not believe that continued use of the ''substantially similar in form'' requirement would result in any difference in practical application from a ''proportional dimensional characteristics of the symbol'' requirement.

B. Multiple Levels of Illumination for Controls and Indicators

The August 17, 2005, final rule at S5.3.2.1 addresses means of illuminating the indicators, identifications of indicators and identification of controls listed in Table 1 to make them visible to the driver under daylight and nighttime driving conditions. S5.3.2.2 in the August 17, 2005 final rule specifies that the means of providing the visibility required by S5.3.2.2(a) must be adjustable to provide at least two levels of brightness. S5.3.2.2(b) in the August 17, 2005 final rule states:

> At the lower level of brightness, the identification of controls and indicators must be barely discernible to the driver who has adapted to dark ambient roadway condition;

The requirement that the August 17, 2005 final rule amended was:

S5.3.3(a) Means shall be provided for making controls, gauges, and the identification of those items visible to the driver under all driving conditions.

(b) The means for providing the required visibility—

(1) Shall be adjustable to provide at least two levels of brightness, one of which is barely discernible to a driver who has adapted to dark ambient roadway conditions.

(2) May be operable manually or automatically, and

(3) May have levels of brightness at which those items and identification are not visible.

The Alliance objected to S5.3.2.2(b) in the August 17, 2005 final rule, stating its belief that the existing 5.3.3(b)(1) which provided for ''at least two levels of brightness, one of which is barely discernible * * *'' meant that ''one level of brightness must be barely discernible, not necessarily the lowest level.'' If two levels are required, and one must be barely discernible, it is clearly not acceptable to have the other of the two required levels of brightness be lower than barely discernible (in other words, invisible).

The Alliance is correct; we note, however, S5.3.2.2 of the August 17, 2005 final rule is internally contradictory; S5.3.2.2(b) conflicts with S5.3.2.2(d), ''May have levels of brightness at which those items and identifications are not visible.'' S5.3.2.2(d), a holdover from the old standard, addresses the manual adjustment of brightness level by a rheostat which may turn beyond the point at which the brightness level goes to zero. The conflict between S5.3.2.2(b) and S5.3.2.2(d) is remedied by adding ''visible'' so that S5.3.2.2(a) reads: ''Must be adjustable to provide at least two visible levels of brightness;'' In this final rule, S5.3.2.2 is amended to read as follows. No changes are made to paragraphs (a) and (c). Corresponding changes are made to paragraphs (b) and (d) for clarity of the ''visible brightness'' issue:

S5.3.2.2 The means of providing the visibility required by S5.3.2.1:

(a) Must be adjustable to provide at least two visible levels of brightness;

(b) At a level of brightness other than the highest level, the identification of controls and indicators must be barely discernible to the driver who has adapted to dark ambient roadway condition;

(c) May be operable manually or automatically; and

(d) May have levels of brightness, other than the two required visible levels of brightness, at which those items and identification are not visible.

C. Sources of Occupant Compartment Illumination Forward of the H-Point

The August 17, 2005 final rule at S5.3.4 *Brightness of interior lamps* states:

Any source of illumination that is:

(a) Within the passenger compartment of a motor vehicle;

(b) Located in front of a transverse vertical plane 110 mm behind the H-point of the driver's seat while it in its rearmost driving position;

(c) Capable of being activated while the motor vehicle is in motion; and

(d) Neither a telltale nor a source of illumination used for the controls and indicators listed in Table 1 or Table 2, must have a means for the driver to turn off that source under the conditions of S5.6.2.

The Alliance and AIAM objected to the requirement that any source of illumination forward of the H-point in the occupant compartment be able to be turned off. Some manufacturers may not be able to meet the ''must have a means for the driver to turn off that source'' requirement in subparagraph (d) because some vehicles have light emitting diodes (LEDs) illuminating controls on the armrests and center consoles.

S5.3.4 was intended to cover sources of illumination such as dome lights, courtesy lights, and map lights, which are convenience lighting for the occupant compartment and are usually brighter than illumination of controls, telltales, and indicators, which must stay on while the vehicle is being driven. NHTSA notes that subparagraph (d) should have excluded all telltales, controls, and indicators, regardless whether they are specified in FMVSS No. 101, or are provided at the manufacturer's option. NHTSA will resolve this issue by reverting to the pre-August 17, 2005 language on this subject, which states:

(a) Any source of illumination within the passenger compartment which is forward of a transverse vertical plane 110 mm rearward of the manikin ''H'' point with the driver's seat in its rearmost driving position, which is not used for the controls and displays regulated by this standard, which is not a telltale, and which is capable of being illuminated while the vehicle is in motion, shall have either:

(1) Light intensity which is manually or automatically adjustable to provide at least two levels of brightness;

(2) A single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions; or

(3) A means of being turned off.

(b) Paragraph (a) does not apply to buses that are normally operated with the passenger compartment illuminated.

The above quoted provision remains as S5.3.4, *Brightness of interior lamps,* which allows certain low intensity lamps within the driver's compartment that cannot be turned off by the driver.

However, NHTSA is aware of an apparent trend of manufacturers to incorporate a variety of low intensity lighting in vehicles to highlight and illuminate various interior items or areas, such as: Cup holders, door handles, foot areas, door pockets, center consoles, and the like. It is concerned that the combined effect of a sufficient number of these various illumination sources may detrimentally affect drivers' night vision and the ability to adapt to the ''dark ambient roadway conditions.'' It is also possible that some of these multiple illumination sources may reflect off interior glazing, and make it difficult to see beyond the reflection. NHTSA intends to monitor this trend in interior lighting for the possibility of safety problems.

D. Color Contrast Between Identifiers and Their Backgrounds

In the August 17, 2005 final rule, the requirement that each symbol must be in a color that stands out clearly against the background was extended to identifiers for controls and indicators (see S5.4.3). The Alliance asked for reconsideration of this requirement, stating that not all identifiers are in a color that stands out clearly against the background. The Alliance further stated that it is not needed, citing as an example the horn identifier. Most vehicle models use the horn symbol as the identifier, which is molded into the air bag cover, without a color ''that stands out clearly against the background'' filled in. The Alliance commented that: ''The symbol is the same color as the background, but it can still be recognized because the embossment stands out against the background.''

NHTSA notes that over the years, agency staff have taken numerous telephone calls from drivers complaining that they cannot locate the horn control. NHTSA's Office of Defects Investigation ARTEMIS database has recorded 120 complaints from consumers reporting trouble locating the horn control in the past ten years. Of these 120 complaints, consumers reported 12 crashes, nine near misses, and an allegation of a fatality. For these reasons, filling in the horn symbol with a color ''that stands out clearly against the background'' would make the horn control more visible and would help drivers be able to more readily find the control. Thus, we are denying this part of the Alliance's petition.

To minimize costs on industry resulting from this requirement, NHTSA

is delaying the compliance date to meet S5.4.3 for five years, to September 1, 2011. NHTSA agrees with the Alliance's recommendation for five years to implement S.5.4.3 to ''allow manufacturers to implement the necessary changes on most products during the planned product changes in normal product development cycles.''

E. Prohibition Against Certain Telltales Sharing a Common Space

The final rule at S5.5.2 prohibits the telltales for any brake system malfunction, the air bag malfunction, the side air bag malfunction, low tire pressure, passenger air bag off, high beam, turn signal and seat belt from being shown in the same common space. The Alliance objected to the inclusion of brake system telltales other than those that are required to be red, and any side air bag malfunction telltale, from being included in the list of telltales specified at S5.5.2. The Alliance argued that ''brake system malfunction'' is overly broad and may include telltales voluntarily provided by the manufacturer. The Alliance further claimed that the inclusion of the side impact air bag telltale in S5.5.2 is inconsistent with a July 30, 1996 NHTSA interpretation letter to Porsche Cars North America.

Upon further review, the agency has been persuaded by the Alliance's comments. Thus, in this final rule, S5.5.2 is amended to limit the prohibition to brake system malfunctions required by Table 1 to be red. The side air bag malfunction telltale is removed.

F. Changes to Table 1

The Alliance and the TMA petitioned for several changes to Table 1. Some of the changes were on the order of technical corrections, others were substantive. The requests for changes, and NHTSA's responses are provided below.

Highbeam and Turn signals telltales—The Alliance petitioned that the highbeam and turn signals telltales in Table 1 be accompanied by a footnote indicating that there are additional requirements in FMVSS No. 108. NHTSA agrees that including the footnote would add clarity to the provisions for highbeam and turn signals telltales. In this final rule, we have added a new footnote 2 that states: ''Additional requirements in FMVSS 108.''

Position, side marker, and/or end-outline marker lamps controls—Although described in Table 1 as position, side marker, and/or end-outline marker lamps controls, FMVSS No. 108 still refers to these lamps as side marker and clearance lamps. The Alliance petitioned that Table 1 reference the language in FMVSS No. 108.

In partial grant of the Alliance's petition, in this final rule, we amend the description of the item in column 1 to read: ''Position, side marker, end-outline marker, identification, or clearance lamps.'' The description now includes all possible names for these lamps and the way the identifier may be used.

Windshield wiping system (continuous)—The Alliance petitioned that the description of this item in column 1 in Table 1 revert to description used in the pre-August 17, 2005 version of Table 1.

The note ''(continuous)'' was proposed in the NPRM for the wiper to differentiate it from another identifier that was proposed for the interval wipe function. That other interval wipe function identifier was not adopted in the August 17, 2005 final rule. Thus, in Table 1 in the final rule, NHTSA should have removed the ''(continuous)'' note because manufacturers may use the windshield wiping system identifier for any wiper function (including continuous and interval) except wash/wipe. In this final rule, ''(continuous)'' is removed from column 1 of ''Windshield wiping system.''

Brake system malfunction may include stop lamp failure—The Alliance stated its belief that the phrase ''may include Stop Lamp failure'' actually refers to an FMVSS No. 105 *Hydraulic and electric brake systems* requirement for systems that do not incorporate a split brake system to provide the following warning: ''STOP—BRAKE FAILURE.'' The Alliance therefore recommended removing ''may include Stop Lamp failure'' and adding ''STOP-BRAKE FAILURE'' to Column 3 with a new footnote indicating that ''STOP-BRAKE FAILURE'' applies to vehicles without split brake systems.

NHTSA notes that the phrase ''may include Stop Lamp failure'' does not refer to the FMVSS No. 105 warning, but instead came from melding European Union (EU) directives with FMVSS No. 101. In this final rule, ''may include Stop Lamp failure'' is removed. NHTSA has decided not to add this to Column 3.

''Antilock brake system malfunction for vehicles subject to FMVSS 105 or 135'' and ''Malfunction in antilock system for vehicles other than trailers subject to FMVSS No. 121''—The Alliance said that these two telltales appear to be redundant, and suggested that by adding a reference to FMVSS No. 121 in the ''Antilock brake system malfunction for vehicles subject to FMVSS 105 or 135'' item, the ''Malfunction in antilock system for vehicles other than trailers subject to FMVSS No. 121'' item may be removed. The Alliance also suggested adding parentheses [1] for consistency with the rest of Table 1.

NHTSA has decided not to make these changes. The two referenced items are not redundant. Each item refers to different vehicles and Column 3 in each item, while similar, are not identical. The parentheses will also not be added because the phrases in Column 1 indicate why two different lines are used in Table 1. These phrases are part of the name of the item.

Antilock brake system trailer fault for vehicles subject to FMVSS 121—TMA petitioned for the use of one of two specified symbols (described in its petition) as an identifier for the trailer antilock braking system (ABS) warning telltale, in lieu of ''Trailer ABS'' or ''Trailer Antilock,'' the words specified in the August 17, 2005 final rule. TMA stated that a symbol is necessary for harmonization with Canada. Under Canadian regulations, if words are used, they must be stated in both English and French. TMA stated that words in dual languages would take up too much space on the truck instrument panel. TMA further stated that each of trailer antilock braking system (ABS) warning telltales they described ''have been accepted by both Canadian officials and truck operators.''

NHTSA notes that one of the symbols described in TMA's petition is a symbol that had been proposed by NHTSA in the FMVSS No. 101 notice of proposed rulemaking published on September 23, 2003 (68 FR 55217). The symbol at issue appears at 68 FR 55229, in row 9, column 2. Column 1 describes the item as ''Antilock brake system trailer fault.''

After considering TMA's petition, NHTSA has decided to adopt the symbol. NHTSA is aware that in commenters to the September 2003 NPRM cautioned against the use of symbols that are not intuitively evident. The symbol we are adopting should not be of concern for the following reasons. First, since this symbol will only appear on commercial vehicles, it will be seen only by drivers with commercial drivers' licenses (CDLs), not by ordinary drivers. Second, the symbol suggested by the TMA is already used on many tractor trailers, and so should be

[1] So that the combined item reads: ''Antilock brake system malfunction (for vehicle subject to FMVSS 105, 121 or 135).''

familiar to drivers with CDLs.[2] Third, NHTSA is providing in effect more than a seven year lead time for use of the symbol and/or the words ''Trailer ABS'' or ''Trailer Antilock.'' This leadtime should be enough time for CDL drivers to become familiar with the symbol and/or the words.

We note that the symbol will be described in Column 1 as ''Antilock brake system trailer fault for vehicles subject to FMVSS 121.'' As provided in Column 3, at the manufacturer's option, the words ''Trailer ABS'' or ''Trailer Antilock'' may be used in lieu of the symbol. The manufacturer is permitted to use both the symbol and the English words specified in column 3.

The Alliance also suggested adding parentheses to this item [3], to make it consistent with the Antilock brake system malfunction for vehicles subject to FMVSS 105 or 135 item and the Malfunction in antilock system for vehicles other than trailers subject to FMVSS 121 item.

NHTSA has decided not to add parentheses to this item. The phrases in Column 1 indicate why two different lines are used in Table 1. These phrases are part of the name of the item.

Brake lining wear-out condition (for vehicles subject to FMVSS 105 or 135)—The Alliance noted that although this item references FMVSS No. 105, brake lining requirements are only specified in FMVSS No. 135. Thus, the Alliance recommended removing the reference to FMVSS 105. In addition, the Alliance recommended that footnote 3 [4] be applied to this item.

NHTSA agrees with the Alliance on these issues and will make the changes in Table 1 in the final rule. Footnote 8 in the August 17, 2005 final rule is footnote 9 in today's final rule.

Automatic vehicle speed (cruise control)—The Alliance noted that the automatic vehicle speed item includes ''(cruise control).'' The Alliance recommended that this item revert to the way this control is specified in the pre-August 17, 2005 Table 1.

NHTSA does not believe there is a need to make this change. The term ''cruise control'' serves to clarify the meaning of ''automatic vehicle speed'' control. ''Cruise control'' is the name by which most American drivers know the ''automatic vehicle speed'' control. ''Cruise control'' appears parenthetically in Column 1, which is only the name of the item, not the required identifier (which would be specified in Column 3).

Automatic transmission control position or Park, Reverse, Neutral, Drive (PRND) Indentifiers—Table 1 includes in column 1, the item ''Automatic transmission control position'' with the words ''(park)'', ''(reverse)'', ''(neutral)'', and ''(drive)'' listed vertically next to it. In column 3 are the abbreviations ''P'', ''R'', ''N'', ''D'' listed vertically. The automatic transmission control position is an indicator. A footnote accompanying the abbreviation ''PRND'' states:

> Letter 'D' may be replaced by other alphanumeric character or symbol chosen by the manufacturer. The indicators may be displayed top to bottom, or left to right, or both.

The Alliance stated that it was confused by the new footnote. The Alliance correctly pointed out that automatic transmission control position is regulated in FMVSS No. 102, *Transmission shift position sequence, starter interlock, and transmission braking effect.* FMVSS No. 102 does not specify specific labels for each transmission position, but specifies that a neutral position shall be located between drive and reverse and, if a column-mounted lever is used, movement from neutral to drive must be clockwise. If a park position is provided, it must be ''at the end, adjacent to the reverse'' position. The pre-August 17, 2005 version of FMVSS No. 101 only required that the ''automatic gear position'' be illuminated and did not specify identifiers for the positions or the indicator as a whole. The specification for the automatic transmission control position in the final rule is identical to that proposed in the NPRM. No commenter objected to the automatic transmission control position proposed in the NPRM.

In its petition for reconsideration, the Alliance stated:

> * * * several vehicle manufacturers have issues with limiting the orientation of the control position (PRND). With the introduction of shift-by-wire technology, some vehicle manufacturers have already introduced this technology and identified a separate lever of the steering column dedicated to the automatic transmission control position (PRND) with the following orientations:

R	R	P–R
P–N	N–P	N
D	D	D

The Alliance asked if any of the PRND orientations described above would not be permitted in the new FMVSS No. 101 final rule, and how automatic transmissions without a park position are to be identified.[5] The Alliance also petitioned that Table 1 be amended to list only ''P'', ''R'' and ''N'', since NHTSA already allows manufacturers to substitute a letter or graphic of their choice for ''D''.

In response to the Alliance's petition, NHTSA will amend the footnote accompanying the automatic transmission control position item [6] in Table 1 to:

> The letters ''P'', ''R'', ''N'', and ''D'' are considered separate identifiers for the gear positions, park, reverse, neutral and drive, respectively. The locations of these gear positions, within the vehicle and with respect to each other, are governed by FMVSS No. 102. The letter ''D'' may be replaced by another alphanumeric character or symbol chosen by the manufacturer.

NHTSA will not change the ''PRND'' abbreviation in column 3 because it is highly recognized by drivers.[7] Changing it to ''PRN'' may mislead some to believe it refers to an item other that the automatic transmission control position.

Low Tire Pressure (including malfunction) (see FMVSS 138), Low Tire Pressure (including malfunction) that identifies involved tire (See FMVSS 138) and Tire Pressure Monitoring System Malfunction (See FMVSS 138)—The Alliance recommended that the parenthetical phrase ''(including malfunction)'' for two of the items be removed from Column 1, and referred to in a footnote, as part of recommended changes to footnote 13.[8] The Alliance noted that ''Tire Pressure Monitoring System Malfunction (See FMVSS 138)'' refers to footnote 14.[9] The Alliance

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[2] ''Warning Assessment of Antilock Brake System (ABS) Malfunction Indicator Lamp Status—A Snapshot of In-Service Vehicles,'' Final Report DOT–FMCSA–MCP/PSV–05–003, January 2005.

[3] So that the item reads: ''Antilock brake system trailer fault (for vehicles subject to FMVSS 121).''

[4] NHTSA believes the reference to footnote 3 (''Blue may be blue-green. Red may be red-orange.'') is an error, and the Alliance meant to refer to footnote 8 (''Refer to FMVSS 105 or FMVSS 135, as appropriate, for additional specific requirements for brake telltale labeling and color. If a single telltale is used to indicate more than one brake system condition, the brake system malfunction indicator must be used.'').

[5] The Alliance appears to be asking for an interpretation of transmission shift positions, regulated in FMVSS No. 102, *Transmission shift position sequence, starter interlock, and transmission braking effect.* We note that in an August 1, 2002 interpretation letter to Lemförder Corporation, NHTSA addressed shift positions that include a ''park'' position, specifically addressing S3.1.1 that states: ''if the transmission shift lever sequence includes a park position, it shall be located at the end, adjacent to the reverse drive position.''

[6] Which will be designated as footnote 13.

[7] See ''Comprehension Testing for In-vehicle Symbols''; Campbell et al, Battelle Human Factors Transportation Center for The Alliance of Automobile Manufacturers; September 7, 2005.

[8] In Table 1 published on August 17, 2005, footnote 13 stated: ''Required only for FMVSS compliant vehicles.''

[9] In Table 1 published on August 17, 2005, footnote 14 stated: ''Alternatively, either low tire

stated its belief that the reference to ''(see FMVSS 138)'' was sufficient and suggested combining footnotes 13 and 14 into one footnote that would read:

> Required only for FMVSS 138 compliant vehicles. Alternatively, either low tire pressure telltale may be used to indicate a TPMS malfunction.

NHTSA has decided not to make changes to ''Low Tire Pressure (including malfunction) (See FMVSS 138),'' to ''Low Tire Pressure (including malfunction) that identifies involved tire (See FMVSS 138)'' or to ''Tire Pressure Monitoring System Malfunction (See FMVSS 138)'' items. There are three items related to tire pressure monitoring in the August 17, 2005 final rule because differing phase-in dates for FMVSS No. 138, *Tire pressure monitoring systems* (TPMS) may make simultaneously available, both vehicles with TPMS that meet FMVSS No. 138 and vehicles with TMPS that are not required to meet FMVSS No. 138. Depending on the FMVSS No. 138 compliance status of the vehicle, the tire pressure monitoring item from Table 1 used in the vehicle will differ.

Footnote 11—In Table 1 in the August 17, 2005 final rule, Footnote 11 accompanied the Speedometer item. Footnote 11 stated: ''If the speedometer is graduated in miles per hour and in kilometers per hour, the identification must be ''MPH and km/h'' in any combination of upper and lowercase letters.'' The Alliance recommended that ''MPH and km/h'' be amended to read '' 'MPH' and 'km/h'.''

NHTSA agrees with the Alliance's recommendation. In the final rule, in Table 1, the footnote, which is now designated as footnote 12, reads: ''If the speedometer is graduated in both miles per hour and kilometers per hour, the scales must be identified ''MPH'' and ''km/h'', respectively, in any combination of upper and lower case letters.''

G. Table 2

The Alliance also petitioned for changes to the following two items in Table 2:

Odometer—For the odometer item, the Alliance petitioned to add a footnote stating that the letters may be any combination of upper and lower case. NHTSA concurs. Therefore, in this final rule, the odometer item in Table 2 will include a footnote 2 that reads: ''Any combination of upper- or lowercase letters may be used.''

Headlamps and Taillamps Control—In the August 17, 2005 final rule, the headlamps and taillamps control, in Table 2, included footnote 3 which reads: ''If a line appears in Column 2 and Column 3, the Control, Telltale or Indicator is required to be identified, however the form of the identification is the manufacturer's option'' and footnote 4 which reads: ''Separate identification not required if function is combined with Master Lighting Switch.'' The Alliance suggested that if footnotes 3 and 4 are moved to Column 1, footnote 3 can be simplified. The Alliance apparently believes the ''first sentence'' is not necessary.

NHTSA has decided not to adopt the Alliance's suggested changes. We are not removing footnotes 3 and 4 for the headlamps and taillamps control item, since the footnotes refer to the words or abbreviations needed to identify the item.

III. Leadtime

In the final rule; delay of effective date document of January 24, 2006, NHTSA delayed the effective date of the FMVSS No. 101 final rule to September 1, 2006. Subsequently, in a document dated March 10, 2006, the AIAM petitioned for reconsideration of the January 24, 2006 final rule, primarily asking that NHTSA address the issues in the petitions for reconsideration by the AIAM and other petitioners by September 1, 2006 and publish ''as soon as possible prior to September 1 a notice establishing a more appropriate effective date, consistent with the pending petitions.''

In this document, we address AIAM's concerns. This final rule; response to petitions for reconsideration is published well in advance of September 1, 2006. In addition, as earlier explained, so that this final rule can be implemented at minimal cost, we are providing a little more than five years' leadtime to implement S5.4.3, ''Each symbol used for the identification of a telltale, control or indicator must be in a color that stands out clearly against the background.'' Today's final rule amends the FMVSS No. 101 final rule published on August 17, 2005 and becomes effective September 1, 2006, for vehicles under 10,000 pounds. The compliance date for S5.4.3 is September 1, 2011.

IV. Statutory Bases for the Rulemaking

We have issued this final rule pursuant to our statutory authority. Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and deaths and injuries resulting from traffic accidents. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

As a Federal agency, before promulgating changes to a Federal motor vehicle safety standard, NHTSA also has a statutory responsibility to follow the informal rulemaking procedures mandated in the *Administrative Procedure Act* at 5 U.S.C. 553. Among these requirements are **Federal Register** publication of a general notice of proposed rulemaking, and giving interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. After consideration of the public comments, we must incorporate into the rules adopted, a concise general statement of the rule's basis and purpose.

The agency has carefully considered these statutory requirements in promulgating this final rule to amend FMVSS No. 101. As previously discussed in detail, we have solicited public comment in an NPRM and have carefully considered the public comments before issuing this final rule. As a result, we believe that this final rule reflects consideration of all relevant available motor vehicle safety information. Consideration of all these statutory factors has resulted in the following decisions in this final rule. In this final rule, NHTSA permits use of a symbol suggested by the TMA in lieu of the words ''Trailer ABS'' or ''Trailer Antilock'' in identifying the ''Antilock brake system trailer fault for vehicles subject to FMVSS 121'' telltale, does not require manufacturers to provide a means to shut off various sources of interior illumination based on light emitting diodes, and agrees to changes to Tables 1 and 2 suggested by the Alliance. This final rule requires symbols to be ''substantially similar in form to the symbol as it appears in

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pressure telltale may be used to indicate a TPMS malfunction. See FMVSS 138.''

Table 1 or Table 2'' and for the horn symbol to have a color contrast with its background. So that the color contrast requirement can be implemented at minimal cost to industry, for vehicles with a GVWR under 10,000 pounds, this final rule delays from September 1, 2006 to September 1, 2011, the effective date for the FMVSS No 101 final rule published on August 17, 2005. For vehicles under 10,000 pounds, the changes made in today's final rule will also take effect on September 1, 2011. Also, because the safety benefits of this final rule are very small, there will be no measurable effect on safety as a result of the delay in effective date.

As indicated, we have thoroughly reviewed the public comments and adopted a final rule in light of comments. In the instances where we did not adopt a comment, we explain why we did not adopt the comment.

V. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, NHTSA concludes that this final rule will not have any quantifiable cost effect on motor vehicle manufacturers. In this final rule, NHTSA permits the use of a symbol suggested by the TMA in lieu of the words ''Trailer ABS'' or ''Trailer Antilock'' in identifying the ''Antilock brake system trailer fault for vehicles subject to FMVSS 121'' telltale, does not require manufacturers to provide a means to shut off various sources of interior illumination based on light emitting diodes, and agrees to changes to Tables 1 and 2 suggested by the Alliance. This final rule requires symbols to be ''substantially similar in form to the symbol as it appears in Table 1 and Table 2'' and for the horn symbol to have a color contrast with its background. So that the color contrast requirement can be implemented at minimal cost to industry, for vehicles with a GVWR under 10,000 pounds, this final rule delays from September 1, 2006 to September 1, 2011, the compliance date for S5.4.3 ''Each symbol used for the identification of a telltale, control or indicator must be in a color that stands out clearly against the background.'' There will be no measurable effect on safety as a result of this delay in compliance date for S5.4.3.

Because the economic effects of this final rule are so minimal, no further regulatory evaluation is necessary.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this final rule will not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for the certification is that for vehicles under 10,000 pounds GVWR, this final rule delays until September 1, 2011, the compliance date of a provision in the final rule published on August 17, 2005, that requires symbols used in identification of telltales, controls or indicators to be in a color that ''stands out clearly against the background.'' As earlier stated, small business manufacturers will incur costs that are so minimal as to be unquantifiable as a result of this final rule.

For these reasons, and for the reasons described in our discussion on Executive Order 12866 and DOT Regulatory Policies and Procedures, NHTSA concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism and has determined that it does not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' we have considered whether this final rule would have any retroactive effect. NHTSA concludes that this final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to

the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This final rule does not require any collections of information, or recordkeeping or retention requirements as defined by the OMB in 5 CFR part 1320.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have determined that there is no applicable voluntary consensus standard for this final rule.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of more than $100 million annually. Accordingly, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166, and 30177; delegation of authority at 49 CFR 1.50.

■ 2. In § 571.101, the second sentence of S5.2.1, paragraph (b) and the introductory text of paragraph (d) of S5.3.2.2, S5.3.4, S5.5.2, and Tables 1 and 2 are revised, and a new sentence is added to the end of S5.4.3 to read as follows:

§ 571.101 Standard No. 101, Controls, telltales, and indicators.

* * * * *

S5.2.1 * * * If a symbol is used, each symbol provided pursuant to this paragraph must be substantially similar in form to the symbol as it appears in Table 1 or Table 2. * * *

S5.3.2.2 * * *

* * * * *

(b) At a level of brightness other than the highest level, the identification of controls and indicators must be barely discernible to the driver who has adapted to dark ambient roadway condition;

* * * * *

(d) May have levels of brightness, other than the two required visible levels of brightness, at which those items and identification are not visible.

* * * * *

S5.3.4 *Brightness of interior lamps.* (a) Any source of illumination within the passenger compartment which is forward of a transverse vertical plane 110 mm rearward of the manikin ''H'' point with the driver's seat in its rearmost driving position, which is not used for the controls and displays regulated by this standard, which is not a telltale, and which is capable of being illuminated while the vehicle is in motion, shall have either:

(1) Light intensity which is manually or automatically adjustable to provide at least two levels of brightness;

(2) A single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions;or

(3) A means of being turned off.

(b) Paragraph (a) of S5.3.4 does not apply to buses that are normally operated with the passenger compartment illuminated.

* * * * *

S5.4.3 * * * For vehicles with a GVWR of under 4,536 kg (10,000 pounds), the compliance date for this provision is September 1, 2011.

* * * * *

S5.5.2 The telltales for any brake system malfunction required by Table 1 to be red, air bag malfunction, low tire pressure, passenger air bag off, high beam, turn signal, and seat belt must not be shown in the same common space.

* * * * *

BILLING CODE 4910–59–P

Table 1
Controls, Telltales, and Indicators with Illumination or Color Requirements [1]

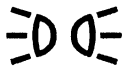
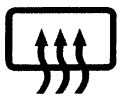
Column 1 ITEM	Column 2 SYMBOL	Column 3 WORDS OR ABBREVIATIONS	Column 4 FUNCTION	Column 5 ILLUMINATION	Column 6 COLOR
Highbeam [2]	[3,5]	—	Telltale	—	Blue or Green [4]
Turn signals [2]	[3,6]	—	Control	—	—
			Telltale	—	Green [4]
Hazard warning signal	[3]	Hazard	Control	Yes	—
		—	Telltale [7]	—	—
Position, side marker, end-outline marker, identification, or clearance lamps	 [3] [8]	Marker Lamps or MK Lps [8]	Control	Yes	—
Windshield wiping system		Wiper or Wipe	Control	Yes	—
Windshield washing system		Washer or Wash	Control	Yes	—
Windshield washing and wiping system combined		Washer-Wiper or Wash-Wipe	Control	Yes	—
Windshield defrosting and defogging system		Defrost, Defog or Def.	Control	Yes	—
Rear window defrosting and defogging system		Rear Defrost, Rear Defog, Rear Def., or R-Def.	Control	Yes	—

Table 1
Controls, Telltales, and Indicators
with Illumination or Color Requirements [1]

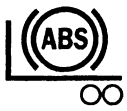
Column 1 ITEM	Column 2 SYMBOL	Column 3 WORDS OR ABBREVIATIONS	Column 4 FUNCTION	Column 5 ILLUMINATION	Column 6 COLOR
Brake system malfunction	—	Brake	Telltale	—	Red[4]
Antilock brake system malfunction for vehicles subject to FMVSS 105 or 135	—	Antilock, Anti-lock, or ABS [9]	Telltale	—	Yellow
Malfunction in Variable Brake Proportioning System	—	Brake Proportioning [9]	Telltale	—	Yellow
Regenerative brake system malfunction	—	RBS or ABS/RBS [9]	Telltale	—	Yellow
Malfunction in antilock system for vehicles other than trailers subject to FMVSS 121	—	ABS or Antilock [9]	Telltale	—	Yellow
Antilock brake system trailer fault for vehicles subject to FMVSS 121		Trailer ABS or Trailer Antilock	Telltale	—	Yellow
Brake Pressure (for vehicles subject to FMVSS 105 or 135)	—	Brake Pressure [9]	Telltale	—	Red[4]
Low brake fluid condition (for vehicles subject to FMVSS 105 or 135)	—	Brake Fluid [9]	Telltale	—	Red[4]
Parking brake applied (for vehicles subject to FMVSS 105 or 135)	—	Park or Parking Brake [9]	Telltale	—	Red[4]
Brake lining wear-out condition (for vehicles subject to FMVSS 135)	—	Brake Wear [9]	Telltale	—	Red[4]

Table 1
Controls, Telltales, and Indicators with Illumination or Color Requirements

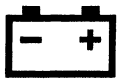
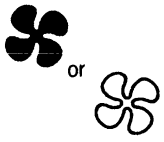
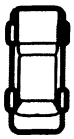
Column 1 ITEM	Column 2 SYMBOL	Column 3 WORDS OR ABBREVIATIONS	Column 4 FUNCTION	Column 5 ILLUMINATION	Column 6 COLOR
Engine oil pressure	10	Oil	Telltale	—	—
			Indicator	Yes	—
Engine coolant temperature	10	Temp	Telltale	—	—
			Indicator	Yes	—
Electrical charge		Volts or Charge or Amp	Telltale	—	—
			Indicator	Yes	—
Engine stop	—	Engine Stop 11	Control	Yes	—
Automatic vehicle speed (cruise control)	—	—	Control	Yes	—
Speedometer	—	MPH, or MPH and km/h 12	Indicator	Yes	—
Heating and Air conditioning system	—	—	Control	Yes	—
Automatic transmission control position *(park) (reverse) (neutral) (drive)*	—	P R N D 13	Indicator	Yes	—
Heating and/or air conditioning fan	 or	Fan	Control	Yes	—
Low Tire Pressure (including malfunction) (See FMVSS 138)	14	Low Tire 14	Telltale	—	Yellow

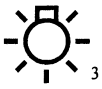
Table 1
Controls, Telltales, and Indicators with Illumination or Color Requirements [1]

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORDS OR ABBREVIATIONS	Column 4 FUNCTION	Column 5 ILLUMINATION	Column 6 COLOR
Low Tire Pressure (including malfunction) that identifies involved tire (See FMVSS 138)	 14	Low Tire 14	Telltale	—	Yellow
Tire Pressure Monitoring System Malfunction (See FMVSS 138) [15]	—	TPMS 14, 16	Telltale	—	Yellow

Notes:

1. An identifier is shown in this table if it is required for a control for which an illumination requirement exists or if it is used for a telltale for which a color requirement exists. If a line appears in column 2 and column 3, the control, telltale or indicator is required to be identified, however the form of the identification is the manufacturer's option. Telltales are not considered to have an illumination requirement, because by definition the telltale must light when the condition for its activation exists.
2. Additional requirements in FMVSS 108.
3. Framed areas of the symbol may be solid; solid areas may be framed.
4. Blue may be blue-green. Red may be red-orange.
5. Symbols employing four lines instead of five may also be used.
6. The pair of arrows is a single symbol. When the controls or telltales for left and right turn operate independently, however, the two arrows may be considered separate symbols and be spaced accordingly.
7. Not required when arrows of turn signal telltales that otherwise operate independently flash simultaneously as hazard warning telltale.
8. Separate identification not required if function is combined with master lighting switch.
9. Refer to FMVSS 105 or FMVSS 135, as appropriate, for additional specific requirements for brake telltale labeling and color. If a single telltale is used to indicate more than one brake system condition, the brake system malfunction identifier must be used.
10. Combination of the engine oil pressure symbol and the engine coolant temperature symbol in a single telltale is permitted.
11. Use when engine control is separate from the key locking system.
12. If the speedometer is graduated in both miles per hour and in kilometers per hour, the scales must be identified "MPH" and "km/h", respectively, in any combination of upper- and lowercase letters.
13. The letters 'P', 'R', 'N', and 'D' are considered separate identifiers for the individual gear positions. Their locations within the vehicle, and with respect to each other, are governed by FMVSS 102. The letter 'D' may be replaced by another alphanumeric character or symbol chosen by the manufacturer.
14. Required only for FMVSS 138 compliant vehicles.
15. Alternatively, either low tire pressure telltale may be used to indicate a TPMS malfunction. See FMVSS 138.
16. Required only for vehicles manufactured on or after September 1, 2007.

Table 2
Identifiers for
Controls, Telltales and Indicators with
No Color or Illumination Requirements

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORD(S) OR ABBREVIATION
Hand Throttle Control	—	Throttle
Engine Start Control	—	Engine Start[1]
Manual Choke Control	—	Choke
Odometer	—	Kilometers or km, if kilometers are shown. Otherwise, no identifier is required. [2]
Horn		Horn
Master Lighting Switch	 [3]	Lights
Headlamps and Taillamps Control	—	— [4,5]
Low Brake Air Pressure Telltale (for vehicles subject to FMVSS 121)	—	Brake Air
Seat Belt Unfastened Telltale		Fasten Belts or Fasten Seat Belts

Notes:

1. Use when engine control is separate from the key locking system.
2. Any combination of upper- or lowercase letters may be used.
3. Framed areas may be filled.
4. If a line appears in Column 2 and Column 3, the Control, Telltale or Indicator is required to be identified, however the form of the identification is the manufacturer's option.
5. Separate identification not required if function is combined with Master Lighting Switch.

Issued on: May 9, 2006.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 06–4478 Filed 5–12–06; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051104293 5344 02; I.D. 050906A]

Fisheries of the Northeastern United States; Atlantic Bluefish 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 Commonwealth of Virginia is transferring 100,000 lb (45,359 kg) of commercial bluefish quota to the State of North Carolina from its 2006 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective May 10, 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.

Virginia has agreed to transfer 100,000 lb (45,359 kg) of its 2006 commercial quota to North Carolina to cover unexpectedly high landings in North Carolina. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. The revised quotas for calendar year 2006 are: North Carolina, 2,652,869 lb (1,203,321 kg); and Virginia, 845,915 lb (383,700 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: May 9, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–4519 Filed 5–10–06; 3:14 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051128313-6029-02; I.D. 050906C]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Adjustment for New York

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces an adjustment in the Atlantic bluefish commercial quota available to New York. This action complies with regulations implementing the Atlantic Bluefish Fishery Management Plan (FMP), which require that landings in excess of a state's commercial quota be deducted from that state's quota the following year. The public is advised that a quota adjustment has been made and is informed of the revised quota for New York.

DATES: This rule is effective May 15, 2006 through December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Policy Analyst, (978) 281–9244.

SUPPLEMENTARY INFORMATION: Regulations implementing Atlantic bluefish management measures are found at 50 CFR part 648, subpart J. An annual commercial quota is allocated to each of the Atlantic coastal states from Maine through Florida. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.160(e).

Section 648.160(e)(2) provides that all landings in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year. The final specifications for the 2005 Atlantic bluefish fishery set the total adjusted coastwide commercial quota equal to 10,398,671 lb (4,717 mt) (70 FR 13402; March 21, 2005). New York's adjusted quota share was calculated to be 1,079,912 lb (489,840 kg).

Based on dealer reports and other information available as of May 1, 2006, NMFS determined that the State of New York landed 1,131,309 lb (513,153 kg) of Atlantic bluefish in 2005, thus exceeding its 2005 adjusted commercial quota by 51,397 lb (23,313 kg). Landings for other states were below their respective quotas.

On March 17, 2006, final specifications for the 2006 Atlantic bluefish commercial fishery became effective (71 FR 13776). The total adjusted commercial harvest was specified at 7,962,586 lb (3,612 mt). New York's portion of the commercial quota for 2006 totaled 826,923 lb (375,086 kg). Consistent with the regulations regarding the disposition of overages, New York's 2006 Atlantic bluefish commercial quota is hereby reduced by 51,397 lb (23,313 kg), from 826,923 lb (375,086 kg) to 775,526 lb (351,773 kg).

Classification

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

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

Dated: May 9, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–4522 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 93
Monday, May 15, 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

Farm Service Agency

7 CFR Part 762

RIN 0560–AH41

Guaranteed Loan Fees

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Farm Service Agency (FSA) proposes to amend the regulations for guaranteed loans to change the amount charged and collected in order for the FSA to provide a guarantee. Except in certain limited cases, FSA currently charges a fee of one percent (1%) of the guaranteed amount on all guaranteed Farm Ownership (FO) loans, and guaranteed Operating Loans (OL). The rule change is necessary for the Agency to be able to offset the cost of the guaranteed loan program so as to maintain program funding at levels that will best service farmers and ranchers.

DATES: Written comments must be received on or before July 14, 2006 in order to be assured of consideration.

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

- E-mail: *Galen.VanVleet@wdc.usda.gov*. Include ''Guarantee Fees'' in the subject line of the message.
- Fax: Submit comments by facsimile transmission to: 202–690–6797.
- Mail: Send comments to: Galen VanVleet, USDA/FSA, Loan Making Division, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522;
- Hand Delivery or Courier: Deliver comments to: FSA, Loan Making Division, 1280 Maryland Ave., SW., Suite 240, Washington, DC 20024.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

All written comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Galen VanVleet at the above address or at (202) 720–3889.

SUPPLEMENTARY INFORMATION:

Discussion of the Proposed Rule

FSA guaranteed loans, administered under 7 CFR part 762, provide eligible lenders (*e.g.*, banks, Farm Credit System institutions, credit unions) with a guarantee of up to 95 percent of the loss of principal and interest on a loan. Farmers and ranchers apply to an agricultural lender, which then arranges for the guarantee. The FSA guarantee permits lenders to make agricultural credit available to farmers who do not meet the lender's normal underwriting standards. FSA guaranteed loans may be made for farm ownership and operating purposes. Guaranteed farm ownership (FO) loans generally may be made to purchase farmland, construct or repair buildings and other fixtures, develop farmland to promote soil and water conservation, or refinance debt. Guaranteed operating (OL) loans generally may be used to purchase livestock, farm equipment, feed, seed, fuel, farm chemicals, insurance, and other operating expenses. Operating loans can also be used to pay for minor improvements to buildings, costs associated with land and water development, family living expenses, and to refinance debts under certain conditions. A percentage of guaranteed loan funds is targeted to beginning farmers and ranchers and minority and female applicants.

FSA proposes to amend its regulations governing fees on guaranteed loans. These fees have not been changed since the inception of the program in the early 1980's. Such fees are authorized by 7 U.S.C. 1927(b) and 31 U.S.C. 9701. With a few exceptions, FSA currently charges a one-time, one (1.0) percent fee on guaranteed loans when the loan is made in accordance with 7 CFR 762.130. The fee is charged to and collected from the lender by FSA. However, FSA allows the fee to be passed on to the applicant and, in practice, the expense is almost always passed on to the applicant or borrower. FSA limits fees to loan origination and currently does not charge any fees for annual renewal, loan servicing, or restructuring actions.

The proposal to revise fees on farm loans is intended to reduce the subsidy cost for such loans, which is reflected in the budget authority needed to support a given loan level. The President's 2007 budget proposes to maintain approximately the same level of farm loans as expected to be made in 2006, and to increase fees so that less budget authority would be needed to support the proposed loan level. This proposal is based on the expectation that there will be sufficient demand to maintain the loan level, which means that borrowers are likely to be willing to pay higher fees to obtain the loans at less cost to the Government.

It is proposed that beginning with fiscal year 2007 (October 1, 2006), the one-time origination fee for a guaranteed farm ownership loan will be increased to 1.5 percent of the loan amount guaranteed (Loan Amount × percent guaranteed × .015). This fee structure will cover the subsidy cost of the program. The fee on non-subsidized guaranteed operating loans will be increased to 1.5 percent of the loan amount guaranteed (Loan Amount × percent guaranteed × .015). In addition, beginning with fiscal year 2007 on October 1, 2006, an annual continuation fee of 0.75 percent of the loan will be charged on lines of credit (Line of Credit Ceiling Amount × percent guaranteed × .0075). This fee structure on operating loans will cover the budgetary shortfall anticipated in the fiscal year 2007 budget preparations. The Agency determined an annual fee was appropriate for lines of credit because additional funds are extended to the borrower annually; loan funds could be made available to pay the continuation fee; and the losses on lines of credit have been higher than on term loans. The continuation fee will be based upon the ceiling amount because this best reflects the amount of credit a borrower will have available.

Fees will not be imposed on loans where imposition is statutorily prohibited, including where the loans are to beginning farmers or ranchers involved in the direct beginning farmer downpayment program or made through a qualified State Beginning Farmer Program under 7 U.S.C. 309. To encourage refinancing, FSA will

continue its policy of not charging fees where a majority of the guaranteed loan funds are used to refinance an Agency direct loan. In addition, fees on loans under the interest assistance program will be addressed under separate rulemaking and are not included in this rule.

This proposed rule provides that the level of fees charged for a guarantee may change in the future without promulgation of a rule to amend the guaranteed loan regulations. The fee schedule, however, will be published as a Notice in the **Federal Register**. It is not possible to accurately predict future fee requirements, and the change in fee may be required quickly after adoption of a budget. When making adjustments in the guarantee origination or continuation fees, the Agency will consider a number of economic and budgetary factors in accordance with OMB Circular No. A–25, including guaranteed loan portfolio performance, the economic outlook of agriculture, the costs of the program, and Federal budget rules and requirements. A fee schedule will apply to all loans obligated during a particular fiscal year or budget cycle and will not apply retroactively to loans made before the increase was effective. Guarantee fee schedules will be available from any FSA office as well as on the Internet at *http://www.fsa.usda.gov/dafl/guaranteed.htm*.

Notice and Comment

This rule is issued as a proposed rule. Upon completion of the public comment period and consideration of the comments received, FSA will issue a final rule addressing the comments, announcing the final determinations, and making the provisions effective.

Executive Order 12866

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

Paperwork Reduction Act of 1995

The information collections to which this rule applies have reviewed by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), approved, and assigned OMB control number 0560–0155. This rule involves no change to the collection of information currently approved.

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 the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, FSA has determined that there will not be a significant economic impact on a substantial number of small entities. This rule may make a few individuals ineligible for FSA guaranteed loans and it will increase the costs of compliance with program regulations for all participants who must pay a guarantee fee. However, the number of applicants who will be severely impacted due to increased fees is expected to be minimal. Further, all persons or entities affected by this change are small. The agency will continue to waive fees for those applicants who have the greatest needs—those who need interest assistance subsidy, those graduating from FSA direct credit, and those who are beginning farmers in need of a downpayment loan or a State Beginning Farmer Program loan. Otherwise, changes will be applied to all applicants equally without regard to their size. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

These regulations are 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 rule has been reviewed under Executive Order 12988, on Civil Justice Reform. The provisions of this rule are not retroactive. The provisions of this rule preempt State and local laws to the extent such State and local laws are inconsistent. Generally, all administrative appeal provisions, including those published at 7 CFR part 11, must be exhausted before any action for judicial review may be brought in connection with the matters that are the subject of this rule.

Environmental Evaluation

The environmental impacts of this rule have been considered consistently with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and the FSA regulations for compliance with NEPA, 7 CFR part 1940, subpart G. FSA concluded that the rule is categorically excluded in accordance with 7 CFR 1940.310(e)(3) and does not require preparation of an environmental assessment or environmental impact statement.

List of Subjects in Part 762

Agriculture, Loan programs—Agriculture.

Accordingly, 7 CFR chapter VII is proposed to be amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

2. Amend § 762.130 by revising paragraphs (d)(4)(ii) and (d)(4)(iii)(C) to read as follows:

§ 762.130 Loan approval and issuing the guarantee.

* * * * *

(d) * * *

(4) * * *

(ii) Guaranteed fees are established by the Agency at the time the guarantee is obligated. The current fee schedule is available at any FSA office and will be published periodically as a Notice in the **Federal Register**. Loan guarantee fees may be adjusted annually, based on factors which affect program costs. The nonrefundable fee is paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds. The origination fee for the loan type will be calculated as follows:

(A) FO: Loan Amount × % guaranteed × (FO factor established by FSA).

(B) OL: Loan Amount × % guaranteed × (OL factor established by FSA).

(iii) * * *

(C) Loans to beginning farmers or ranchers involved in the direct

beginning farmer downpayment program or a qualified State Beginning Farmer Program.

* * * * *

3. Amend § 762.140 by adding a new paragraph (e) as follows:

§ 762.140 General servicing responsibilities.

* * * * *

(e) *Continuation fee.* For lines of credit with a year or more remaining on their term that will be continued, the lender will remit a continuation fee to FSA as follows:

(1) The fee will be due on the anniversary date of the issuance of the guarantee on a line of credit. Fees will be accepted within 60 days of the anniversary date. Any fee received after 60 days but within 90 days of the anniversary date may be accepted by FSA provided the lender has documented that circumstances existed that were beyond their control to be able to remit the fee in a timely manner. If the annual fee is not received within this time, all advances made after the anniversary date will not be covered by the guarantee.

(2) The fee amount will be established by the Agency at the time the guarantee is obligated.

(3) Fees are nonrefundable and are paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds.

(4) The continuation fee will be calculated as follows: Fee = Line of Credit Ceiling Amount × % guaranteed × (continuation factor established by FSA). The current fee schedule is available at any FSA office and will be published periodically as a Notice in the **Federal Register**. The continuation fee may be adjusted annually based on factors which affect program costs.

(5) Loans with interest assistance or loans to beginning farmers or ranchers in the direct beginning farmer downpayment program or a qualified State Beginning Farmer Program will not be charged an annual continuation fee.

Signed at Washington, DC, on April 24, 2006.

Teresa Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E6–7326 Filed 5–12–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA85

Financial Crimes Enforcement Network; Provision of Banking Services to Money Services Businesses

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is extending the comment period for the referenced advance notice of proposed rulemaking, 71 FR 12308 (March 10, 2006), for an additional sixty (60) days. The original comment period would have expired on May 9, 2006. The new extended comment period will expire on July 10, 2006.

DATES: Comments must be submitted on or before July 10, 2006.

ADDRESSES: You may submit comments, identified by RIN 1506–AA85, by any of the following methods:

- Federal e-rulemaking portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *regcomments@fincen.treas.gov.* Include RIN 1506–AA85 in the subject line of the message.
- Mail: FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AA85 in the body of the text.

Instructions: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fincen.gov*, including any personal information provided. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN on (800) 949–2732 (toll-free).

SUPPLEMENTARY INFORMATION: FinCEN issued an advance notice of proposed rulemaking (71 FR 12308) on March 10, 2006 in order to solicit further information as part of our ongoing effort to address, in the context of the Bank Secrecy Act, the issue of access to banking services by money services businesses. We have received a number of comments to date, including a request to extend the deadline for comments in order to allow interested parties more time in which to comment on the specific issues raised in the advance notice.

In light of the fact that an extension of time will not impede any imminent rulemaking and will allow additional interested parties to respond to the issues raised in the advance notice, we have determined that it is appropriate to extend the comment period until July 10, 2006.

Dated: May 9, 2006.

Robert W. Werner,

Director, Financial Crimes Enforcement Network.

[FR Doc. E6–7327 Filed 5–12–06; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF EDUCATION

34 CFR Part 76

RIN 1890–AA13

State-Administered Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On April 27, 2006, we published a notice of proposed rulemaking for State-Administered Programs (NPRM) in the **Federal Register** (71 FR 24824). In the NPRM, we inadvertently included the incorrect OMB Control number for the Department's electronic ED*Facts* Data Management System. This notice corrects that error as follows:

On page 24824, column three, second to last sentence in the **SUMMARY** section, replace ''1880–0541'' with ''1875–0240.''

FOR FURTHER INFORMATION CONTACT: Bonny Long, U.S. Department of Education, 400 Maryland Avenue, SW., room 7C110, Washington, DC 20202. Telephone: (202) 401–0325 or via Internet: *Bonny.Long@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 10, 2006.

Tom Luce,

Assistant Secretary, Office of Planning, Evaluation and Policy Development.

[FR Doc. E6–7346 Filed 5–12–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060503118–6118–01; I.D. 042606E]

RIN 0648–AT26

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 6

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 6 (Framework 6) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow regional conservation equivalency in the summer flounder recreational fishery. The intent is to provide flexibility and efficiency to the management of the summer flounder recreational fishery, specifically by expanding the suite of management tools available when conservation equivalency is implemented.

DATES: Comments must be received on or before May 30, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *FSBFW6@noaa.gov*. Include in the subject line the following identifier: ''Comments on Summer Flounder Framework 6.''
- Federal e-rulemaking portal: *http://www.regulations.gov.*
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Summer Flounder Framework 6.''
- Fax: (978) 281–9135.

Copies of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils.

The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°15.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The FMP and its implementing regulations, which are found at 50 CFR part 648, subparts A (General Provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The Council and the Commission seek to expand the suite of management tools available for management of the summer flounder recreational fishery when conservation equivalency is recommended by the Council. The Council initiated Framework 6, pursuant to § 648.108, in order to address issues related to the administration of the summer flounder recreational fishery, while continuing to achieve the management objectives of the FMP. Framework 6 complements Addendum XVII to the Interstate Summer Flounder, Scup, and Black Sea Bass FMP.

In 2001, NMFS implemented Framework Adjustment 2 to the FMP (Framework 2), which established a process that makes conservation equivalency an option for the summer flounder recreational fishery (66 FR 36208, July 11, 2001). Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the overall recreational harvest limit. Conservation equivalency has been approved for the summer flounder recreational fishery each year since 2002.

During the development of Framework 2, the Council considered but did not approve an alternative that would divide the recreational harvest limit into three subregions: Northern (MA, RI, CT), Central (NY, NJ, DE), and Southern (MD, Potomac River Fisheries Commission, VA, and NC). Development of Framework 6 was necessary to allow for modification of the state-specific conservation equivalency procedures as established in Framework 2. Framework 6 would allow for the voluntary formation of multi-state regions by two or more adjacent states for the purpose of setting regional, conservation-equivalent recreational summer flounder fishing measures. Using guidelines approved by both the Council and the Commission, multi-state conservation equivalency regions would develop fishing measures (i.e., minimum fish size, possession limits, and fishing seasons) intended to maximize landings in the region, without resulting in overages of the regional targets (in number of fish). All states forming a region would be required to implement identical recreational fishery regulations.

Currently, the Council and Board recommend annually that either state-

specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented by all states to ensure that the recreational harvest limit will not be exceeded. The Commission's conservation equivalency guidelines require the states to determine and implement appropriate state-specific management measures to achieve state-specific harvest limits. Under this approach, each state may implement unique management measures appropriate to that state, so long as these measures are determined by the Commission to provide equivalent conservation as would Federal coastwide measures developed to achieve the overall recreational harvest limit.

For each fishing year, if the Council recommends conservation equivalency, the Board requires that each state submit its conservation equivalency proposal to the Commission by January 15. The Commission's Summer Flounder Technical Committee then evaluates the proposals and advises the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. The Commission invites public participation in its review process by allowing public comment on the state proposals at the Technical Committee meeting and Board meeting. The Board meets in February to approve or disapprove the state management proposals. Once the states select and submit their final summer flounder management measures to the Commission, the Commission officially notifies NMFS as to which state proposals have been approved or disapproved. NMFS retains the final authority to either approve or disapprove using conservation equivalency in place of the coastwide measures and publishes its determination in the final rule establishing the annual recreational measures for these fisheries.

If conservation equivalency is recommended, and following confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ then would be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures. In addition, the Council and the Board must recommend precautionary default measures. The precautionary default measures would be assigned to any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that are determined not to achieve the required reduction. The precautionary default measures are defined as the set of measures that would achieve the greatest reduction in landings required for any state.

Under Framework 6, multi-state conservation equivalency measures for each region would be developed in the same manner as state-specific conservation equivalency measures, as specified in Framework 2. The procedures and timeline associated with development of summer flounder recreational management measures as determined in Framework 2 would also apply to multi-state conservation equivalency, i.e., with regard to distribution of multi-state conservation equivalency guidelines by the Commission to each state, distribution of multi-state conservation equivalency proposals to the Commission's Summer Flounder Technical Committee, evaluation of conservation equivalency proposals, and approval or disapproval of the proposals.

The recreational harvest limit for a multi-state region would be the sum of the harvest limits for all of the states volunteering to form that region. The Summer Flounder Technical Committee would develop region-specific tables as necessary for use by a multi-state region in determining recreational management measures expected to constrain recreational landings to the regional harvest limit. For the purpose of explanation, it should be assumed that a state or region makes its plans for the current calendar year at the beginning of the calendar year. To determine the multi-state conservation equivalency measures for a current year, the prior year's recreational landings would be pooled among the inclusive states and then compared to the current year's region-specific recreational harvest limit to determine if any reduction in landings would be required of that region. Each multi-state region would then craft their regulations under the same guidelines used to develop state-specific conservation equivalency measures and under the same timeline identified in Framework 2.

There are two possible scenarios for how states could proceed based on whether a region decides to maintain their voluntary regional agreement or decides to dissolve the voluntary multi-state region and resume state-specific conservation equivalency. First, in the event that a multi-state region maintains its voluntary conservation equivalency agreement, the region would again compare its regional recreational landings for the prior year to the current year's region-specific recreational harvest limit to determine if any necessary reductions in landings would be required of that region. The region would then adjust their regulations such that the region-specific harvest limit would be achieved. Second, in the event the region dissolves its agreement and opts for state-specific conservation equivalency, state-specific harvest limits would apply and individual states would compare their state-specific landings for the prior year to the state-specific harvest limits in the current year. Each state would then adjust their regulations such that the state-specific harvest limits would be achieved. As established for individual states in Framework 2, a multi-state region that does not exceed its regional harvest limit in a given year may be allowed to set less restrictive management measures for the following year, if the following year's regional harvest limit is greater than the current year's regional landings.

NMFS proposes to expand the scope of the regulations at § 648.100(e) to allow states and/or multi-state regions to implement conservation equivalent recreational fishing measures. The conservation equivalency regulations at § 648.107 would continue to apply, i.e., references to ''state'' would not be modified, since individual states are ultimately responsible for implementation of the conservation equivalent regulations (including those approved for a multi-state region).

Need for Clarification/Correction

NMFS has identified the need to clarify and to correct the regulations regarding summer flounder commercial gear restrictions. This proposed rule would clarify (at § 648.104(b)) that, although the minimum mesh size requirements specified for otter trawls would not apply for a vessel issued a summer flounder small-mesh exemption letter, other restrictions in part 648 may limit the area in which the exemption letter may be used. This proposed rule would correct the reference to net stowage requirements at § 648.104(b)(1) to be § 648.104(e) rather than § 648.100(e) as it was inadvertently published in a final rule that consolidated regulations governing multiple marine fisheries of the Northeast region into one new CFR part (61 FR 34966, July 3, 1996).

In addition, NMFS proposes a non-substantive modification to the regulatory text at § 648.107(b) for clarification purposes.

Classification

NMFS has determined that the proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

The proposed action could affect any recreational angler who fishes for summer flounder in the EEZ or on a party/charter vessel issued a Federal permit for summer flounder. However, the IRFA focuses upon the impacts on party/charter vessels issued a Federal summer flounder permit because these vessels are considered small business entities for the purposes of the RFA, i.e., businesses with receipts (gross revenues) of up to $6.5 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters.

Data from the Northeast permit application database indicates that in 2004 there were 803 party/charter vessels permitted to take part in the summer flounder, scup, and/or black sea bass recreational fisheries in the EEZ. Of those 803 party/charter vessels, 56 held a summer flounder permit alone, and 683 held a summer flounder permit in combination with a scup permit, black sea bass permit, or both. However, only 284 of these vessels reported active participation in the recreational summer flounder fishery in 2004. Although individual recreational anglers may be impacted, they are not considered small entities under the RFA. Also, there is no permit requirement to participate in these fisheries; thus, it would be difficult to quantify any impacts on recreational anglers in general.

In the EA/RIR/IRFA, the no-action alternative (i.e., maintenance of the regulations as codified) is defined as continuance of the state-specific conservation equivalency procedures as established in Framework 2. The implications of the no-action alternative are not substantial. State-specific summer flounder conservation equivalency, which was designed to constrain landings to the annual recreational harvest limit while allowing states the flexibility of determining their own recreational management measures, has been recommended by the Council and approved by NMFS each year since 2002.

The proposed action is not expected to result in negative impacts to a significant number of small entities participating in the recreational summer flounder fishery, relative to the status quo. The coastwide recreational harvest limit for summer flounder would not be altered. Multi-state conservation equivalency regions will develop fishing measures that maximize the harvest of the region-specific limit, without resulting in overages. This is similar to what is currently done on a state-specific basis when conservation equivalency is implemented, but on a larger scale. It is expected that the conservation equivalent recreational management measures would allow each state or multi-state region to develop specific summer flounder recreational measures that allow the fishery to operate during critical fishing periods, while still achieving conservation goals and mitigating potential adverse economic effects in specific states.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 09, 2006.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.100, paragraphs (e)(2) introductory text, (e)(2)(i), and (e)(2)(ii) are revised to read as follows:

§ 648.100 Catch quotas and other restrictions.

* * * * *

(e) * * *

(2) *Conservation equivalent measures.* Individual states or regions formed voluntarily by adjacent states (i.e., multi-state conservation equivalency regions) may implement different combinations of minimum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each state or multi-state conservation equivalency region may implement measures by mode or area only if the proportional standard error of Marine Recreational Fisheries Statistics Survey (MRFSS) landings estimates by mode or area for that state are less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** on or about March 1 to implement the overall percent adjustment in recreational landings required for the fishing year, the Council and Commission's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) During the public comment period on the proposed rule, the Commission will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The Commission will provide the Regional Administrator with the individual state and/or multi-state region conservation measures for the approved state and/or multi-state region proposals, and in the case of disapproved state and/or multi-state region proposals, the precautionary default measures.

* * * * *

3. In § 648.104, paragraphs (b) introductory text and (b)(1) are revised to read as follows:

§ 648.104 Gear restrictions.

* * * * *

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in

paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0′ W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). Vessels fishing under the LOA shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.104(e), so that it is not ''available for immediate use'' outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register** terminating the exemption for the remainder of the exemption season.

* * * * *

4. In § 648.107, paragraph (b) is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

* * * * *

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season - January 1 through December 31; minimum size - 18 inches (45.7 cm); and possession limit - one fish.

[FR Doc. E6–7357 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 050306E]

RIN 0648–AT71

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources

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

ACTION: Availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS manages Gulf of Alaska (GOA) groundfish fisheries through the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Congress granted NMFS specific regulatory authority to manage Central GOA rockfish fisheries in the Consolidated Appropriations Act of 2004. Congress provided additional guidance to the North Pacific Fishery Management Council (Council) in the development of a program to allocate harvesting privileges to fishermen and permit a defined group of processors to form associations with these harvesters for the exclusive use of specific rockfish and other groundfish in the Central GOA.

The Council adopted Amendment 68 in June 2005. Amendment 68 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) would establish a program to allocate Central GOA groundfish resources among harvesters and processors (Program). Amendment 68 would modify the FMP to increase resource conservation, improve economic efficiency, and improve safety in the Central GOA rockfish fisheries and other fisheries that are subject to the Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Comments on the amendment must be received on or before July 14, 2006.

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

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand Delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.
- Facsimile: 907–586–7557.
- E-mail: *0648-AT71-GOA68-NOA@noaa.gov*. Include in the subject line of the e-mail the following document identifier: ''Central GOA Rockfish RIN 0648–AT71.'' 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.

Copies of Amendment 68 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries.htm*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The Council submitted Amendment 68 to the FMP for Secretarial review, which would implement the Program designed to meet the requirements of Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–199). Section 802 states:

SEC. 802. GULF OF ALASKA ROCKFISH DEMONSTRATION PROGRAM.

The Secretary of Commerce, in consultation with the North Pacific Fishery Management Council, shall establish a pilot program that recognizes the historic participation of fishing vessels (1996 to 2002, best 5 of 7 years) and historic participation of fish processors (1996 to 2000, best 4 of 5 years) for pacific ocean perch, northern rockfish, and pelagic shelf rockfish harvested in Central Gulf of Alaska. Such a pilot program shall (1) provide for a set-aside of up to 5 percent for the total allowable catch of such fisheries for catcher vessels not eligible to participate in the pilot program, which shall be delivered to shore-based fish processors not eligible to participate in the pilot program; (2) establish catch limits for non rockfish species and non-target rockfish species currently harvested with pacific

ocean perch, northern rockfish, and pelagic shelf rockfish, which shall be based on historical harvesting of such bycatch species. The pilot program will sunset when a Gulf of Alaska Groundfish comprehensive rationalization plan is authorized by the Council and implemented by the Secretary, or 2 years from date of implementation, whichever is earlier.

The Council considered congressional guidance in the development of the Program, particularly in the selection of specific years on which to base participation and for the ''recognition'' of processor participation. Additionally, Section 802 provides NMFS with the authority to regulate processors under this Program. NMFS does not have specific authority under the Magnuson-Stevens Act to regulate on-shore processing activities.

Amendment 68 would amend the FMP to allow the implementation the Program consistent with Section 802. If approved, the proposed Program would be effective through December 31, 2008. Broadly, the Program would provide exclusive harvesting and processing privileges for a specific set of rockfish species and associated species harvested incidentally to those rockfish in the Central GOA, an area from 147° W. long. to 159° W. long. The granting of exclusive harvesting and processing privileges is commonly called rationalization. The rockfish species rationalized under the Program are: northern rockfish, Pacific Ocean perch (POP), and pelagic shelf rockfish. These rockfish species are called the primary species. The incidentally harvested groundfish taken in the primary rockfish fisheries and which also are rationalized under the Program are called the secondary species. The secondary species are: Pacific cod, rougheye rockfish, shortraker rockfish, and sablefish that are harvested by vessels using trawl gear. In addition to these secondary species, the Program would allocate a portion of the halibut bycatch mortality limit annually specified for the GOA trawl fisheries to Program participants based on their historic mortality rates in the primary species fisheries. This allocation of bycatch mortality could be used by Program participants during harvest activities in the fisheries rationalized under the Program.

Basic provisions of the Program implemented under Amendment 68 would:

(1) Allocate a catch history of primary rockfish species, secondary species, and halibut bycatch mortality to harvesters that use trawl gear in the Central GOA. To receive this catch history allocation, a harvester must have harvested primary rockfish species during a specific time period and meet other eligibility requirements. On an annual basis, this catch history allocation would yield a specific harvest amount of primary and secondary species and halibut bycatch mortality that could be exclusively caught by a group of harvesters if they are part of a harvesting cooperative. Cumulatively, these amounts, when allocated to a cooperative, are referred to as a cooperative fishing quota (CFQ);

(2) Establish eligibility criteria for processors to have an exclusive privilege to receive and process primary rockfish and secondary species allocated to harvesters in the Program;

(3) Allow a harvester that receives a catch history allocation to form a cooperative with other harvesters and a processor on an annual basis. This cooperative would be allocated an amount of fish that could be harvested in that year based on the sum of the catch history allocation held by all of the participants in the cooperative. This amount of fish could only be harvested by that cooperative. Cooperatives could only form under specific conditions. Harvesters that catch and process (catcher/processor) their catch at sea could form cooperatives with each other. Harvesters that deliver their catch onshore could only form a cooperative in association with the processor to whom they have historically delivered most of their catch;

(4) Allow cooperatives to transfer their CFQ of fish to and from other cooperatives.

(5) Provide an opportunity for harvesters not in a cooperative to fish in a limited access fishery. All harvesters in the limited access fishery compete with all other harvesters in the fishery to catch the total amount of fish assigned to the limited access fishery;

(6) Establish an entry level fishery for Central GOA rockfish for harvesters and processors not eligible to receive a catch history allocation under this Program;

(7) Allow catcher/processor harvesters to opt-out of the Program, with certain limitations;

(8) Limit the ability of processors to process catch outside of the communities in which they have traditionally processed Central GOA rockfish and associated secondary species;

(9) Establish catch limits, commonly called ''sideboards,'' that limit the ability of participants eligible for this Program to harvest fish in other fisheries. Sideboard provisions are intended to prevent harvesters in the Program from using their economic advantage to out compete participants in other fisheries. Sideboard harvest limits are established for groundfish outside of the Central GOA and for the amount of GOA halibut bycatch mortality annually specified for the GOA flatfish fisheries; and

(10) Establish monitoring and enforcement provisions to ensure that harvesters maintain catches within their annual allocations and do not exceed sideboard limits.

By creating an exclusive harvest privilege, the Program would provide greater security to harvesters in cooperatives. Although participants in the limited access fishery, opt-out fishery, and entry level fishery would not receive a guaranteed annual catch amount, most harvesters likely would participate in a cooperative that receives this allocation. A CFQ allocation would increase the focus on quality, promote a slower paced fishery, enhance safety by providing a vessel operator more flexibility to choose when to fish and therefore avoid poor weather, and provide greater stability for processors by spreading out production over a greater period of time.

Public comments are being solicited on proposed Amendment 68 through the end of the comment period (see DATES). NMFS intends to publish a proposed rule that would implement Amendment 68 in the **Federal Register** for public comment, following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 68 to be considered in the approval/disapproval decision on Amendment 68. All comments received by the end of the comment period on Amendment 68, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received not just postmarked or otherwise transmitted by the close of business on the last day of the comment period (see **DATES**).

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108–199, 118 Stat. 110.

Dated: May 9, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–7352 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 93
Monday, May 15, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

McKelvie Geographic Area Rangeland Allotment Management Plans on National Forest System Lands on the Samuel R. McKelvie National Forest, Bessey Ranger District in Nebraska

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement in conjunction with the revision of allotment management plans.

SUMMARY: Revise Rangeland Allotment Management Plans (RAMP) for all allotments within the McKelvie Geographic Area and analyze continuation of grazing within the constraints of the Revised Nebraska Land and Resource Management Plan (NLRMP).

DATES: Comments concerning the scope of the analysis must be received within 30 days after publication in the **Federal Register**. The draft environmental impact statement is expected February 2007 and the final environmental impact statement is expected May 2007.

ADDRESSES: Send written comments to: Michael E. Croxen, Interdisciplinary Team Leader, USDA Forest Service, P.O. Box 39, Halsey Nebraska 69142.

FOR FURTHER INFORMATION CONTACT: Michael E. Croxen, Interdisciplinary Team Leader, USDA Forest Service, P.O. Box 39, Halsey Nebraska 69142. Phone (308) 533–2257.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose of the EIS is to determine current conditions, analyze environmental consequences of actions to those conditions, and assist the decision maker in selecting management/monitoring strategies consistent with meeting desired conditions in the NLRMP. The need for the action is to ensure that authorized uses and associated management activities move them towards or maintain desired NLRMP conditions.

Proposed Action: The Bessey Ranger District proposes to implement best management practices and activities with adaptive management and monitoring strategies to ensure compliance between current conditions and NLRMP desired conditions.

Possible alternatives: No-Action Alternative is to not change current permitted uses. No-Grazing alternative is to eliminate any grazing on the project area.

Responsible Official: Patricia D. Barney, District Ranger, Bessey Ranger District, P.O. Box 39, Halsey Nebraska 69142.

Nature of Decision to be Made: The decision to be made is whether or not to continue permitted uses within the project area. If uses are permitted, then adaptive management strategies and monitoring will be identified to ensure compliance with desired NLRMP conditions.

Scoping Process: The agency sent a letter to interested parties on May 19, 2006 requesting comments concerning the scope of the analysis. Comments were due by June 19, 2006.

Release and Review of the Draft Environmental Impact Statement: The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by February 2007. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

Reviewers of the DEIS 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 Com.* v *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and Wisconsin.

Heritages, Inc., v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: May 5, 2006.

Patricia D. Barney,

District Ranger.

[FR Doc. 06–4518 Filed 5–12–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Baht Timber Sale Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: This NOI revises information supplied in the previously published Revised NOI published in the **Federal Register** Vol. 71, No. 23 (pages 5803–5804) on February 3, 2006. The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber in the Baht Timber Sale project area, Wrangell Ranger District, Tongass National Forest. The proposed

action is to harvest an estimated 42 million board feet on approximately 1410 acres with about 11 miles of new road construction. The proposed action would harvest approximately 210 acres and construct about 1.3 miles of road in roadless area. A range of alternatives are being developed to respond to the significant issues and will include a no-action alternative. The Tongass Forest Supervisor will decide on whether or not to harvest timber from this area, and if so, how this timber would be harvested. The decision will be documented in a Record of Decision based on the information disclosed in the EIS and the goals, objectives and desired future conditions as stated in the Forest Plan.

DATES: Initial letters outlining the project timeline and public involvement opportunities was distributed in July, 2003 and February, 2006. Opportunities for comment are available throughout the process. Individuals interested in receiving a scoping package should contact us within 30 days of the publication of this NOI. Comments about this stage of the project will be most helpful if received by May 30, 2006. Additional opportunities for comment will be provided after release of the Draft EIS, which is anticipated in early summer, 2006.

ADDRESSES: Please send written comments to Wrangell Ranger District; Attn: Baht EIS, P.O. Box 51, Wrangell, AK 99929. Electronic comments can be e-mailed to *comments-alaska-tongass-wrangell@fs.fed.us.* Please include the word ''Baht'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Mark Hummel, District Ranger, or Linda Christian, IDT Leader, Wrangell Ranger District, Tongass National Forest, P.O. Box 51, Wrangell, AK 99929, telephone (907) 874–2323.

SUPPLEMENTARY INFORMATION: The proposed action is to harvest an estimated 42 million board feet on approximately 1410 acres with about 11 miles of new road construction. The range of alternatives being developed to respond to the significant issues, besides no-action, will likely be between 15–45 million board feet of timber on an estimated 500–1500 acres in one or more timber sales.

The proposed action was originally developed not to enter roadless areas. However, recent GIS mapping updates showed that portions of harvest units in the proposed action are within roadless areas. Therefore, the proposed action would enter roadless areas. The proposed action would harvest about 40 acres in the West Zarembo roadless area and about 170 acres in the East Zarembo roadless area. The proposed action would construct about 1 mile of new road and 0.3 miles of temporary road in roadless areas.

Purpose and Need for Action: The purpose and need for the Baht Timber sale is to: (1) Contribute to the production of a sustained yield of timber and mix of other resource activities from the Tongass National Forest, consistent with Forest Plan Standards and Guidelines; (2) seek to provide a timber supply sufficient to meet the annual and planning cycle market demand for Tongass National Forest timber; (3) provide a diversity of opportunities for resource uses that contribute to the economies of Southeast Alaska; and (4) support a wide range of natural resource employment opportunities within Southeast Alaska's communities.

The proposed timber harvest is located within Tongass Forest Plan Value Comparison Units 456, 457, 458 and 459 on Zarembo Island, Alaska, Wrangell Ranger District of the Tongass National Forest. The sale is currently listed on the Tongass 5-year action plan to be sold in 2007. The repercussions of delaying the project planning process regarding road building and timber harvest, even for a relatively short period, can have a significant effect on the amount of timber available for sale on the Tongass over the next few years. The Baht Timber Sale Project is consistent with the 1997 Tongass Land Management Plan.

Public Participation: Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Tribal Governments, Federal, State, and local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of non-significant issues or those which have been covered by a previous environmental review. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by *May 30, 2006.*

Preliminary Issues: Tentative issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: Old-growth ecosystem management and the maintenance of habitat for viable populations of wildlife species, timber sale economics, road construction/access management and water quality.

Draft Environmental Impact Statement: Based on results of scoping and the resource capabilities within the project area, alternatives including a ''no action'' alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in May 2006. The Final EIS is anticipated by September 2006.

The comment on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes 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, 533, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage 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 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. Comments 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 part 215. 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 (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 or Licenses Required: Permits required for implementation include the following:

1. U.S. Army Corps of Engineers

—Approvals 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

—National Pollutant Discharge Elimination System (402) Permit;

—Review Spill Prevention Control and Countermeasure Plan;

3. State of Alaska, Department of Natural Resources

—Tideland Permit and Lease or Easement;

4. State of Alaska, Department of Environmental Conservation

—Solid Waste Disposal Permit;

—Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official: The Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: May 7, 2006.

Forrest Cole,

Forest Supervisor.

[FR Doc. 06–4495 Filed 5–12–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Yellow River Watershed Structure No. 3: Gwinnett County, GA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of a finding of no significant impact.

SUMMARY: Pursuant to Section 102[2][c] of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations [40 CFR part 1500]; and the Natural Resources Conservation Service Regulations [7 CFR part 650]; the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Yellow River Watershed Structure No. 3, Gwinnett County, Georgia.

FOR FURTHER INFORMATION CONTACT: Cran Upshaw, Economist, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, Telephone [706] 546–2277, e-mail *cran.upshaw@ga.usda.gov.*

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James E. Tillman, Sr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact [FONSI] has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cran Upshaw at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Signed in Athens, Georgia, on May 4, 2006.

James E. Tillman, Sr.,

State Conservationist.

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials].

Finding of No Significant Impact for Yellow River Watershed Structure No. 3 Gwinnett County, Georgia, April 27, 2006.

Introduction

The Yellow River Watershed is a federally assisted action authorized for planning under Public Law 106–472, the Small Watershed Rehabilitation Act, which amends Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, Yellow River Watershed Structure No. 3 [Y–3], to meet current dam safety criteria in Georgia. The plan calls for construction of a roller-compacted concrete labyrinth with orifice spillway over the top of an existing earthen embankment. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures are to:

1. Construct a roller-compacted concrete labyrinth with orifice spillway over the top of an existing earthen embankment. This constructed emergency spillway is designed to bring the existing dam into compliance with current dam safety criteria in Georgia.

2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Installing the roller-compacted concrete labyrinth with orifice spillway will bring Yellow River Watershed Structure No. 3 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 39 homes, 1 commercial property, 2 miles of roadway and 5 bridges. Additional effects will include continued protection against flooding, continued water quality benefits, continued

fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 11.3 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Alternatives

Seven alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring organizations include the Gwinnett County Government, Gwinnett County Soil and Water Conservation District, and the Upper Ocmulgee River Resource Conservation and Development Council. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the Yellow River Watershed. Gwinnett County agreed to serve as ''lead sponsor'' being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process

An Interdisciplinary Planning Team provided for the ''technical'' administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS-National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing the Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process, were presented at the public meeting on April 14, 2005. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

A Technical Advisory Group was developed to aid the Planning Team with the planning process. The following agencies were involved in developing this plan and provided representation on the Technical Advisory Group:

- Gwinnett County Government
- Gwinnett County Soil and Water Conservation Districts
- Georgia Department of Natural Resources, Environmental Protection Division [EPD], Safe Dams Program
- Georgia Department of Natural Resources, Wildlife Resources Division [WRD], Game and Fisheries Section
- United States Environmental Protection Agency [EPA], Region IV
- USDA, Natural Resources Conservation Service [NRCS]
- USDI, Fish and Wildlife Service [F&WS]
- US Army Corps of Engineers [COE]

Public Participation

A public meeting was held on April 14, 2005 to explain the Small Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the Y–3 project area. Potential alternative solutions to bring Y–3 into compliance with current dam safety criteria were also presented. Through a voting process, eleven meeting participants heard summaries of planning accomplishments to date provided input on issues and concerns to be considered in the planning process, were made aware of results from the reservoir sedimentation survey, and identified which planning alternative [i.e. No Action, Decommission, Structural, Non-Structural] was most desirable.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended plan of action on Yellow River Watershed Structure No. 3 is not required.

Dated: May 4, 2006.

James E. Tillman, Sr.,

State Conservationist.

[FR Doc. E6–7306 Filed 5–12–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–201–830)

Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 7, 2005, the Department of Commerce (the Department) published the preliminary results of its second administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico. The review covers two producers of the subject merchandise. The period of review (POR) is October 1, 2003, through September 30, 2004. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: May 15, 2006.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Jolanta Lawska, at (202) 482–1767 or (202) 482–8362, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2005, the Department published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico. *See Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Steel Alloy Steel Wire Rod from Mexico*, 70 FR 67422 (November 7, 2005) (*Preliminary Results*). On December 7, 2005, petitioners [1] requested a hearing, and on December 7, 2005, Hylsa Puebla, S.A. de C.V. (Hylsa) also requested a hearing. On January 6, 2006, both petitioners and Hylsa withdrew their requests for a hearing. No other interested parties requested a hearing.

We invited parties to comment on the *Preliminary Results*. On December 14, 2005, we received case briefs from Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V. (SICARTSA), Hysla, and petitioners. All parties submitted rebuttal briefs on December 19, 2005.

Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) Stainless steel; (b) tool steel; c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining

[1] Gerdau Ameristeel US Inc., ISG Georgetown Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should the petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to this order are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3092, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7213.99.0090, 7227.20.0000, 7227.90.6010, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[2]

Analysis of Comments Received

The issues raised in the case briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary (Wire Rod Decision Memorandum), which is hereby adopted by this notice. A list of the issues addressed in the Wire Rod Decision Memorandum is appended to this notice. The Wire Rod Decision Memorandum is on file in the Central Records Unit in Room B–099 of the main Commerce building, and can also be accessed directly on the Web at *www.ia.ita.doc.gov/frn*. The paper copy and electronic version of the Wire Rod Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received for Hylsa, we have: (1) Included our weighting of characteristic methodology used in prior segments which was omitted for the preliminary results; (2) made adjustments to the reported costs of direct materials (iron ore and steel scrap) from affiliated suppliers; (3) recalculated Hylsa's warranty expense ratio using a three-year history of U.S. warranty claims; (4) revised Hylsa's parent company's calculation of G&A expenses to include ''corporate charges from affiliated parties;'' (5) adjusted Hylsa's General & Administrative (G&A) expense ratio to account for ''parent company profit sharing expenses;'' (6) corrected a ministerial error in the calculation of net price for U.S. sales with billing adjustments. *See* May 8, 2006, Final Calculation Memorandum for Hylsa Puebla, S.A. de C.V.

Based on our analysis of comments received for SICARTSA and our finding, we have: (1) Included our weighting of characteristic methodology used in prior segments which was omitted for the preliminary results; (2) removed an improper adjustment to cost of manufacturing; (3) included the variable for debit notes in the programs; (4) corrected a syntax error in summing home–market credit expenses; (5) corrected an error in which we improperly excluded partially unpaid accounts receivables; (6) renamed a file of home–market selling expenses used

[2] Effective January 1, 2006, U.S. Customs and Border Protection (CBP) reclassified certain HTSUS numbers related to the subject merchandise. *See* http: //hotdocs.usitc.gov/ tariff__chapters__current/ toc.html.

for constructed value which is imported from the comparison market program to the margin program; (7) removed an incorrect adjustment made to SICARTSA's general and administrative expense; (8) used the invoice date as the date of sale in the comparison market program; and (9) applied a per–unit assessment rate. *See* May 8, 2006, Final Calculation Memorandum for Siderurgica Lazaro Cardenas Las Truchas (SICARTSA).

Both Hylsa's and SICARTSA's adjustments are discussed in detail in the accompanying Wire Rod Decision Memorandum.

Final Results of Review

As a result of our review, we determine that the following weighted–average margins exist for the period October 01, 2003, through September 30, 2004:

Producer	Weighted–Average Margin (Percentage)
Hylsa	1.81
SICARTSA	1.26

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). For Hylsa, the Department has calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. For SICARTSA, the Department has calculated importer–specific assessment rates on a per–unit basis. Specifically, to calculate the assessment rate on a per–unit basis, the Department divided the total dumping margin for SICARTSA (calculated as the difference between normal value and export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposits

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of carbon and certain alloy steel wire rod from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) For SICARTSA and Hylsa, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered a prior segment, the cash deposit rate will continue to be the company–specific rate from the final results; (3) if the exporter is not a firm covered in this review or a prior segment, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the final determination; and (4) if neither the exporter nor the producer is a firm covered in this review or the investigation, the cash deposit rate will be 20.11 percent, the ''All Others'' rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent increase in antidumping duties by the amount of antidumping duties reimbursed.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 8, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

I. List of Comments:

Hylsa Puebla S.A. (Hysla)

Comment 1: Treatment of Home–Market Sales of Redirected Merchandise
Comment 2: Recalculation of Hylsa's Warranty Expenses
Comment 3: Hylsa's Cost of Materials from Affiliated Suppliers - Major Input Rule
Comment 4: Treatment of Sales with Negative Dumping Margins (''Zeroing'')
Comment 5: Managerial Labor Costs
Comment 6: Parent Company General and Administrative (''G&A'') Expenses
Comment 7: Parent Company Employee Profit Sharing Expenses
Comment 8: Use of Monthly Costs for Profit Calculations
Comment 9: Hylsa's Home–Market Credit Expenses
Comment 10: Error in the Calculation of Net Price for U.S. Sales with Billing Adjustments

Siderurgica Lazaro Cardenas las Truchas, S.A. de C.V. (SICARTSA)

Comment 11. Major Input of Iron Ore and Ferrous Scrap
Comment 12: Credit Expense using U.S. Dollar Interest Rates
Comment 13: Assessment Rate
Comment 14: Adjustment to SICARTSA's G&A Expenses
Comment 15: Home–Market Discounts and Rebates
Comment 16: Home–Market Credit Expense
Comment 17: Treatment of Unpaid Accounts Receivable
Comment 18: Incorrect File Name

[FR Doc. E6–7360 Filed 5–12–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–879

Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of administrative review of the antidumping duty order on polyvinyl alcohol (''PVA'') from the

People's Republic of China (''PRC'') on November 7, 2005. *See Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 67434 (November 7, 2005) (''*Preliminary Results*''). The period of review (''POR'') is August 11, 2003, through September 30, 2004. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made certain changes to our calculations. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: May 15, 2006.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

We invited parties to comment on our *Preliminary Results*. On December 7, 2005, the Department received case briefs from Petitioners [1] and the respondent, Sinopec Sichuan Vinylon Works (''SVW''). On December 16, 2005, we received rebuttal comments from Petitioners, SVW, and Solutia, Inc. (''Solutia''), a domestic producer of PVA. On February 7, 2006, the Department issued a fifth Section D supplemental questionnaire to SVW, to which SVW responded on February 14, 2006. In addition, on February 7, 2006, we issued a memorandum to all interested parties requesting comments regarding a change in the Department's calculated regression–based wage rate methodology and in the allocation of the labor benefits in the financial ratio calculation. *See* Letter from Wendy Frankel, Director, Office 8, to All Interested Parties, dated February 7, 2006. Petitioners provided comments on February 14, 2006. No other interested party provided comments. We have conducted this administrative review in accordance with Section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213.

Period of Review

The POR is August 11, 2003, through September 30, 2004.

Scope of the Order

The merchandise covered by this order is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

1) PVA in fiber form.
2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.
3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.
4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.
5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end–use certification.
6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.
8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non–vinyl acetic material.
9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.
11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise subject to this order is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Results of the First Administrative Review of the Antidumping Duty Order on Polyvinyl Alcohol from the People's Republic of China,'' dated May 8, 2006 (''*Issues and Decision Memorandum*''), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the *Issues and Decision Memorandum* is attached to this notice as an appendix. The *Issues and Decision Memorandum* is a public document which is on file in the Central Records Unit (''CRU'') in room B–099 in the main Department building, and is accessible on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for SVW.

- We changed our surrogate value labor rate to the rate issued by the Department in November 2005. *See Issues and Decision Memorandum* at Comment 9.
- We moved employee benefits of the surrogate company from the direct labor calculation into manufacturing overhead. *See Issues and Decision Memorandum* at Comment 8.
- For the preliminary results, we did not value freon. However, for the final results, we valued freon for our margin calculations. *See Issues and Decision Memorandum* at Comment 6.

[1] Celanese Chemicals, Ltd. and E.I. DuPont de Nemours and Co. (collectively ''Petitioners'').

- In the preliminary results, we used a heat–of-combustion methodology to allocate costs to acetylene and acetylene tail gas. For the final results, we utilized a value–based allocation methodology. *See Issues and Decision Memorandum* at Comment 1.
- In the preliminary results, we inadvertently added the value of the steam by–product to acetylene and acetylene tail gas. For the final results, we revised the surrogate value for steam to apply the intended by–product credit. *See Issues and Decision Memorandum* at Comment 1.
- For the preliminary results, we inadvertently included a waterway supplier distance in calculating the weighted–average supplier distance for coal. For the final results, we removed this distance. *See* Final Results of Administrative Review of the Order on Polyvinyl Alcohol from the People's Republic of China: Sinopec Sichuan Vinylon Works Program Analysis for the Final Results of Review from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, to the File, dated May 8, 2006 (''*Final Analysis Memorandum*.'').
- We adjusted the calculation of self–produced electricity as an input into self–produced tap water, steam and compressed air, and the calculation of self–produced steam as an input into self–produced 12 degree circulation water, power generation boiler water, de–oxygen water, methanol, vinyl acetate monomer, and acetylene/acetylene tail gas. *See Issues and Decision Memorandum* at Comments 12 - 14.
- In the preliminary results, we inadvertently applied the surrogate value of pure water to the factor of 33 degree circulation water. For the final results, we applied the surrogate value of 33 degree circulation water to the factor of 33 degree circulation water. *See Issues and Decision Memorandum* at Comment 15.
- In the preliminary results, we intended to increase SVW's direct labor hours to account for unreported engineering and production management but inadvertently applied the increase only to the last stage of PVA production: the production of finished PVA. For the final results, we increased the direct labor hours for the full PVA production cycle. See Attachment 6 of Preliminary Results of Review of the Order on Polyvinyl Alcohol from the People's Republic of China: Sinopec Sichuan Vinylon Works Program Analysis for the Preliminary Results of Review from Lilit Astvatsatrian, Case Analyst, through Robert Bolling, Program Manager, to the File, dated October 31, 2005, and Exhibit 1 of *Final Analysis Memorandum* at page 4.

Surrogate Country

In the *Preliminary Results*, we stated that we treat the PRC as a non–market economy (''NME'') country, and, therefore, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries. Also, we stated that we had selected India as the appropriate surrogate country to use in this review for the following reasons: (1) it is a significant producer of comparable merchandise; and (2) it is at a similar level of economic development, pursuant to 773(c)(4) of the Act. *See Preliminary Results*, 70 FR 67436. For the final results, we made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that SVW demonstrated its eligibility for separate–rate status. For the final results, we continue to find that the evidence placed on the record of this review by SVW demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review, and, thus determine SVW is eligible for separate–rate status.

Weighted–Average Dumping Margin

The weighted–average dumping margin is as follows:

POLYVINYL ALCOHOL FROM THE PRC

Producer/Manufacturer/ Exporter	Weighted–Average Margin (Percent)
SVW*	0.04 %

* This rate is *de minimis*.

Assessment Rates

The Department will issue appraisement instructions directly to U.S. Customs and Border Protection (''CBP'') within 15 days of publication of these final results of administrative review. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates for merchandise subject to this review. For SVW, we divided the total dumping margins of its reviewed sales by the total entered value of its reviewed sales for each applicable importer to calculate *ad valorem* assessment rates. We will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on SVW's entries under the relevant order during the POR.

To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific *ad valorem* rates. For SVW, we aggregated the dumping margins calculated for all U.S. sales to each importer and divided this amount by the entered value of the sales to each importer. For further details *see Final Analysis Memorandum*. Where an importer–specific *ad valorem* rate is *de minimis*, we will order CBP to liquidate appropriate entries without regard to antidumping duties.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of PVA from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) Because the cash deposit rates for SVW is *de minimis*, no cash deposit shall be required for SVW; (2) for previously reviewed or investigated companies not listed above that have a separate rate, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 97.86 percent, the current PRC–wide rate; and (4) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with

this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 8, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Cost Allocation Methodology of Acetylene and Acetylene Tail Gas Co–Products

Comment 2: Surrogate Value for Natural Gas

Comment 3: Surrogate Value for Coal

Comment 4: Surrogate Value Purity Adjustment for Purchased Inputs Sourced from *Chemical Weekly*

Comment 5: Surrogate Value for Methanol

Comment 6: Valuation of Surrogate Value for Freon

Comment 7: Inclusion of Excise Duty in Surrogate Company's Profit

Comment 8: Inclusion of Labor Benefits in Factory Overhead

Comment 9: Surrogate Value for Wages

Comment 10: Treatment of By–Product Offsets

Comment 11: Surrogate Value for Brokerage and Handling

Comment 12: Use of Self–Produced Electricity in the Production of Certain Self–Produced Inputs

Comment 13: Use of Different Value of Self–Produced Steam as an Input to Other Self–Produced Inputs

Comment 14: Use of Self–Produced Electricity in Calculation of the Cost of 33 Degree Circulation Water

Comment 15: Calculation of 33 Degree Circulation Water in Margin Calculation Program

Comment 16: Correction of the Calculation of Train Freight

[FR Doc. E6–7358 Filed 06–12–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050406B]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of applications for renewal; modification of scientific research/enhancement permit (1093); request for comment.

SUMMARY: Notice is hereby given that NMFS has received applications to renew and modify permits from U. S. Geological Survey, Arcata, CA (Permit 1093). This permit would affect Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*), Central California Coast (CCC) coho salmon, Northern California (NC) steelhead (*O. mykiss*), and California Coastal (CC) Chinook salmon (*O. tshawytscha*). This document serves to notify the public of the availability of the permit application for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Daylight Savings Time on June 14, 2006.

ADDRESSES: Written comments on any of these renewal and modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment: For Permit 1093: Steve Liebhardt, Protected Species Division, NOAA Fisheries, 1655 Heindon Road, Arcata, CA 95521 (ph: 707–825–5186, fax: 707–825–4840).

FOR FURTHER INFORMATION CONTACT: Steve Liebhardt at phone number (707B825B5186), or e-mail: *steve.liebhardt@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531B1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NOAA Fisheries regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the following four threatened salmonid ESUs: Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*), Central California Coast (CCC) coho salmon, Northern California (NC) steelhead (*O. mykiss*), and California Coastal (CC) Chinook salmon (*O. tshawytscha*).

Renewal and Requests Received

Permit 1093

The U.S. Geological Survey (USGS) has requested the renewal and modification 2 of Permit 1093 for take of SONCC coho salmon, CCC coho salmon, NC steelhead, and CC Chinook salmon, associated with five studies. The USGS proposes to capture juvenile salmon and steelhead by electrofishing. Permit 1068 was originally issued on April 1, 1998. That permit expired on June 30, 2003. NMFS placed the USGS on the California Department of Fish and Game (CDFG) 4d list for scientific research to cover the USGS for anticipated take of listed salmonids. However, because CCC coho salmon are listed as endangered and because the USGS would conduct research on CCC coho salmon, they could not be covered for take of CCC coho salmon under the 4d list. Therefore, NMFS is renewing and modifying Permit 1093 for a second

time to cover anticipated take of CCC coho salmon. USGS has requested lethal take of up to: 1,900 juvenile SONCC coho salmon, 300 juvenile CCC coho salmon, 3,050 juvenile NC steelhead, and 1,200 juvenile CC Chinook salmon. The five studies would involve using listed salmonids caught by electrofishing to continue research on the demographics of coho salmon, investigate the influence of non-native fish species on food webs, develop protocols for measuring a biological response to watershed restoration, and investigate the response of steelhead to fire in coastal watersheds.

Renewal and Modification 2 of Permit 1093 will expire on January 1, 2011.

The USGS has requested renewal and modification 2 of Permit 1093 for take of SONCC coho salmon, CCC coho salmon, NC steelhead, and CC Chinook salmon associated with studies to continue research on the demographics of coho salmon, investigate the influence of non-native fish species on food webs, develop protocols for measuring a biological response to watershed restoration, and investigate the response of steelhead to fire in coastal watersheds. Proposed capture methods are by electrofishing. NMFS placed the USGS on the California Department of Fish and Game (CDFG) 4d list for scientific research to cover the USGS for anticipated take of listed salmonids on December 28, 2005. The USGS has requested non-lethal take of up to 1,900 juvenile SONCC coho salmon, 300 juvenile CCC coho salmon, 3,050 juvenile NC steelhead, and 1,200 juvenile CC Chinook salmon. Renewal and Modification of Permit 1093 will expire January 1, 2011.

Dated: May 9, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–7363 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050806A]

New England Fishery Management Council; Northeast Multispecies; Small-mesh Multispecies; Scoping Process

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

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of scoping meetings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare, in cooperation with NMFS, an SEIS to assess the potential effects on the human environment of alternative measures for managing the small-mesh multispecies fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. This notice announces a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to management of the small-mesh multispecies fishery. The Council will use the scoping process and the SEIS to develop Amendment 14 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) for Small-Mesh Multispecies.

DATES: The Council will discuss and take scoping comments at public meetings in May and June 2006. For specific dates and times of the scoping meetings, see **SUPPLEMENTARY INFORMATION**. Written scoping comments must be received on or before 5 p.m., local time, June 16, 2006.

ADDRESSES: The Council will take scoping comments at public meetings in Massachusetts, Maine, Rhode Island, Connecticut, New York, and New Jersey. For specific locations, see **SUPPLEMENTARY INFORMATION**. Written comments and requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. Comments may also be sent via facsimile (fax) to (978) 465–3116 or via e-mail to *MULA14–NOI@noaa.gov*. Include in the subject line the following identifier: ''MUL Amendment 14 Scoping Comments.'' The scoping document is accessible electronically via the Internet at *http://www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The small-mesh multispecies fishery includes silver hake (*Merluccius bilinearis*, also known as whiting), offshore hake (*Merluccius albidus*, also know as blackeye whiting) and red hake (*Urophycis chuss*, also known as ling and mud hake) and is managed under the Council's NE Multispecies FMP. Silver hake is a widely distributed, slender, swiftly swimming species whose range extends from Newfoundland to South Carolina. Offshore hake, often referred to as another species of silver hake, co-occur with silver hake over the continental shelf and slope of the northwest Atlantic Ocean and are often indistinguishable from silver hake in commercial landings. Red hake are distributed from the Gulf of St. Lawrence to North Carolina but are most abundant between Georges Bank and New Jersey. The Council has managed these species as a unit under the NE Multispecies FMP since 1999. Currently, the small-mesh multispecies fishery is an open access fishery. Management measures for these species include retention limits based on net mesh size, seasonal fishing areas, and requirements for fishing gear to ensure escapement of other groundfish species.

Purpose of Action

An amendment and SEIS to the NE Multispecies FMP to address the small-mesh multispecies fishery is being considered due to concerns that the small mesh multispecies fishery may be, or may become, overcapitalized as a result of shifts in the distribution of fishing effort that followed recent changes to the management measures of other New England fisheries. While overfishing currently is not occurring on stocks of silver hake and red hake, the threat of overfishing exists as long as an unlimited number of vessels may enter the fishery and increase landings beyond sustainable levels.

In January 2006, a stock assessment was completed for silver hake. This assessment indicates that the abundance index for the northern stock of silver hake has declined since 1999 due to low recruitment and the abundance index for the southern stock of silver hake remains below the target level. In the most recent Stock Assessment and Fishery Evaluation report published in 2003, the members of the Council's Whiting Monitoring Committee indicated concerns about declining survey mean weights for both red and offshore hake in portions of their stock areas.

Measures Under Consideration

The Council may consider several types of management measures to improve the effectiveness of small-mesh multispecies management including, but not limited to:

- Limited entry for commercial vessels;
- Hard total allowable catch (TAC) output controls;
- Dedicated Access Privileges (DAPs); and
- Recreational measures for the these species.

Further information regarding each issue follows. Detailed information on each of these potential measures, including specific topics for which the Council is soliciting comment, are in the scoping document, available on the Council web site *http://www.nefmc.org.*

Limited Entry for Commercial Vessels

The Council voted to reaffirm the existing small-mesh multispecies control date of March 25, 2003, during their meeting on April 4, 2006. The purpose of this control date was to deter speculative entry into the fishery after its establishment. The Council is not obliged to limit entry into the commercial small-mesh fisheries, nor is it obliged to use participation before the control date as the basis for qualification. Qualification criteria may include such things as participation in the fishery prior to the control date, participation within a defined time period, historical landing levels by fishery participants, and dependency on the fishery.

Hard Total Allowable Catches

Hard TACs are an output control measure that limit total harvest by closing the fishery when the TAC is reached. As such, TACs may be considered to reduce the likelihood that overfishing may occur in the fishery. Hard TACs may be developed for individual species, species assemblages, areas, seasons, commercial or recreational fisheries. Hard TACs may be developed in conjunction with individual harvesting privileges and could be developed wether the fishery becomes limited entry or remains open access.

Dedicated Access Privileges

DAP programs may include such measures as fishing sector allocations, community quotas, harvesting cooperatives, or other group or individual access privileges. DAPs may provide for a management approach that can be tailored to a smaller number of vessels instead of developing an approach to accommodate several hundred vessels. DAPs may allow additional flexibility for participants to pool resources and maximize efficiency and economic benefits. If developed, the Council may consider safeguards to consolidation, transferability, allocation changes over time, and how DAPs may change the fishery and fishing communities.

It is possible that during the scoping process other issues will be raised related to the purpose of this amendment, and if appropriate, those issues also will be considered by the Council.

Scoping Process

It is the Council's and NMFS' intent to encourage all persons affected by or otherwise interested in the management of small-mesh multispecies to participate in the process to determine the scope and significance of issues to be analyzed in the SEIS and amendment. All such persons are encouraged to submit written comments (see ADDRESSES) or attend one of the scoping meetings. Persons submitting written comments may wish to address the specific measures introduced in the previous section. The scope of the SEIS consists of the range of actions, alternatives, and impacts to be considered. Alternatives may include the following: Not amending the FMP (taking no action); developing an amendment that contains management measures such as those discussed in this notice; or other reasonable courses of action. Impacts may be direct, indirect, or cumulative.

This scoping process also will identify and eliminate from detailed analysis issues that are not significant. After the scoping process is completed, the Council will proceed with the development of an amendment to the NE Multispecies FMP and the Council will prepare an SEIS to analyze the impacts of the range of alternatives considered in the amendment. The Council will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts presented in the draft SEIS.

Scoping Hearing Schedule

The Council will discuss and take scoping comments at the following public meetings:

1. Wednesday, May 24, 5 p.m., MA DMF of Marine Fisheries, Annisquam River Marine Station, 30 Emerson Avenue, Gloucester, MA 01930. Telephone (978) 282–0308.

2. Thursday, May 25, 5 p.m., Casco Bay Lines, 56 Commercial Street, Portland, ME 04101. Telephone (207) 774–7871.

3. Wednesday, May 31, 5 p.m., Narragansett Town Hall, 25 Fifth Avenue, Narragansett, RI 02882. Telephone (401) 789–1044.

4. Tuesday, June 6, 5 p.m., Stonington Office of Public Safety, 173 South Broad Street, Route 1, Stonington, CT 06378. Telephone (860) 599–7510.

5. Wednesday, June 7, 5 p.m., Riverhead Town Hall, 200 Howell Avenue, Riverhead, NY 11901. Telephone (631) 727–3200.

6. Thursday, June 8, 5 p.m., Ferrara's Restaurant, 518 Arnold Avenue, Point Pleasant Beach, NJ 08742. Telephone (732) 899–3900.

Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 08, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–7362 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042406C]

Marine Mammals; File No. 782–1812

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that NMFS, National Marine Mammal Laboratory (Principle Investigator: Dr. Robert DeLong), Alaska Fisheries Science Center, Seattle, WA has been issued a permit to conduct research on California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and northern fur seals (*Callorhinus ursinus*) on the southern California Channel Islands, surrounding waters, and at haul–out sites along the coast of California, Oregon, and Washington.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East–West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1,

Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Andrew Wright or Dr. Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 9, 2006, notice was published in the Federal Register (71 FR 12185) that a request for a scientific research permit to take the species identified above had been submitted by the above–named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit authorizes the holder to conduct five research projects related to population and health assessment and studies of the ecology of and disease in these pinniped species. The permit authorizes the holder to harass, capture, sample (blood and various tissues), mark (by dye, flipper tag, neoprene patch, and hot brand), and attach instruments to individuals and to inject California sea lion and northern fur seal pups with either an antihelminthic treatment or placebo. The permit also authorizes NMML a limited number of mortalities of each species per year incidental to the research. Please refer to the tables in the permit for details of the numbers of marine mammals that are authorized to be taken during the course of the various research activities. The permit will expire on April 30, 2011.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: May 9, 2006.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–7356 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050306A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey of the Western Canada Basin, Chukchi Borderland and Mendeleev Ridge, Arctic Ocean, July-August, 2006

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

ACTION: Notice; receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the University of Texas at Austin Institute for Geophysics (UTIG) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a marine seismic survey in the Arctic Ocean from approximately July 15 – August 25, 2006. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to incidentally take, by harassment, small numbers of several species of marine mammals during the seismic survey.

DATES: Comments and information must be received no later than June 14, 2006.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.050306A@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 8, 2006, NMFS received an application from UTIG for the taking, by

harassment, of several species of marine mammals incidental to conducting, with research funding from the National Science Foundation (NSF), a marine seismic survey in the Western Canada Basin, Chukchi Borderland and Mendeleev Ridge of the Arctic Ocean during July through August, 2006. The seismic survey will be operated in conjunction with a sediment coring project, which will obtain data regarding crustal structure. The purpose of the proposed study is to collect seismic reflection and refraction data and sediment cores that reveal the crustal structure and composition of submarine plateaus in the western Amerasia Basin in the Arctic Ocean. Past studies have led many researchers to support the idea that the Amerasia Basin opened about a pivot point near the Mackenzie Delta. However, the crustal character of the Chukchi Borderlands could determine whether that scenario is correct, or whether more complicated tectonic scenarios must be devised to explain the presence of the Amerasia Basin. These data will assist in the determination of the tectonic evolution of the Amerasia Basin and Canada Basin which is fundamental to such basic concerns as sea level fluctuations and paleoclimate in the Mesozoic era.

Description of the Activity

The *Healy*, a U.S. Coast Guard (USCG) Cutter ice-breaker, will rendezvous with the science party off Barrow on or around 15 July. The *Healy* will then sail north and arrive at the beginning of the seismic survey, which will start >150 km (93 mi) north of Barrow. The cruise will last for approximately 40 days, and it is estimated that the total seismic survey time will be approximately 30 days depending on ice conditions. Seismic survey work is scheduled to terminate west of Barrow about 25 August. The vessel will then sail south to Nome where the science party will disembark.

The seismic survey and coring activities will take place in the Arctic Ocean. The overall area within which the seismic survey will occur is located approximately between 71°36′ and 79°25′ N., and between 151°57′ E. and 177°24′ E. The bulk of the seismic survey will not be conducted in any country's territorial waters. The survey will occur within the Exclusive Economic Zone (EEZ) of the U.S. for approximately 563 km.

The *Healy* will use a portable Multi-Channel Seismic (MCS) system to conduct the seismic survey. A cluster of eight airguns will be used as the energy source during most of the cruise, especially in deep water areas. The airgun array will have four 500–in^3 Bolt airguns and four 210–in^3 G. guns for a total discharge volume of 2840 in^3. In shallow water, occurring during the first and last portions of the cruise, a four 105 in^3 GI gun array with a total discharge volume of 420 in^3 will be used. Other sound sources (see below) will also be employed during the cruise. The seismic operations during the survey will be used to obtain information on the history of the ridges and basins that make up the Arctic Ocean.

The *Healy* will also tow a hydrophone streamer 100–150 m (328–492 ft) behind the ship, depending on ice conditions. The hydrophone streamer will be up to 200 m (656 ft) long. As the source operates along the survey lines, the hydrophone receiving system will receive and record the returning acoustic signals. In addition to the hydrophone streamer, sea ice seismometers (SIS) will be deployed on ice floes ahead of the ship using a vessel-based helicopter, and then retrieved from behind the ship once it has passed the SIS locations. SISs will be deployed as much as 120 km (74 mi) ahead of the ship, and recovered when as much as 120 km (74 mi) behind the ship. The seismometers will be placed on top of ice floes with a hydrophone lowered into the water through a small hole drilled in the ice. These instruments will allow seismic refraction data to be collected in the heavily ice-covered waters of the region.

The program will consist of a total of approximately 3625 km (2252 mi) of surveys, not including transits when the airguns are not operating, plus scientific coring at least seven locations. Water depths within the study area are 40–3858 m (131–12,657 ft). Little more than 8 percent of the survey (approximately 300 km (186 mi)) will occur in water depths <100 m (328 ft), 23 percent of the survey (approximately 838 km (520 mi)) will be conducted in water 100–1000 m (328–3280 ft) deep, and most (69 percent) of the survey (approximately 2486 km (1,544 mi)) will occur in water deeper than 1000 m (3280 ft). There will be additional seismic operations associated with airgun testing, start up, and repeat coverage of any areas where initial data quality is sub-standard. In addition to the airgun array, a multibeam sonar and sub-bottom profiler will be used during the seismic profiling and continuously when underway. A pinger may be used during coring to help direct the core bit.

The coring operations will be conducted in conjunction with the seismic study from the *Healy*. Seismic operations will be suspended while the USCG *Healy* is on site for coring. Several more coring sites may be identified and sampled depending on the ability to deploy SISs given ice and weather conditions. The plan is to extract one core from six of the seven identified sample locations along the seismic survey, and two cores at the last site on the Chukchi Cap. The coring system to be used is a piston corer that is lowered to the sea floor via a deep sea winch. Coring is expected to occur in 400–4000–m (1,312–13,120–ft) water depths. The piston corer recovers a sample in PVC tubes of 10 cm (3.9–in) diameter. Most of the cores will be approximately (approximately) 5–10 m long (16.4–32.8 ft); maximum possible length will be approximately 24 m (79 ft). The core is designed to leave nothing in the ocean after recovery.

Vessel Specifications

The *Healy* has a length of 128 m (420 ft), a beam of 25 m (82 ft), and a full load draft of 8.9 m (29 ft). The *Healy* iscapable of traveling at 5.6 km/h (3 knots) through 1.4 m (4.6 ft) of ice. A ''Central Power Plant'', four Sultzer 12Z AU40S diesel generators, provides electric power for propulsion and ship's services through a 60 Hz, 3–phase common bus distribution system. Propulsion power is provided by two electric AC Synchronous, 11.2 MW drive motors, fed from the common bus through a Cycloconverter system, that turn two fixed-pitch, four-bladed propellers. The operation speed during seismic acquisition is expected to be approximately 6.5 km/h (3.5 knots). When not towing seismic survey gear or breaking ice, the Healy cruises at 22 km/h (12 knots) and has a maximum speed of 31.5 km/h (17 knots). It has a normal operating range of about 29,650 km (18,423 mi) at 23.2 km/hr (12.5 knots).

Seismic Source Description

A portable MCS system will be installed on the Healy for this cruise. The source vessel will tow along predetermined lines one of two different airgun arrays (an 8–airgun array with a total discharge volume of 2840 in^3 or a four GI gun array with a total discharge volume of 420 in3), as well as a hydrophone streamer. Seismic pulses will be emitted at intervals of approximately 60 s and recorded at a 2 ms sampling rate. The 60–second spacing corresponds to a shot interval of approximately 120 m (394 t) at the anticipated typical cruise speed.

As the airgun array is towed along the survey line, the towed hydrophone array receives the reflected signals and transfers the data to the on-board

processing system. The SISs will store returning signals on an internal datalogger and also relay them in real-time to the *Healy* via a radio transmitter, where they will be recorded and processed.

The 8–airgun array will be configured as a four-G. gun cluster with a total discharge volume of 840 in^3 and a four Bolt airgun cluster with a total discharge volume of 2000 in^3. The source output is from 246–253 dB re 1 µPa m. The two clusters are four meters apart. The clusters will be operated simultaneously for a total discharge volume of 2840 in^3. The 4–GI gun array will be configured the same as the four G. gun portion of the 8–airgun array. The energy source (source level 239–245 dB re 1 µPa m) will be towed as close to the stern as possible to minimize ice interference. The 8–airgun array will be towed below a depressor bird at a depth of 7–20 m (23–66 ft) depending on ice conditions; the preferred depth is 8–10 m (26–33 ft).

The highest sound level measurable at any location in the water from the airgun arrays would be slightly less than the nominal source level because the actual source is a distributed source rather than a point source. The depth at which the source is towed has a major impact on the maximum near-field output, and on the shape of its frequency spectrum. In this case, the source is expected to be towed at a relatively deep depth of up to 9 m (30 ft).

The rms (root mean square) received sound levels that are used as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airguns. The measurement units used to describe airgun sources, peak or peak-to-peak dB, are always higher than the rms dB referred to in much of the biological literature. A measured received level of 160 dB rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a peak-to-peak measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.*, 1998, 2000). The precise difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or peak-to-peak level for an airgun-type source. Additional discussion of the characteristics of airgun pulses is included in Appendix A of UTIG's application.

Safety Radii

NMFS has determined that for acoustic effects, using established acoustic thresholds in combination with corresponding safety radii is the most effective way to consistently both apply measures to avoid or minimize the impacts of an action and to quantitatively estimate the effects of an action. NMFS believes that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 µPa (rms) to avoid permanent physiological damage (Level A Harassment). NMFS also assumes that cetaceans or pinnipeds exposed to levels exceeding 160 dB re 1 µPa (rms) experience Level B Harassment. Thresholds are used in two ways: (1) To establish a mitigation shut-down or power down zone, i.e., if an animal enters an area calculated to be ensonified above the level of an established threshold, a sound source is powered down or shut down; and (2) to calculate take, in that a model may be used to calculate the area around the sound source that will be ensonified to that level or above, then, based on the estimated density of animals and the distance that the sound source moves, NMFS can estimate the number of marine mammals that may be ''taken''.

In order to implement shut-down zones, or to estimate how many animals may potentially be exposed to a particular sound level using the acoustic thresholds described above, it is necessary to understand how sound will propagate in a particular situation. Models may be used to estimate at what distance from the sound source the water will be ensonified to a particular level. Safety radii represent the estimated distance from the sound source at which the received level of sound would correspond to the acoustic thresholds of 190, 180, and 160 dB. Many models have been field tested in the water. Field verification has shown that some of the predictions are close to being accurate, an some are not.

UTIG proposed to base the safety radii for the *Healy* cruise on a model created by the Lamont-Doherty Earth Observatory and field tested in the Gulf of Mexico. UTIG has further proposed to enlarge some of the safety radii that relate to shut-down zones to provide further protection for marine mammals that may be in the area during seismic operations. The model utilized by UTIG to develop their safety radii is described below.

Safety Radii Proposed by UTIG

Received sound fields have been modeled by Lamont-Doherty Earth Observatory (L-DEO) for the 8–airgun and 4–GI gun arrays that will be used during this survey. Predicted sound fields were modeled using sound exposure level (SEL) units (dB re 1 μPa^2 s), because a model based on those units tends to produce more stable output when dealing with mixed-gun arrays like the one to be used during this survey. The predicted SEL values can be converted to rms received pressure levels, in dB re 1 µPa (as used in NMFS' impact criteria for pulsed sounds) by adding approximately 15 dB to the SEL value (Greene, 1997; McCauley *et al.*, 1998, 2000). The rms pressure is an average over the pulse duration. This is the measure commonly used in studies of marine mammal reactions to airgun sounds, and in NMFS guidelines concerning levels above which ''taking'' might occur. The rms level of a seismic pulse is typically about 10 dB less than its peak level.

The empirical data concerning 190, 180, and 160 dB (rms) distances in deep and shallow water acquired for various airgun array configurations during the acoustic verification study conducted by L-DEO in the northern Gulf of Mexico. Tolstoy *et al.*, (2004a,b) demonstrate that L-DEO's model tends to overestimate the distances applied in deep water. The proposed study area will occur mainly in water approximately 40–3858 m (131–12,657 ft) deep, with only approximately 8 percent of the survey lines in shallow (<100 m (<328 ft)) water and approximately 23 percent of the trackline in intermediate water depths (100–1000 m (328–3,280 ft)). The calibration-study results showed that radii around the airguns where the received level would be 180 dB re 1 µPa (rms), the safety criterion applicable to cetaceans (NMFS 2000), vary with water depth. Similar depth-related variation is likely in the 190–dB distances applicable to pinnipeds.

UTIG has applied the empirical data collected during the Gulf of Mexico verification study to the L-DEO model in the manner described below to develop the safety radii listed in Table 1:

- The empirical data indicate that, for deep water (>1000 m), the L-DEO model tends to overestimate the received sound levels at a given distance (Tolstoy *et al.*, 2004a,b). However, to be precautionary pending acquisition of additional empirical data, it is proposed that safety radii during airgun operations in deep water will be the

values predicted by L-DEO's modeling, after conversion from SEL to rms (Table 1).

• Empirical measurements were not conducted for intermediate depths (100–1000 m). On the expectation that results would be intermediate between those from shallow and deep water, a 1.5 correction factor is applied to the estimates provided by the model for deep water situations (as noted before, NSF is recalculating the numbers using a more conservative, or larger, correction factor).

• Empirical measurements were not made for the 4 GI guns that will be employed during the proposed survey in shallow water (<100 m). (The 8–airgun array will not be used in shallow water.) The empirical data on operations of two 105 in^3 GI guns in shallow water showed that modeled values underestimated the distance to the actual 160 dB sound level radii in shallow water by a factor of approximately 3 (Tolstoy *et al.*, 2004b). Sound level measurements for the 2 GI guns were not available for distances <0.5 km (.31 mi)(from the source. The radii estimated here for the 4 GI guns operating in shallow water are derived from the L-DEO model, with the same adjustments for depth-related differences between modeled and measured sound levels as were used for 2 GI guns in earlier applications. Correction factors for the different sound level radii are approximately 12x the model estimate for the 190 dB radius in shallow water, approximately 7x for the 180 dB radius and approximately 4x for the 170 dB radius [Tolstoy 2004a,b]).

As mentioned above, UTIG has further proposed expanded safety radii, as they apply to the shutdown zones for marine mammals, and these are indicated by parentheses in Table 1.

Seismic Source Volume	Water depth	Estimated Distances for Received Levels (m)		
		190 dB (shut-down criterion for pinnipeds)	**180 dB** (shut-down criterion for cetaceans)	**160 dB** (assumed onset of behavioral harassment)
105 in^3	>1000 m	10	27	275
GI gun	100–1000 m	15 (500*)	41 (max. vis., 2-3 km*)	413
	<100 m	125 (1000*)	200 (max. vis., 2-3 km*)	750
210 in^3	>1000 m	20	78	698
G. gun	100–1000 m	30 (500*)	117 (max. vis., 2-3 km*)	1047
	<100 m	250 (1000*)	578 (max. vis., 2-3 km*)	1904
420 in^3	>1000 m	75	246	2441
(4-GI gun array)	100–1000 m	113 (500*)	369 (max. vis., 2-3 km*)	3662
	<100 m	938 (1000*)	1822 (max. vis., 2-3 km*)	6657
2840 in^3	>1000 m	230	716	7097
(8-airgun array)	100–1000 m	345 (500*)	1074 (max. vis., 2-3 km*)	10646
	<100 m	NA	NA	NA

Table 1. Estimated distances to which sound levels > 190, 180, and 160 dB re 1 miPa (rms) might be received from the various gun-types used during the 2006 Healy Arctic cruise.
* Expanded shut-down radii proposed subsequent to IHA application submittal, for cetaceans, the Healy will cease operating seismic whenever a cetacean is sighted, regardless of distance.

Other Acoustic Devices

Along with the airgun operations, additional acoustical systems will be operated during much of or the entire cruise. The ocean floor will be mapped with a multibeam sonar, and a sub-bottom profiler will be used. These two systems are commonly operated simultaneously with an airgun system. An acoustic Doppler current profiler will also be used through the course of the project, as well as a pinger.

Multibeam Echosounder (SeaBeam 2112)

A SeaBeam 2112 multibeam 12 kHz bathymetric sonar system will be used on the *Healy*, with a maximum source output of 237 dB re 1 μPa at one meter. The transmit frequency is a very narrow band, less than 200 Hz, and centered at 12 kHz. Pulse lengths range from less than one millisecond to 12 ms. The transmit interval ranges from 1.5 s to 20 s, depending on the water depth, and is longer in deeper water. The SeaBeam system consists of a set of underhull projectors and hydrophones. The transmitted beam is narrow (approximately 2°) in the fore-aft direction but broad (approximately 132°) in the cross-track direction. The system combines this transmitted beam with the input from an array of receiving hydrophones oriented perpendicular to the array of source transducers, and calculates bathymetric data (sea floor depth and some indications about the character of the seafloor) with an effective 2° by 2° foot print on the seafloor. The SeaBeam 2112

system on the *Healy* produces a useable swath width of slightly more than 2 times the water depth. This is narrower than normal because of the ice-protection features incorporated into the system on the *Healy*.

Hydrographic Sub-bottom Profiler (Knudsen 320BR)

The Knudsen 320BR will provide information on sedimentary layering, down to between 20 and 70 m, depending on bottom type and slope. It will be operated with the multibeam bathymetric sonar system that will simultaneously map the bottom topography.

The Knudsen 320BR sub-bottom profiler is a dual-frequency system with operating frequencies of 3.5 and 12 kHz:

Low frequency - Maximum output power into the transducer array, as wired on the Healy (125 ohms), at 3.5 kHz is approximately 6000 watts (electrical), which results in a maximum source level of 221 dB re 1 µPa at 1 m downward. Pulse lengths range from 1.5 to 24 ms with a bandwidth of 3 kHz (FM sweep from 3 kHz to 6 kHz). The repetition rate is range dependent, but the maximum is a 1–percent duty cycle. Typical repetition rate is between 1/2 second (in shallow water) to 8 seconds in deep water.

High frequency - The Knudsen 320BR is capable of operating at 12 kHz; but the higher frequency is rarely used because it interferes with the SeaBeam 2112 multibeam sonar, which also operates at 12 kHz. The calculated maximum source level (downward) is 215 dB re 1 µPa at 1 m (3.28 ft). The pulse duration is typically 1.5 to 5 ms with the same limitations and typical characteristics as the low frequency channel.

A single 12 kHz transducer and one 3.5 kHz, low frequency (sub-bottom) transducer array, consisting of 16 elements in a 4 by 4 array will be used for the Knudsen 320BR. The 12 kHz transducer (TC–12/34) emits a conical beam with a width of 30° and the 3.5 kHz transducer (TR109) emits a conical beam with a width of 26°.

12–kHz Pinger (Benthos 2216)

A Benthos 12–kHz pinger may be used during coring operations, to monitor the depth of the corer relative to the sea floor. The pinger is a battery-powered acoustic beacon that is attached to the coring mechanism. The pinger produces an omnidirectional 12 kHz signal with a source output of approximately 192 dB re 1 µPa m at a one pulse per second rate. The pinger produces a single pulse of 0.5, 2 or 10 ms duration (hardware selectable within the unit) every second.

Acoustic Doppler Current Profiler (150 kHz)

The 150 kHz acoustic Doppler current profiler (ADCP) has a minimum ping rate of 0.65 ms. There are four beam sectors, and each beamwidth is 3°. The pointing angle for each beam is 30° off from vertical with one each to port, starboard, forward and aft. The four beams do not overlap. The 150 kHz ADCP's maximum depth range is 300 m.

Acoustic Doppler Current Profiler (RD Instruments Ocean Surveyor 75)

The Ocean Surveyor 75 is an ADCP operating at a frequency of 75 kHz, producing a ping every 1.4 s. The system is a four-beam phased array with a beam angle of 30°. Each beam has a width of 4°, and there is no overlap. Maximum output power is 1 kW with a maximum depth range of 700 m (2,297 ft).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort and Chukchi sea ecosystems and their associated marine mammals can be found in several documents (Corps of Engineers, 1999; NMFS, 1999; Minerals Management Service (MMS), 2006, 1996 and 1992). MMS' Programmatic Environmental Assessment (PEA) - Arctic Ocean Outer Continental Shelf Seismic Surveys - 2006 may be viewed at: *http://www.mms.gov/alaska/*.

Marine Mammals

A total of 8 cetacean species, 4 species of pinnipeds, and 1 marine carnivore are known to or may occur in or near the proposed study area (Table 2). Two of these species, the bowhead and fin whale, are listed as ''Endangered'' under the ESA, but the fin whale is unlikely to be encountered along the planned trackline.

The marine mammals that occur in the proposed survey area belong to three taxonomic groups: odontocetes (toothed cetaceans, such as beluga whale and narwhal whale), mysticetes (baleen whales), and carnivora (pinnipeds and polar bears). Cetaceans and pinnipeds (except walrus) are the subject of the IHA Application to NMFS; in the U.S., the walrus and polar bear are managed by the USFWS.

The marine mammal species most likely to be encountered during the seismic survey include one or perhaps two cetacean species (beluga and perhaps bowhead whale), three pinniped species (ringed seal, bearded seal, and walrus), and the polar bear. However, most of these will occur in low numbers and encounters with most species are likely to be most common within 100 km (62 mi) of shore where no seismic work is planned to take place. The marine mammal most likely to be encountered throughout the cruise is the ringed seal. Concentrations of walruses might also be encountered in certain areas, depending on the location of the edge of the pack ice relative to their favored shallow-water foraging habitat. The most widely distributed marine mammals are expected to be the beluga, ringed seal, and polar bear.

Three additional cetacean species, the gray whale, minke whale and fin whale, could occur in the project area. It is unlikely that gray whales will be encountered near the proposed trackline; if encountered at all, gray whales would be found closer to the Alaska coastline where no seismic work is planned. Minke and fin whales are extralimital in the Chukchi Sea and will not likely be encountered as the proposed trackline borders their known range. Two additional pinniped species, the harbor and spotted seal, are also unlikely to be seen.

Table 2 also shows the estimated abundance and densities of the marine mammals likely to be encountered during the *Healy*'s Arctic cruise. Additional information regarding the distribution of these species and how the estimated densities were calculated may be found in Conoco's application and NMFS' Updated Species Reports at: (*http://www.nmfs.noaa.gov/pr/readingrm/MMSARS/2005alaskasummarySARs.pdf)*.

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Species	Habitat	Abundance	ESTIMATED DENSITIES Offshore Barrow Average	Offshore Barrow Maximum	Polar Pack Ice Average	Polar Pack Ice Maximum	Requested Take Authorization Max (Best)
Odontocetes							
Beluga whale (*Delphinapterus leucas*)	Offshore, Coastal, Ice edges	50,000 (W. Alaska) 39257 (Beaufort)	0.0034	0.0135	0.0003	0.0014	134 (33)
Narwhal (*Monodon monoceros*)	Offshore, Ice edge	Rare	0	0.0001	0	0.0001	5
Killer whale (*Orcinus orca*)	Widely distributed	Rare	0	0	Not	Present	10
Harbor Porpoise (*Phocoena phocoena*)	Coastal, inland waters	Extralimital	0	0.0002	Not	Present	5
Mysticetes							
Bowhead whale* (*Balaena mysticetus*)	Pack ice & coastal	10545 (near Barrow)	0.0032	0.0064	0.0003	0.0006	63 (31)
Gray whale (*Eschrichtius robustus*) (eastern Pacific population)	Coastal, lagoons	488 (S.Chukchi/N.Bering) 17500 (N. Pacific)	0.0022	0.0045	0	0	29 (14)
Minke whale (*Balaenoptera acutorostrata*)	Shelf, coastal	0	0	0	0	0	5
Fin whale* (*Balaenoptera physalus*)	Slope, mostly pelagic	0	0	0	0	0	5
Pinnipeds							
Walrus (*Odobenus rosmarus*)	Coastal, pack ice, ice	188316 (Pacific)	0.0731	0.6169	0	0.0001	N/A
Bearded seal (*Erignathus barbatus*)	Pack ice	300,000-450,000 (Alaska) 4863 (E. Chukchi)	0.0128	0.0256	0.0013	0.0023	487 (127)
Spotted seal (*Phoca largha*)	Pack ice	1000	0.0001	0.0005	0	0	5
Ringed seal (*Pusa hispida*)	Landfast & pack ice	Up to 3.6 million (Alaska) 245048 (Bering/Chukchi) 326500 (Alaskan Beaufort)	0.251	1.004	0.0251	0.1004	7934 (1984)
Carnivora							
Polar bear (*Ursus maritimus*)	Coastal, ice	>2500 (Amstrup et al.) 15000 (NWT W&F)	0.0016	0.004	0.0002	0.0004	N/A

Table 2. Estimated abundance and density of marine mammals likely to be encountered during the Healy's Arctic seismic survey Requested take authorization for each species, based on estimated exposures > 160 dB and maximum density, is also included.
* Listed as endangered under the U.S. Endangered Species Act

Potential Effects on Marine Mammals

Potential Effects of Airguns

The effects of sounds from airguns might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and at least in theory, temporary or permanent hearing impairment, or non-auditory physical effects (Richardson *et al.*, 1995). Because the airgun sources planned for use during the present project involve only 4 or 8 airguns, the effects are anticipated to be less than would be the case with a large array of airguns. It is very unlikely that there would be any cases of temporary or especially permanent hearing impairment, or non-auditory physical effects. Also, behavioral disturbance is expected to be limited to relatively short distances.

Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response (see Appendix A (e) of application). That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times mammals of all three types have shown no overt reactions. In general, pinnipeds, small odontocetes, and sea otters seem to be more tolerant of exposure to airgun pulses than are baleen whales.

Masking

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data of relevance. Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a more recent study reports that sperm whales off northern Norway continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). That has also been shown during recent work in the Gulf of Mexico (Tyack *et al.*, 2003). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds. For more information on masking effects, see Appendix A (d) of the application.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or the species as a whole. Alternatively, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals are most likely significant. There are some uncertainties in predicting the quantity and types of impacts of noise on marine mammals. When attempting to quantify potential take for an authorization, NMFS estimates how many mammals were likely within a certain distance of sound level that equates to the received sound level.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based on behavioral observations during studies of several species. However, information is lacking for many species. Detailed studies have been done on humpback, gray, and bowhead whales, and on ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, small toothed whales, and sea otters.

Baleen Whales: Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix A (e) of the application, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the case of the migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have determined that received levels of pulses in the 160–170 dB re 1 μPa rms range seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed. In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4.5 to 14.5 km (2.8–9 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong disturbance reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and recent studies reviewed in Appendix A (e) of the application have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160–170 dB re 1 μPa rms. Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20–30 km (12.4–18.6 mi) from a medium-sized airgun source (Miller *et al.*, 1999; Richardson *et al.*, 1999). More recent research on bowhead whales (Miller *et al.*, 2005), however, suggests that during the summer feeding season (during which the proposed project will take place) bowheads are not nearly as sensitive to seismic sources and can be expected to react to the more typical 160–170 dB re 1 Pa rms range.

Malme *et al.* (1986, 1988) studied the responses of feeding eastern gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast.

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive

noises do not necessarily provide information about long-term effects. It is not known whether impulsive noises affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales continued to migrate annually along the west coast of North America despite intermittent seismic exploration and much ship traffic in that area for decades (Appendix A in Malme *et al.*,1984). Bowhead whales continued to travel to the eastern Beaufort Sea each summer despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*,1987). Populations of both gray whales and bowhead whales grew substantially during this time. In any event, the brief exposures to sound pulses from the proposed airgun source are highly unlikely to result in prolonged effects.

Toothed Whales: Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above and in Appendix A of the application have been reported for toothed whales. However, systematic work on sperm whales is underway (Tyack *et al.*, 2003), and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (e.g., Stone, 2003; Smultea *et al.*, 2004).

Seismic operators sometimes see dolphins and other small toothed whales near operating airgun arrays, but in general there seems to be a tendency for most delphinids to show some limited avoidance of seismic vessels operating large airgun systems. However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing. Nonetheless, there have been indications that small toothed whales sometimes move away, or maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (e.g., Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003). Aerial surveys during seismic operations in the southeastern Beaufort Sea recorded much lower sighting rates of beluga whales within 10–20 km (6.2–12.4 mi) of an active seismic vessel. These results were consistent with the low number of beluga sightings reported by observers aboard the seismic vessel, suggesting that some belugas might be avoiding the seismic operations at distances of 10–20 km (6.2–12.4 mi) (Miller *et al.*, 2005).

Similarly, captive bottlenose dolphins and (of some relevance in this project) beluga whales exhibit changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002). However, the animals tolerated high received levels of sound (pk-pk level >200 dB re 1 µPa) before exhibiting aversive behaviors. With the presently-planned source, such levels would be found within approximately 400 m (1,312 ft) of the 4 GI guns operating in shallow water.

Odontocete reactions to large arrays of airguns are variable and, at least for small odontocetes, seem to be confined to a smaller radius than has been observed for mysticetes. UTIG proposed using a 170–dB acoustic threshold for behavioral disturbance of delphinids and pinnipeds in lieu of the 160–dB NMFS currently uses as the standard threshold. However, NMFS does not believe there is enough data to support changing the threshold at this time and will utilize the 160 dB safety radii. NMFS is currently developing new taxa-specific acoustic criteria and they are scheduled to be made available to the public within the next two years.

Pinnipeds: Pinnipeds are not likely to show a strong avoidance reaction to the medium-sized airgun sources that will be used. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior-see Appendix A (e) of the application. Those studies show that pinnipeds frequently do not avoid the area within a few hundred meters of operating airgun arrays (e.g., Miller *et al.*, 2005; Harris *et al.*, 2001). However, initial telemetry work suggests that avoidance and other behavioral reactions to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses. Current NMFS practice regarding exposure of marine mammals to high-level sounds is to establish mitgation that will avoid cetaceans and pinnipeds exposure to impulsive sounds 180 and 190 dB re 1 µPa (rms), respectively (NMFS, 2000). Those criteria have been used in defining the safety (shut down) radii planned for the proposed seismic survey. As summarized here,

- The 180 dB criterion for cetaceans may be lower than necessary to avoid temporary threshold shift (TTS), let alone permanent auditory injury, at least for belugas and delphinids.
- The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.
- The level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage.

NMFS is presently developing new noise exposure criteria for marine mammals that account for the now-available scientific data on TTS and other relevant factors in marine and terrestrial mammals.

Several aspects of the proposed monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airguns (and multi-beam bathymetric sonar), and to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment (see Mitigation). In addition, many cetaceans are likely to show some avoidance of the area with high received levels of airgun sound (see above). In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects might also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed below, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns and beaked whales do not occur in the present study area. It is unlikely that any effects of these types would occur during the present project given the brief duration of exposure of any given

mammal, and the planned monitoring and mitigation measures (see below). The following subsections discuss in somewhat more detail the possibilities of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

TTS: TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran et al., 2005, 2002). Given the available data, the received level of a single seismic pulse might need to be approximately 210 dB re 1 Pa rms (approximately 221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200–205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. Seismic pulses with received levels of 200–205 dB or more are usually restricted to a radius of no more than 200 m around a seismic vessel operating a large array of airguns.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. However, no cases of TTS are expected given the moderate size of the source, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; cf. Au *et al.*, 2000).

A marine mammal within a radius of 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of 205 dB, and possibly more pulses if the mammal moved with the seismic vessel. The sound level radius would be similar (100 m) around the proposed 8–airgun array while surveying in intermediate depths (100–1000 m). This would occur for <23 percent (approximately 838 km (520 mi)) of the survey when the survey will be conducted in intermediate depths. Also, the PIs propose using the 4 GI guns for some of the intermediate-depth survey, which would greatly reduce the 205 dB sound radius. (As noted above, most cetacean species tend to avoid operating airguns, although not all individuals do so.) However, several of the considerations that are relevant in assessing the impact of typical seismic surveys with arrays of airguns are not directly applicable here:

- ''Ramping up'' (soft start) is standard operational protocol during startup of large airgun arrays. Ramping up involves starting the airguns in sequence, usually commencing with a single airgun and gradually adding additional airguns. This practice will be employed when either airgun array is operated.
- It is unlikely that cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. In this project, most of the seismic survey will be in deep water where the radius of influence and duration of exposure to strong pulses is smaller.
- With a large array of airguns, TTS would be most likely in any odontocetes that bow-ride or otherwise linger near the airguns. In the present project, the anticipated 180–dB distances in deep and intermediate-depth water are 716 m (2,349 ft) and 1074 m (3,524 ft), respectively, for the 8–airgun gun system (Table 1) and 246 m (840 ft) and 369 m (1,207 ft), respectively for the 4–GI gun system. The waterline at the bow of the *Healy* will be approximately 123 m (404 ft) ahead of the airgun. However, no species that occur within the project area are expected to bow-ride.

The predicted 180 and 190 dB distances for the airguns operated by UTIG vary with water depth. They are estimated to be 716 m (2,349 ft) and 230 m (754 ft), respectively, in deep water for the 8–airgun system, and 246 m (807 ft) and 75 m (246 ft), respectively, in deep water for the 4–GI gun system. In intermediate depths, these distances are predicted to increase to 1074 m (3,523 ft) and 345 m (1,131 ft), respectively for the 8–airgun system, and 369 m (1,210 ft) and 113 m (371 ft), respectively for the 4–GI gun system. The predicted 180 and 190 dB distances for the 4–GI gun system in shallow water are 1822 m (5,978 ft) and 938 m (3,077 ft), respectively (Table 1). The 8–airgun array will not be operated in shallow water. Shallow water (<100 m (328 ft)) will occur along only 300 km (186 mi) (approximately 8 percent) of the planned trackline. Furthermore, those sound levels are not considered to be the levels above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to airgun pulses much stronger than 180 dB re 1 Pa rms and since no bow-riding species occur in the study area, it is unlikely such exposures will occur.

PTS: When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges.

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to the strong sound pulses with very rapid rise time-see Appendix A (f) of the application.

It is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient duration) to cause permanent hearing impairment during a project employing the medium-sized airgun sources planned here. In the proposed project, marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS, as they would probably need to be within 100–200 m (328–656

ft) of the airguns for that to occur. Given the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. In fact, even the levels immediately adjacent to the airgun may not be sufficient to induce PTS, especially because a mammal would not be exposed to more than one strong pulse unless it swam immediately alongside the airgun for a period longer than the inter-pulse interval. Baleen whales generally avoid the immediate area around operating seismic vessels. The planned monitoring and mitigation measures, including visual monitoring, power downs, and shut downs of the airguns when mammals are seen within the ''safety radii'', will minimize the already-minimal probability of exposure of marine mammals to sounds strong enough to induce PTS.

Non-auditory Physiological Effects: Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, and other types of organ or tissue damage. However, studies examining such effects are very limited. If any such effects do occur, they probably would be limited to unusual situations when animals might be exposed at close range for unusually long periods. It is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. That is especially so in the case of the proposed project where the airgun configuration is moderately sized, the ship is moving at 3–4 knots (5.5–7.4 km/hr), and for the most part, the tracklines will not ''double back'' through the same area.

Until recently, it was assumed that diving marine mammals are not subject to the bends or air embolism. This possibility was first explored at a workshop (Gentry [ed.], 2002) held to discuss whether the stranding of beaked whales in the Bahamas in 2000 (Balcomb and Claridge, 2001; NOAA and USN, 2001) might have been related to bubble formation in tissues caused by exposure to noise from naval sonar. However, the opinions were inconclusive. Jepson *et al.* (2003) first suggested a possible link between mid-frequency sonar activity and acute and chronic tissue damage that results from the formation in vivo of gas bubbles, based on the beaked whale stranding in the Canary Islands in 2002 during naval exercises. Fernandez *et al.* (2005a) showed those beaked whales did indeed have gas bubble-associated lesions as well as fat embolisms. Fernandez *et al.* (2005b) also found evidence of fat embolism in three beaked whales that stranded 100 km north of the Canaries in 2004 during naval exercises. Examinations of several other stranded species have also revealed evidence of gas and fat embolisms (e.g., Arbelo *et al.*, 2005; Jepson *et al.*, 2005a; Mendez *et al.*, 2005). Most of the afflicted species were deep divers. There is speculation that gas and fat embolisms may occur if cetaceans ascend unusually quickly when exposed to aversive sounds, or if sound in the environment causes the destabilization of existing bubble nuclei (Potter, 2004; Arbelo *et al.*, 2005; Fernandez *et al.*, 2005a; Jepson *et al.*, 2005b). Even if gas and fat embolisms can occur during exposure to mid-frequency sonar, there is no evidence that that type of effect occurs in response to airgun sounds. Also, most evidence for such effects have been in beaked whales, which do not occur in the proposed study area.

In general, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances and probably to projects involving large arrays of airguns. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur auditory impairment or other physical effects. Also, the planned monitoring and mitigation measures include shut downs of the airguns, which will reduce any such effects that might otherwise occur.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no proof that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with naval exercises and, in one case, an L-DEO seismic survey, has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding. Appendix A (g) of the application provides additional details.

Seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by airgun arrays are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2–10 kHz, generally with a relatively narrow bandwidth at any one time. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to physical damage and mortality (NOAA and USN, 2001; Jepson *et al.*, 2003; Fernandez *et al.*, 2005a), even if only indirectly, suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In May 1996, 12 Cuvier's beaked whales stranded along the coasts of Kyparissiakos Gulf in the Mediterranean Sea. That stranding was subsequently linked to the use of low- and medium-frequency active sonar by a North Atlantic Treaty Organization (NATO) research vessel in the region (Frantzis, 1998). In March 2000, a population of Cuvier's beaked whales being studied in the Bahamas disappeared after a U.S. Navy task force using mid-frequency tactical sonars passed through the area; some beaked whales stranded (Balcomb and Claridge, 2001; NOAA and USN, 2001).

In September 2002, a total of 14 beaked whales of various species stranded coincident with naval exercises in the Canary Islands (Martel, n.d.; Jepson et al., 2003; Fernandez et al., 2003). Also in September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L-DEO vessel Maurice Ewing was operating a 20 airgun, 8490 in3 array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, that plus the incidents involving beaked whale strandings near naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales. However, no beaked whales are found within this project area and the planned monitoring and mitigation measures are expected to minimize any possibility for mortality of other species.

Potential Effects of Other Acoustic Devices

Bathymetric Sonar Signals

A SeaBeam 2112 multibeam 12 kHz bathymetric sonar system will be

operated from the source vessel essentially continuously during the planned study. Sounds from the multibeam are very short pulses, depending on water depth. Most of the energy in the sound pulses emitted by the multibeam is at moderately high frequencies, centered at 12 kHz. The beam is narrow (approximately 2°) in fore-aft extent and wide (approximately 130°) in the cross-track extent. Any given mammal at depth near the trackline would be in the main beam for only a fraction of a second. Therefore, marine mammals that encounter the SeaBeam 2112 at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses. Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a multibeam sonar emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to be subjected to sound levels that could cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally are more powerful than the SeaBeam 2112 sonar, (2) have a longer pulse duration, (3) are directed close to horizontally vs. downward for the SeaBeam 2112, and (4) have a wider beam width. The area of possible influence of the bathymetric sonar is much smaller, a narrow band oriented in the cross-track direction below the source vessel. Marine mammals that encounter the bathymetric sonar at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only small amounts of pulse energy because of the short pulses. In assessing the possible impacts of a similar multibeam system (the 15.5 kHz Atlas Hydrosweep multibeam bathymetric sonar), Boebel *et al.* (2004) noted that the critical sound pressure level at which TTS may occur is 203.2 dB re 1 µPa (rms). The critical region included an area of 43 m (141 ft) in depth, 46 m (151 ft) wide athwartship, and 1 m (3.3 ft) fore-and-aft (Boebel *et al.*, 2004). In the more distant parts of that (small) critical region, only slight TTS could potentially be incurred. This area is included within the 160 dB isopleth for airguns, in which Level B Harassment is already assumed to occur when th airguns are operating.

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. During exposure to a 21–25 kHz whale-finding sonar with a source level of 215 dB re 1 µPa m, gray whales showed slight avoidance (approximately 200 m (656 ft)) behavior (Frankel, 2005).

However, all of those observations are of limited relevance to the present situation. Pulse durations from the Navy sonars were much longer than those of the bathymetric sonars to be used during the proposed study, and a given mammal would have received many pulses from the naval sonars. During UTIG's operations, the individual pulses will be very short, and a given mammal would rarely receive more than one of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1 second of pulsed sounds at frequencies similar to those that will be emitted by the bathymetric sonar to be used by UTIG, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in either duration or bandwidth as compared with those from a bathymetric sonar.

We are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the multibeam sonar (12 kHz). Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions to the sonar sounds are expected to be limited to startle or otherwise brief responses of no lasting consequence to the animals.

Sub-bottom Profiler Signals

A Knudsen 320BR sub-bottom profiler will be operated from the source vessel at nearly all times during the planned study. The Knudsen 320BR produces sound pulses with lengths of up to 24 ms every 0.5 to approximately 8 s, depending on water depth. The energy in the sound pulses emitted by this sub-bottom profiler is at mid- to moderately high frequency, depending on whether the 3.5 or 12 kHz transducer is operating. The conical beamwidth is either 26°, for the 3.5 kHz transducer, or 30°, for the 12 kHz transducer, and is directed downward.

Source levels for the Knudsen 320 operating at 3.5 and 12 kHz have been measured as a maximum of 221 and 215 dB re 1 µPa m, respectively. Received levels would diminish rapidly with increasing depth. Assuming circular spreading, received level directly below the transducer(s) would diminish to 180 dB re 1 µPa at distances of about 112 m (367 ft) when operating at 3.5 kHz, and 56 m when operating at 12 kHz. The 180 dB distances in the horizontal direction (outside the downward-directed beam) would be substantially less. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small, and if the animal was in the area, it would have to pass the transducer at close range and in order to be subjected to sound levels that could potentially cause TTS.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the sub-bottom profiler (see Appendix A in the application). In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Pinger Signals

A pinger will be operated during all coring, to monitor the depth of the core relative to the sea floor. Sounds from the pinger are very short pulses, occurring for 0.5, 2 or 10 ms once every second, with source level approximately 192 dB re 1 µPa m at a one pulse per second rate. Most of the energy in the sound pulses emitted by this pinger is at mid frequencies, centered at 12 kHz. The signal is omnidirectional. The pinger produces sounds that are within the range of frequencies used by small odontocetes and pinnipeds that occur or may occur in the area of the planned survey.

Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the pinger are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed

signals from the pinger are much weaker than those from the bathymetric sonars and from the airgun. Therefore, neither behavioral responses nor TTS would potentially occur unless marine mammals were to get very close to the source, which is unlikely due to the fact that animals will probably move away from the ship in response to the louder sounds from the other sources operating and the vessel itself, and the fact that the proposed mitigation and monitoring measures will be implemented during the operation of the airguns.

Effects of Helicopter Activities

Collection of seismic refraction data requires the deployment of hydrophones at great distances from the source vessel. In order to accomplish this in the ice-covered waters of the Arctic Ocean, the science party plans to deploy SISs along seismic lines in front of the *Healy* and then retrieve them off the ice once the vessel has passed. Vessel-based helicopters will be used to shuttle SISs along seismic track lines. Deployment and recovery of SISs every 10–15 km (6.2–9.3 mi) along the track line and as far as 120 km (75 mi) ahead or behind the vessel will require as many as 24 on-ice landings per 24–hr period during seismic shooting.

Levels and duration of sounds received underwater from a passing helicopter are a function of the type of helicopter used, orientation of the helicopter, the depth of the marine mammal, and water depth. A civilian helicopter service will be providing air support for this project and we do not yet know what type of helicopter will be used. Helicopter sounds are detectable underwater at greater distances when the receiver is at shallow depths. Generally, sound levels received underwater decrease as the altitude of the helicopter increases (Richardson *et al.*, 1995). Helicopter sounds are audible for much greater distances in air than in water.

Cetaceans

The nature of sounds produced by helicopter activities above the surface of the water does not pose a direct threat to the hearing of marine mammals that are in the water; however minor and short-term behavioral responses of cetaceans to helicopters have been documented in several locations, including the Beaufort Sea (Richardson *et al.*, 1985a,b; Patenaude *et al.*, 2002). Cetacean reactions to helicopters depend on several variables including the animal's behavioral state, activity, group size, habitat, and the flight patterns used, among other variables (Richardson *et al.*, 1995). During spring migration in the Beaufort Sea, beluga whales reacted to helicopter noise more frequently and at greater distances than did bowhead whales (38 percent vs.14 percent of observations, respectively). Most reaction occurred when the helicopter passed within 250 m (820 ft) lateral distance at altitudes <150 m (492 ft). Neither species exhibited noticeable reactions to single passes at altitudes >150 m (492 ft). Belugas within 250 m (820 ft) of stationary helicopters on the ice with the engine running showed the most overt reactions (Patenaude *et al.*, 2002). Whales were observed to make only minor changes in direction in response to sounds produced by helicopters, so all reactions to helicopters were considered brief and minor. Cetacean reactions to helicopter disturbance are difficult to predict and may range from no reaction at all to minor changes in course or (infrequently) leaving the immediate area of the activity.

Pinnipeds

Few systematic studies of pinniped reactions to aircraft overflights have been completed. Documented reactions range from simply becoming alert and raising the head to escape behavior such as hauled out animals rushing to the water. Ringed seals hauled out on the surface of the ice have shown behavioral responses to aircraft overflights with escape responses most probable at lateral distances <200 m (656 ft) and overhead distances <150 m (492 ft) (Born *et al.*, 1999). Although specific details of altitude and horizontal distances are lacking from many largely anecdotal reports, escape reactions to a low flying helicopter (<150 m (492 ft) altitude) can be expected from all four species of pinnipeds potentially encountered during the proposed operations. These responses would likely be relatively minor and brief in nature. Whether any response would occur when a helicopter is at the higher suggested operational altitudes (below) is difficult to predict and probably a function of several other variables including wind chill, relative wind chill, and time of day (Born *et al.*, 1999).

In order to limit behavioral reactions of marine mammals during deployment of SISs, helicopters will maintain a minimum altitude of 1000 ft (304 m) above the sea ice except when taking off or landing. Sea-ice landings within 1000 ft (304 m) of any observed marine mammal will not occur, and the helicopter flight path will remain along the seismic track line. Three or four SIS units will be deployed/retrieved before the helicopter returns to the vessel. This should minimize the number of disturbances caused by repeated overflights.

Estimated Take by Incidental Harassment for Chukchi Sea Seismic Survey

All anticipated takes would be ''takes by harassment'', as described previously, involving temporary changes in behavior. In the sections below, we describe methods to estimate ''take by harassment'' and present estimates of the numbers of marine mammals that might be affected during the proposed seismic study in the Arctic Ocean. The estimates are based on data obtained during marine mammal surveys in and near the Arctic Ocean by Stirling *et al.* (1982), Kingsley (1986), Koski and Davis (1994), Moore *et al.* (2000a), and Moulton and Williams (2003), and on estimates of the sizes of the areas where effects could potentially occur. In some cases, these estimates were made from data collected from regions and habitats that differed from the proposed project area. Adjustments to reported population or density estimates were made on a case by case basis to take into account differences between the source data and the general information on the distribution and abundance of the species in the project area. This section provides estimates of the number of potential ''exposures'' to sound levels equal or greater than 160 dB.

Although several systematic surveys of marine mammals have been conducted in the southern Beaufort Sea, few data (systematic or otherwise) are available on the distribution and numbers of marine mammals in the northern Chukchi and Beaufort Seas or offshore water of the Arctic Ocean. The main sources of distributional and numerical data used in deriving the estimates are described in detail in UTIG's application. There is some uncertainty about the representativeness of those data and the assumptions used below to estimate the potential ''take by harassment''. However, the approach used here seems to be the best available at this time.

The following estimates are based on a consideration of the number of marine mammals that might be disturbed appreciably by approximately 3624 line kilometers (2,251 mi) of seismic surveys across the Arctic Ocean. An assumed total of 4530 km (2,815 mi) of trackline includes a 25–percent allowance over and above the planned approximately 3624 km (2,251 mi) to allow for turns, lines that might have to be repeated because of poor data quality, or for minor changes to the survey design.

As noted above, there is some uncertainty about the representativeness of the data and assumptions used in the calculations. To provide some allowance for the uncertainties, ''maximum estimates'' as well as ''best estimates'' of the numbers potentially affected have been derived (Table 1). For a few marine mammal species, several density estimates were available, and in those cases, the mean and maximum estimates were calculated from the survey data. When the seismic survey area is on the edge of the range of a species, we used the available mammal survey data as the maximum estimate and assumed that the average density along the seismic trackline will be approximately 0.10 times the density from the available survey data. The assumed densities are believed to be similar to, or in most cases higher than, the densities that will actually be encountered during the survey.

The anticipated radii of influence of the bathymetric sonar, sub-bottom profiler, and pinger are less than those for the airgun configurations. NMFS assumes that, during simultaneous operations of all the airgun array, sonar, and profiler, any marine mammals close enough to be affected by the sonars would already be affected by the airguns. The pinger will operate only during coring while the airguns are not in operation. However, whether or not the airguns are operating simultaneously with the sonar, profiler or pinger, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the sonar, profiler or pinger given their characteristics (e.g., narrow downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute ''taking'' and, therefore, no additional allowance is included for animals that might be affected by the sound sources other than the airguns.

The potential number of occasions when members of each species might be exposed to received levels 160 dB re 1 μPa (rms) was calculated for each of three water depth categories (<100 m (328 ft), 100–1000 m (328–3,280 ft), and >1000 m (>3,280 ft)) within the two survey areas (south of 75° N. ''near Barrow'' and north of 75° N. ''polar pack'') by multiplying

- the expected species density, either ''average'' (i.e., best estimate) or ''maximum'', corrected as described above,
- the anticipated line-kilometers of operations with both the 4–GI and 8–airgun array in each water-depth category after applying a 25 percent allowance for possible additional line kilometers as noted earlier,
- the cross-track distances within which received sound levels are predicted to be 160 dB for each water-depth category (2 X the 160 dB safety radii).

Unlike other species whose ''best'' and ''maximum'' density estimates were multiplied by the entire trackline within each of the two portions of the project area (''near Barrow'' and ''polar pack'') to estimate exposures, gray whale and walrus densities were only multiplied by the proposed seismic trackline in water depths <200 m (<656 ft) along the final SW leg of the survey, south of 75° N. Gray whales tend to remain in the shallow, nearshore waters of the Chukchi Sea and rarely occur in the Beaufort Sea. Basing exposures on the entire SW seismic trackline south of 75° N should somewhat overestimate the number of gray whales that may be encountered while conducting seismic operations.

Based on this method, the ''best'' and ''maximum'' estimates of the numbers of marine mammal exposures to airgun sounds with received levels 160 dB re 1 μPa (rms) were obtained using the average and ''maximum'' densities from Tables 1, and are presented in Table 1. Using these calculations, for some species zero individuals were expected to be exposed to 160 dB. Since they are occasionally seen, however, UTIG increased the requested take to 5 to allow for the unlikely chance that they are encountered and exposed to 160 dB (Table 1). Additional information regarding how these estimated take numbers were calculated is available in the application.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to the food sources they utilize. Although feeding bowhead whales may occur in the area, the proposed activities will be of short duration in any particular area at any given time; thus any effects would be localized and short-term. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that, unlike explosives, they do not result in any appreciable fish kill. However, the existing body of information relating to the impacts of seismic on marine fish and invertebrate species is very limited.

In water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) the received peak pressure, and (2) the time required for the pressure to rise and decay (Hubbs and Rechnitzer, 1952 in Wardle *et al.*, 2001). Generally, the higher the received pressure and the less time it takes for the pressure to rise and decay, the greater the chance of acute pathological effects. Considering the peak pressure and rise/decay time characteristics of seismic airgun arrays used today, the pathological zone for fish and invertebrates would be expected to be within a few meters of the seismic source (Buchanan *et al.*, 2004). For the proposed survey, any injurious effects on fish would be limited to very short distances.

The only designated Essential Fish Habitiat (EFH) species that may occur in the area of the project during the seismic survey are salmon (adult), and their occurrence in waters ≤150 km (93 mi) north of the Alaska coast is highly unlikely. Adult fish near seismic operations are likely to avoid the source, thereby avoiding injury. No EFH species will be present as very early life stages when they would be unable to avoid seismic exposure that could otherwise result in minimal mortality.

The proposed Arctic Ocean seismic program for 2006 is predicted to have negligible to low physical effects on the various life stages of fish and invertebrates for its approximately 40 day duration and 3625–km (2,252–mi) extent and will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. Nonetheless, the main impact issue associated with the proposed activities will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed above.

During the seismic study only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the seismic activity ceases. Thus, the proposed survey would have little, if any, impact on the abilities of marine mammals to feed in the area where seismic work is planned.

Some mysticetes, including bowhead whales, feed on concentrations of zooplankton. Although the main summering area for bowheads is in the Canadian Beaufort Sea, at least a few feeding bowhead whales may occur in offshore waters of the western Beaufort Sea and northern Chukchi Sea in July and August, when the Healy will be in the area. A reaction by zooplankton to a seismic impulse would only be

relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the source. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on feeding mysticetes.

Thus, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations, since operations at the various sites will be limited in duration.

Potential Effects on Subsistence Use of Marine Mammals

Subsistence hunting and fishing continue to be prominent in the household economies and social welfare of some Alaskan residents, particularly among those living in small, rural villages (Wolfe and Walker, 1987). Subsistence remains the basis for Alaska Native culture and community. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. The National Science Foundation offers guidelines for science coordination with native Alaskans at *http://www.arcus.org/guidelines/*.

Marine mammals are legally hunted in Alaskan waters near Barrow by coastal Alaska Natives; species hunted include bowhead whales, beluga whales, ringed, spotted, and bearded seals, walrus, and polar bears. In the Barrow area, bowhead whales provided approximately 69 percent of the total weight of marine mammals harvested from April 1987 to March 1990. During that time, ringed seals were harvested the most on a numerical basis (394 animals).

Bowhead whale hunting is the key activity in the subsistence economies of Barrow and two smaller communities to the east, Nuiqsut and Kaktovik. The whale harvests have a great influence on social relations by strengthening the sense of Inupiat culture and heritage in addition to reinforcing family and community ties.

An overall quota system for the hunting of bowhead whales was established by the International Whaling Commission in 1977. The quota is now regulated through an agreement between NMFS and the Alaska Eskimo Whaling Commission (AEWC). The AEWC allots the number of bowhead whales that each whaling community may harvest annually (USDI/BLM 2005).

The community of Barrow hunts bowhead whales in both the spring and fall during the whales' seasonal migrations along the coast. Often, the bulk of the Barrow bowhead harvest is taken during the spring hunt. However, with larger quotas in recent years, it is common for a substantial fraction of the annual Barrow quota to remain available for the fall hunt. The communities of Nuiqsut and Kaktovik participate only in the fall bowhead harvest. The spring hunt at Barrow occurs after leads open due to the deterioration of pack ice; the spring hunt typically occurs from early April until the first week of June. The fall migration of bowhead whales that summer in the eastern Beaufort Sea typically begins in late August or September. The location of the fall subsistence hunt depends on ice conditions and (in some years) industrial activities that influence the bowheads movements as they move west (Brower, 1996). In the fall, subsistence hunters use aluminum or fiberglass boats with outboards. Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 80 km. The autumn hunt at Barrow usually begins in mid-September, and mainly occurs in the waters east and northeast of Point Barrow. The whales have usually left the Beaufort Sea by late October (Treacy, 2002a,b).

The scheduling of this seismic survey has been discussed with representatives of those concerned with the subsistence bowhead hunt, most notably the AEWC and the Barrow Whaling Captains' Association,. For this among other reasons, the project has been scheduled to commence in mid-July and terminate approximately 25 August, before the start of the fall hunt at Barrow (or Nuiqsut or Kaktovik), to avoid possible conflict with whalers.

Although the timing of the *Healy's* seismic survey may overlap with potential subsistence harvest of beluga whales, ringed seals, spotted seals, or bearded seals, the hunting takes place well inshore of the proposed survey, which is to start >150 km (93 mi) offshore and terminate >200 km (124 mi) offshore.

NMFS does not anticipate any unmitigable adverse impacts on the subsistence hunt of these species or stocks to result from the proposed Healy seismic survey.

Plan of Cooperation

UTIG and the AEWC will develop a ''Plan of Cooperation'' for the 2006 Arctic Ocean seismic survey, in consultation with representatives of the Barrow whaling community. UTIG is working with the people of Barrow to identify and avoid areas of potential conflict. The proposed plan has been presented to and discussed with the Whaling Captains' Association's, local residents, the AEWC, and the biologists in North Slope Borough Department of Wildlife Management.

A Barrow resident knowledgeable about the mammals and fish of the area is expected to be included as a member of the MMO team aboard the *Healy*. Although his primary duties will be as a member of the MMO team responsible for implementing the monitoring and mitigation requirements, he will also be able to act as liaison with hunters and fishers if they are encountered at sea. However, the proposed activity has been timed so as to avoid overlap with the main harvests of marine mammals (especially bowhead whales), and is not expected to affect the success of subsistence fishers.

The Plan of Cooperation will cover the initial phases of UTIG's Arctic Ocean seismic survey planned to occur 15 July to 25 August. The purpose of this plan will be to identify measures that will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses, and to ensure good communication between the project scientists and the community of Barrow.

Subsequent meetings with whaling captains, other community representatives, the AEWC, NSB, and any other parties to the plan will be held as necessary to negotiate the terms of the plan and to coordinate the planned seismic survey operation with subsistence whaling activity.

The proposed Plan of Cooperation may address the following:

- Operational agreement and communications procedures
- Where/when agreement becomes effective
- General communications scheme
- On-board Inupiat observer
- Conflict avoidance
- Seasonally sensitive areas
- Vessel navigation
- Air navigation
- Marine mammal monitoring activities
- Measures to avoid impacts to marine mammals
- Measures to avoid conflicts in areas of active whaling
- Emergency assistance
- Dispute resolution process

As noted above, in the unlikely event that subsistence hunting or fishing is occurring within 5 km (3 mi) of the *Healy*'s trackline, the airgun operations

will be suspended until the Healy is >5 km (3 mi) away.

Mitigation

For the proposed seismic survey in the Arctic Ocean, UTIG will deploy airgun sources involving 4 GI guns or 8 airguns. These sources will be small-to-moderate in size and source level, relative to airgun arrays typically used for industry seismic surveys. However, the airguns comprising the arrays will be clustered with only limited horizontal separation, so the arrays will be less directional than is typically the case with larger airgun arrays, which will result in less downward directivity than is often present during seismic surveys, and more horizontal propagation of sound.

Several important mitigation measures have been built into the design of the project:

- The project is planned for July-August, when few bowhead whales are present and no bowhead hunting is occurring;
- Airgun operations will be limited to offshore waters, far from areas where there is subsistence hunting or fishing, and in waters where marine mammal densities are generally low;
- When operating in shallower parts of the study area, airgun operations will be limited to the smaller source (4 GI guns);

In addition to these mitigation measures that are built into the general design, several specific mitigation measures will be implemented to avoid or minimize effects on marine mammals encountered along the tracklines and are discussed below.

Vessel-based observers will monitor marine mammals near the seismic source vessel during all airgun operations. These observations will provide the real-time data needed to implement some of the key mitigation measures. When marine mammals are observed within, or about to enter, designated safety zones (see below) where there is a possibility of significant effects on hearing or other physical effects, airgun operations will be powered down (or shut down if necessary) immediately. Vessel-based observers will watch for marine mammals near the seismic vessel during all periods of shooting and for a minimum of 30 min prior to the planned start of airgun operations after an extended shut down. Due to the timing of the survey situated at high latitude, the project will most likely take place during continuous daylight and monitoring adjustments will not be necessary for nighttime (darkness).

In addition to monitoring, mitigation measures that will be adopted will include (1) speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) power down or shut-down procedures, and (3) no start up of airgun operations unless the full 180 dB safety zone is visible for at least 30 min during day or night.

Speed or Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect on the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or power down or shut down of the airgun(s). However, in regions of complete ice cover, which are common north of 75° N., cetaceans are unlikely to be encountered because they must reach the surface to breathe.

Power-down Procedures

A power-down involves decreasing the number of airguns in use such that the radius of the 180–dB zone is decreased to the extent that marine mammals are no longer within the 180–dB safety radius. A power down may also occur when the vessel is moving from one seismic line to another. During a power down, one airgun (or some other number of airguns less than the full airgun array) is operated. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety radius, the airguns may (as an alternative to a complete shut down) be powered down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered down if the power-down results in the animal being outside of the 180–dB isopleth, else the airguns will be shut down. During a power-down of the 4- or 8–airgun array, one airgun (either a single 105 in3 GI gun or one 210 in3 G. gun, respectively) will be operated. If a marine mammal is detected within or near the smaller safety radius around that single airgun (see Table 2), it will be shut down as well (see next subsection).

Following a power-down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it: is visually observed to have left the safety zone; or has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds; or has not been seen within the zone for 30 min in the case of mysticetes (large odontocetes do not occur within the study area).

Because of the expanded shut-down radii proposed by UTIG (below), power-downs will only be used in deep water. In shallow and intermediate depth water, an immediate shutdown will occur when marine mammals are sighted within the designated safety radii.

Shut-down Procedures

The operating airgun(s) will be shut down completely if a marine mammal approaches or enters the then-applicable safety radius and a power down is not practical (or shut down is specifically prescribed, see expanded shut down radii in Table 1). The operating airgun(s) will also be shut down completely if a marine mammal approaches or enters the estimated safety radius around the source that would be used during a power down.

After submitting their application, UTIG proposed expanded shut down zones for shallow and intermediate depth water. As reflected in Table 1, in shallow or intermediate depth water, the *Healy* will cease operating airguns if a cetacean is seen at any distance from the vessel (most likely maximum visibility 2–3 km (1.2–1.9 mi)). For pinnipeds, in shallow water the *Healy* will implement a 1000–m (3,280–ft) shut-down zone, and for intermediate depth water, the Healy will implement a 500–m (1,640–ft) shut-down zone.

Ramp-up Procedures

A ''ramp-up'' procedure will be followed when the airgun array begins operating after a specified-duration period without airgun operations. NMFS normally requires that the rate of ramp up be no more than 6 dB per 5 min period. The specified period depends on the speed of the source vessel and the size of the airgun array that is being used. Ramp-up will begin with one of the G. guns (210 in^3) or one of the Bolt airguns (500 in^3) for the 8–airgun array, or one of the 105 in^3 GI

guns for the 4–GI gun array. One additional airgun will be added after a period of 5 minutes. Two more airguns will be added after another 5 min, and the last four airguns (for the 8–airgun array) will all be added after the final 5 min period. During the ramp-up, the safety zone for the full airgun array in use at the time will be maintained.

If the complete 180–dB safety radius has not been visible for at least 30 min prior to the start of operations, ramp up will not commence unless at least one airgun has been operating during the interruption of seismic survey operations. This means that it will not be permissible to ramp up the 4–GI gun or 8–airgun source from a complete shut down in thick fog or darkness (which may be encountered briefly in late August); when the outer part of the 180 dB safety zone is not visible. If the entire safety radius is visible, then start up of the airguns from a shut down may occur at night (if any periods of darkness are encountered during seismic operations). If one airgun has operated during a power-down period, ramp up to full power will be permissible in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Ramp up of the airguns will not be initiated during the day or at night if a marine mammal has been sighted within or near the applicable safety radii during the previous 15 or 30 min, as applicable.

Airgun activity will not resume until the marine mammal has cleared the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes).

Helicopter Flights

The use of a helicopter to deploy and retrieve SISs during the survey is expected, at most, to cause brief behavioral reactions of marine mammals. To limit disturbance to marine mammals, helicopters will follow the survey track line. UTIG would avoid landing within 1000 ft (304 m) of an observed marine mammal, and maintain a minimum altitude of 1000 ft (304 m), unless weather or other circumstances require a closer landing for human safety. For efficiency, each helicopter excursion will be scheduled to deploy/retrieve three or four SIS units. This will minimize the number of flights and the number of potential distubances to marine mammals in the area.

Monitoring

UTIG proposes to sponsor marine mammal monitoring during the present project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA.

Vessel-based observers will monitor marine mammals near the seismic source vessel during all seismic operations. There will be little or no darkness during this cruise. Airgun operations will be shut down when marine mammals are observed within, or about to enter, designated safety radii (see below) where there is a possibility of significant effects on hearing or other physical effects. Vessel-based MMOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the planned start of airgun operations after an extended shut down of the airgun. When feasible, observations will also be made during daytime periods without seismic operations (e.g., during transits and during coring operations).

During seismic operations in the Arctic Ocean, four observers will be based aboard the vessel. MMOs will be appointed by UTIG with NMFS concurrence. A Barrow resident knowledgeable about the mammals and fish of the area is expected to be included as one of the team of marine mammal observers (MMOs) aboard the *Healy*. At least one observer, and when practical, two observers, will monitor marine mammals near the seismic vessel during ongoing operations and nighttime start ups (if darkness is encountered in late August). Use of two simultaneous observers will increase the proportion of the animals present near the source vessel that are detected. MMO(s) will normally be on duty in shifts of duration no longer than 4 hours. The USCG crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey the crew will be given additional instruction on how to do so.

The *Healy* is a suitable platform for marine mammal observations. When stationed on the flying bridge, the eye level will be approximately 27.7 m (91 ft) above sea level, and the observer will have an unobstructed view around the entire vessel. If surveying from the bridge, the observer's eye level will be 19.5 m (64 ft) above sea level and approximately 25° of the view will be partially obstructed directly to the stern by the stack (Haley and Ireland, 2006). The MMO(s) will scan the area around the vessel systematically with reticle binoculars (e.g., 7 50 Fujinon), Big-eye binoculars (25 150), and with the naked eye. During any periods of darkness (minimal, if at all, in this cruise), NVDs will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), if and when required. The survey will take place at high latitude in the summer when there will be continuous daylight, but night (darkness) is likely to be encountered briefly at the southernmost extent of the survey in late August. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation; these are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly.

To assure prompt implementation of shut downs, additional channels of communication between the MMOs and the airgun technicians will be established in 2006 as compared with the arrangements on the Healy in 2005 (cf. Haley and Ireland, 2006). During power downs and shut downs, the MMO(s) will continue to maintain watch to determine when the animal(s) are outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius. The animal will be considered to have cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes).

All observations and airgun power or shut downs will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for further processing and archiving.

Results from the vessel-based observations will provide

1.The basis for real-time mitigation (airgun power or shut down).

2.Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3.Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4.Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5.Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and the marine mammals that were detected near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring. The 90–day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seis-mic survey activities). The report will also include estimates of the amount and nature of the impacts on marine mammals resulting from the seismic survey. Analysis and reporting conventions will be consistent with those for the 2005 *Healy* cruise to factilitate comparisons and (where appropriate) pooling of data across the two seasons.

Endangered Species Act

Pursuant to section 7 of the ESA, the National Science Foundation (NSF) has begun consultation on this proposed seismic survey. NMFS will also consult on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NSF prepared a Draft Environmental Assessment of a Marine Geophysical Survey by the USCG Healy of the Western Canada Basin, Chukchi Borderland and Mendeleev Ridge, Arctic Ocean, July-August 2006. NMFS will either adopted NSF's EA or prepare their own NEPA document prior to the issuance of an IHA. A copy of the EA is available at the NMFS website (see ADDRESSES).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the Arctic Ocean may result, at worst, in a temporary modification in behavior (Level B Harassment) of small numbers, relative to the population sizes, of certain species of marine mammals. The maximum estimates of take indicate that no more than 2.5 percent of the gray whale and ringed seal populations would be harassed, and no more than 1 percent of any of the other affected stocks. This activity is expected to result in a negligible impact on the affected species or stocks.

To summarize the reasons stated previously in this document, this preliminary determination is supported by: (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 µPa are reached rather than 180 dB re 1 µPa; (3) the fact that 200–205 dB isopleths would be well within 100 m (328 ft) of the vessel; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small, and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

The proposed seismic program will not interfere with any legal subsistence hunts, since seismic operations will not be conducted in the same space and time as the hunts in subsistence whaling and sealing areas. Therefore, NMFS believes the issuance of an IHA for this activity will not have an unmitigable adverse effect on any marine mammal species or stocks used for subsistence purposes.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to UTIG for conducting a seismic survey in the Arctic Ocean from July 15 - August 25, 2006, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 9, 2006.

Donna Wieting,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–4520 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040706C]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of meeting cancellation.

SUMMARY: The Gulf of Mexico Fishery Management Council is cancelling the previously-published meeting of the Ad Hoc Shrimp Effort Working Group (SEWG) scheduled for May 23–24, 2006.

DATES: The SEWG meeting scheduled to convene at 9 a.m. on Tuesday May 23, 2006 and conclude no later than 3 p.m. on Wednesday May 24, 2006 has been cancelled and will be rescheduled at a later date.

ADDRESSES: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Assane Diagne, Economist, telephone (813) 348–1630.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on April 13, 2006 (71 FR 19167). The Gulf of Mexico Fishery Management Council (Council) has canceled the meeting of the Ad Hoc Shrimp Effort Working Group scheduled to convene at 9 a.m. on Tuesday May 23, 2006 and conclude no later than 3 p.m. on Wednesday May 24, 2006 and will be rescheduled at a later date.

Dated: May 9, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7308 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050506B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of Closed Session SEDAR Selection Committee Conference Call.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Southeast Data, Assessment and Review (SEDAR) Selection Committee via Conference Call to select participants for SEDAR 12 for red grouper for recommendation to the Council.

DATES: The Conference Call will be held on Wednesday, May 31, 2006, from 11 a.m. EDT to 12 noon EDT.

ADDRESSES: The meeting will be held via closed session conference call.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Southeast Data, Assessment and Review (SEDAR) Selection Committee in a closed session conference call on Wednesday, May 31, 2006 at 11 a.m. EDT. The purpose of the meeting is to select members for the SEDAR 12 series for Red Grouper for recommendation to the Council. The Committee recommendations will be presented to the Council at the June 5–9, 2006 Council meeting in Tampa, FL.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: May 9, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7309 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050406D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of Ecosystem Scientific and Statistical Committee (SSC) meeting via Conference Call.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Ecosystem SSC via conference call to discuss planning of an ecosystem modeling workshop to be held by the SSC later in the year.

DATES: The conference call will be held on May 30, 2006. The conference call will begin at 10 a.m. EDT and conclude no later than 12 noon EDT.

ADDRESSES: The meeting will be held via conference call and listening stations will be available. For specific locations see **SUPPLEMENTARY INFORMATION.**

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Council will convene its Ecosystem SSC May 30, 2006, via conference call.

Listening stations are available at the following locations:

The Gulf Council office (see **ADDRESSES**), and the NMFS offices as follows:

Galveston, TX

4700 Avenue U, Galveston, TX 77551, Contact: Rhonda O'Toole, (409) 766–3500;

St. Petersburg, FL

263 13th Avenue South, St. Petersburg, FL 33701, Contact: Stephen Holiman, (727) 551–5719;

Panama City, FL

3500 Delwood Beach Road, Panama City, FL 32408, Contact: Janice Hamm, (850) 234–6541.

The purpose of the conference call is to decide which issues and models will be evaluated in an ecosystem modeling workshop to be held later this year. The workshop will evaluate the use of ecosystem modeling to address some of the key policy issues facing the Council. The SSC will also discuss what specific tasks will be requested from outside ecosystem modeling experts prior to and during the workshop, a timeline for completion of those tasks, and dates to hold the workshop. Based on the tasks identified by the SSC, the Council will produce a request for proposals (RFP) from which the selection of outside experts will be made.

The Ecosystem SSC, a committee of economists, biologists, sociologists, and natural resource attorneys knowledgeable about the technical aspects of fisheries in the Gulf, is appointed by the Council, and provides advice and opinions on various issues facing the Council.

Copies of any related meeting materials can be obtained by calling the Council office at (813) 348–1630.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: May 9, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7313 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050506E]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Atlantic Mackerel, Loligo and Illex Squid, and Butterfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, June 1, 2006, beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Comfort Inn, 1940 Post Road, Warwick, RI 02886; telephone: (401) 732–0470.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

The purpose of the meeting is to make recommendations concerning quotas and other management measures for the 2007 Atlantic Mackerel, Loligo and Illex Squid, and Butterfish fisheries.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jan Saunders (302) 674–2331 ext. 18, at the Council Office at least 5 days prior to the meeting date.

Dated: May 9, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7312 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050506C]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in May, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, May 30, 2006, at 10:30 a.m. and Wednesday, May 31, 2006, at 8:30 a.m.

ADDRESSES: This meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801: telephone: (603) 431–2300; fax: (603) 433–5649.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will develop management reviews for a number of cooperative research project, that have been approved by NOAA Fisheries Northeast Cooperative Research Partners Program (NCRPP). Their conclusions will be presented to the full Council at its June 13–15, 2006 meeting in Newport, RI. In addition to an NCRPP update, the committee will also receive a report on staff follow-up activities since the last meeting and discuss further refinements to its management review process. The committee will also review its involvement in the Council's research set-aside programs.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 9, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7310 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050506D]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meetings of its Magnuson-Stevens Committee in June, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Friday, June 2, 2006, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will meet to review and develop draft Council positions on two bills introduced by U.S. House of Representative members to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act. Any committee recommendations will be forwarded to the full Council for final approval at its June 13–15 meeting to be held in Newport, RI.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul

J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 9, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7311 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050906E]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meetings of its Standardized Bycatch Reporting Methodology (SBRM) Committee in June, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, June 12, 2006, at 1 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency, One Goat Island, Newport, RI 02840; telephone: (401) 851–1234.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review the Fishery Management Action Team (FMAT) progress report on the development of the Omnibus SBRM amendment to the Council's fishery management plans (FMPs). In addition, the committee will continue discussions related to issues to address within this amendment and its recommendations will be reported to the Council at its June 13–15, 2006 meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 10, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7342 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050906D]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Habitat and Environmental Protection Advisory Panel and Coral Advisory Panel in Coconut Grove, FL.

DATES: The joint meeting will take place June 7–9, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Wyndham Grand Bay Hotel, 2669 South Bayshore Drive, Coconut Grove, FL 33133; telephone: (800) 996–3426 or (305) 858–9600; fax: (305) 859–2026.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Habitat AP and Coral AP will meet from 1 p.m. – 5 p.m. on June 7, 2006, from 8:30 a.m. – 5 p.m. on June 8, 2006, and from 8:30 a.m. – 1 p.m. on June 9, 2006.

The joint meeting is being convened to continue the Council's integrated process to update Essential Fish Habitat information and consider ecosystem-based management through the development of a Fishery Ecosystem Plan (FEP) for the South Atlantic Region.

Items for discussion at the joint panel meeting include: (1) Review and approval of a draft research and monitoring plan for deepwater coral ecosystems in the South Atlantic; (2) Review and comment on a preliminary draft of the South Atlantic Fishery Ecosystem Plan; (3) Review of refined proposed deepwater Coral Habitat Areas of Particular Concern and other possible measures for development of the Council's Comprehensive Ecosystem Amendment to the FEP; (4) Update on the Habitat and Ecosystem Page and Internet Map Server development; (5) Review and comment on Amendment 14 to the Snapper Grouper Fishery Management Plan addressing marine protected areas; (6) Development of an offshore aquaculture policy statement; (7) Energy development proposals for the South Atlantic region; (8) Southeast Aquatic Resources Partnership; and (9) Status of regional Ocean Observing Systems development and management.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Note: The times and sequence specified in this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Dated: May 10, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–7341 Filed 5–12–06; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Request for Approval of a Collection of Information—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for extension of approval of a collection of information from manufacturers and importers of residential garage door operators. The collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Automatic Residential Garage Door Operators (16 CFR part 1211). The Commission will consider all comments received in response to this notice before requesting approval of this extension of a collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than July 14, 2006.

ADDRESSES: Written comments should be captioned ''Residential Garage Door Operators'' and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1211, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: In 1990, Congress enacted legislation requiring residential garage door operators to comply with the provisions of a standard published by Underwriters Laboratories to protect against entrapment. (The Consumer Product Safety Improvement Act of 1990, Pub. L. 101–608, 104 Stat. 3110.) The entrapment protection requirements of UL Standard 325 are codified into the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR part 1211. Automatic residential garage door operators must comply with the latest edition of the Commission's regulations at 16 CFR part 1211.

The Office of Management and Budget (OMB) approved the collection of information concerning the Safety Standard for Automatic Residential Garage Door Operators under control number 3041–0125. OMB's most recent approval will expire on July 31, 2006. The Commission now proposes to request an extension of approval without changes of this collection of information.

A. Certification Requirements

The Improvement Act provides that UL Standard 325 shall be considered to be a consumer product safety standard issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2058). Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA (15 U.S.C. 2063(b)) authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 14(b) of the CPSA allows firms that are required to issue certificates of compliance to use an independent third-party organization to conduct the testing required to support the certificate of compliance.

Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require establishment and maintenance of records necessary to implement the CPSA or determine compliance with rules issued under the authority of the CPSA. On December 22, 1992, the Commission issued rules prescribing requirements for a reasonable testing program to support certificates of compliance with the Safety Standard for Automatic Residential Garage Door Operators (57 FR 60449). These regulations also require manufacturers, importers, and private labelers of residential garage door operators to establish and maintain records to demonstrate compliance with the requirements for testing to support certification of compliance. 16 CFR part 1211, Subparts B and C.

The Commission uses the information compiled and maintained by manufacturers and importers of residential garage door operators to protect consumers from risks of death and injury resulting from entrapment accidents associated with garage door operators. More specifically, the Commission uses this information to determine whether the products produced and imported by those firms comply with the standard. The Commission also uses this information to facilitate corrective action if any residential garage door operators fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

B. Estimated Burden

The Commission staff estimates that about 22 firms are subject to the testing and recordkeeping requirements of the certification regulations. The staff estimates that each respondent will spend 40 hours annually on the collection of information for a total of about 880 hours. Using an hourly rate of $42.82, based on Total compensation, private goods-producing section, managerial, executive, and administrative category, Bureau of Labor Statistics, September 2005, the total industry cost would be $37,700.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: May 8, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–7292 Filed 5–12–06; 8:45 am]

BILLING CODE 6355–01–P

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1454]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) is announcing the June 2, 2006, meeting of the Council.

DATES: Friday, June 2, 2006, 9:15 a.m.–12:30 p.m.

ADDRESSES: The meeting will take place at the Department of Health and Human Services, 200 Independence Ave, SW., Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, by telephone at 202–307–9963 [**Note:** this is not a toll-free telephone number.], or by e-mail at *Robin.Delany-Shabazz@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.*

Documents such as meeting announcements, agendas, minutes, and interim and final reports will be available on the Council's Web page at *http://www.JuvenileCouncil.gov.* (You may also verify the status of the meeting at that Web address.)

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary for Homeland Security, Immigrations and Customs Enforcement. Nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States.

Meeting Agenda

The agenda for this meeting will include: (a) A review of the past meeting and written public comments; (b) remarks from Michael Leavitt (invited), Secretary, Health and Human Services, and Susan Orr, Associate Commissioner, Children's Bureau and other Children's Bureau staff concerning child and family service reviews and the implications of the reviews for member agencies; (c) an update on mentoring activities; (d) discussions of various opportunities to coordinate federal work addressing juveniles and youth who are disadvantaged or at-risk; and (e) other business and announcements.

For security purposes, members of the public who wish to attend the meeting must pre-register by calling the Juvenile Justice Resource Center at 301–519–6473 (Daryel Dunston), no later than Friday, May 26, 2006. [**Note:** these are not toll-free telephone numbers.] Additional identification documents may be required. To register online, please go to *http://www.JuvenileCouncil.gov/meetings.html.* Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments

Interested parties may submit written comments by Friday, May 26, 2006, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Robin.Delany-Shabazz@usdoj.gov.* The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. Written questions and comments from the public may be invited at this meeting.

Dated: May 10, 2006.

Michael Costigan,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. E6–7355 Filed 5–12–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for the Neuse River Basin Feasibility Study, NC

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

ACTION: Notice of intent.

SUMMARY: The Neuse River Basin is the third largest basin in North Carolina, encompassing a total area of about 6,235 square miles. The Neuse River originates in north central North Carolina and flows southeasterly until it reaches tidal waters of Pamlico Sound. Water quality in the Neuse River Basin has become degraded from multiple causes, including: Rapidly expanding urban growth with increasingly rapid runoff from storm events; deforestation; expanding high-density livestock operations; and aging wastewater infrastructure. Fish and wildlife populations have suffered declines in diversity and vigor; and waterborne fish diseases have now become apparent, especially *Pfiesteria.* The U.S. Army Corps of Engineers, Wilmington District, in cooperation with the State of North Carolina Division of Water Resources has initiated the Neuse River Basin Feasibility Study in North Carolina. The purpose of the feasibility study is to develop and evaluate basin wide alternatives to improve water quality, restore anadromous fish passage, wetlands, stream, riparian buffer, and oyster habitat. We will also investigate flood damage reduction. The focus of this study is to identify resource problems, needs, and opportunities and develop solutions. The feasibility study is being carried out under the Corps of Engineers General Investigation Program and is being conducted in response to a congressional resolution adopted July 23, 1997.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Hugh Heine; Environmental Resources Section; U.S. Army Engineer District, Wilmington; P.O. Box 1890; Wilmington, NC 28402–1890; telephone: (910) 251–4070.

SUPPLEMENTARY INFORMATION: This study will investigate the following alternatives: No action alternative, restoration of wetland and stream habitats as well as riparian buffers which serve as natural filtering systems, oyster habitat restoration, removal or modification of low head dams and culverts to restore anadromous fish

passages, and flood reduction. The final outcome of the study would be a feasibility report and an Environmental Impact Statement (EIS), which would recommend projects for construction authorization. All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the intent to prepare a DEIS and are invited to comment at this time. An initial scoping letter dated March 31, 1999 was circulated during the early planning phase of the study. Another scoping letter dated April 26, 2006 was sent out to continue the coordination process and solicit any additional comments on this study. All comments received as a result of this notice of intent and the above mentioned scoping letters will be considered in the preparation of the DEIS.

The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, nor requested by, any other agency.

The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders.

The DEIS is currently scheduled to be available spring 2008.

Dated: May 1, 2006.

John E. Pulliam, Jr.

Colonel, U.S. Army, District Commander.

[FR Doc. 06–4512 Filed 5–12–06; 8:45 am]

BILLING CODE 3710–CE–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of Partially Exclusive, Exclusive or Non Exclusive License

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

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of partially exclusive, exclusive or non exclusive licenses under the following pending patents listed under **SUPPLEMENTARY INFORMATION**. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until August 14, 2006.

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, VA 22315–3860.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland (703) 428–6672.

SUPPLEMENTARY INFORMATION:

1. *Title:* Embedded Barrier to Fluid Flow. An Electro-Osmotic Pulse (EOP) system is used to dewater structure, both natural and manmade. Preferably, the system employs durable, dimensionally stable anodes affixed to structure in a configuration designed to maximize electrical contact with the structure and minimize electrode gas generation. The anodes and cathodes are attached to a DC power supply that provides a voltage potential between them. DC power is cycled until the structure has been sufficiently treated. Select embodiments employ perforated metal pipes as cathodes for the purpose of transport and drainage of fluids. In select embodiments of the present invention, the cathodes are connected to variable resistors designed to reduce opportunity for corrosion of buried metal objects in the vicinity of the EOP system. Select embodiments employ a pre-specified pulse train of DC voltage pulses to migrate water from under a crawl space while moving available cations in the soil. Select embodiments also protect large structures such as concrete dams.

Serial No: 10/421,922.

Date: April 24, 2004.

2. *Title:* Detecting, Classifying and Localizing Minor Amounts of an Element Within a Sample of Material. Minute amounts of material, such as a contaminant, are detected, classified and located using a single procedure that eliminates the need for using complex and sometimes redundant instrumentation setups, multiple (and sometimes overlapping) analytic processes, or both. In one embodiment, a series of processing steps enables one to detect, classify, and localize minute amounts of particular elements, e.g., contaminants, in material being tested. Data sets, suitable for characterizing components of samples at least spectrally and spatially, are collected from at least one uncontaminated sample of material (the ''baseline'' or ''control'') and a sample of material under test (MUT) that may contain contaminants. Comparison of these data sets, using the procedures of the present invention, enables ready classification of minute amounts of material in any sample. The present invention may be used for liquids, solids, and gases, with specific application to gels, pastes, hard powders, soft powders, films, inorganics, and pharmaceuticals.

Serial No: 10/890,844.

Date: July 9, 2004.

3. *Title:* Modular Bullet Trap Cover. A modular bullet trap cover element generally includes a shell filled with a projectile trapping medium, preferably a mixture of a resilient granular ballistic medium and a hydrated super absorbent polymer (SAP) gel. The shell may be made of any of a number of fabric or polymeric materials. In embodiments, the shell includes at least two bags, an inner bag and at least one outer bag, each of which has an open end and a sealed end, connected to one another such that the outer bags may be inverted over the inner bag to cover at least a portion thereof. The modular cover element is formed by filling the inner bag with the projectile trapping medium and then inverting the outer bags to produce a multi-layer shell. In embodiments, the outer bags and inner bag are rotatably connected, permitting the outer bags to be rotated with respect to the inner bag such that bullet holes in the inner and outer bags no longer line up with each other. Several modular cover elements may be fixedly or releasably interconnected, preferably in a mattress-like arrangement, to form a bullet trap cover.

Serial No: 10/890,846.

Date: July 9, 2004.

4. *Title:* A Method and System for Treating Contaminants and Odors in Airborne Emissions. A second-generation rotating biofilter employing microorganisms in a microbiological film (biofilm) ''mineralizes'' contaminants, such as VOCs and odoriferous contaminants. Contaminated fluid, such as air from manufacturing processes, is directed radially outward from a perforated pipe through porous foam attached to the pipe. The pipe serves as the axis upon which layers of foam suitable for supporting formation of biofilms are placed. In one embodiment, an octagonal-shaped drum incorporates eight baskets. In each basket, foam is layered outwardly from the pipe in trapezoidal-shaped layers each of approximately 3.8 cm thickness, each layer separated by air gaps of approximately 1.3 cm to prevent clogging. Seven layers in each of eight baskets comprise the octagonal drum. When the drum is sprayed on one side, water soaks the media and it is heavier on that side, thus facilitating rotation of the drum. Further, the biofilms are supplied with moisture and supplemental nutrients as needed.

Serial No: 10/911,763.

Date: August 4, 2004.

5. *Title:* Self-Dispensing Bullet Trap Buffer Block. An additive for buffering a projectile trapping medium and spent projectile strapped therein is a buffering compound formed as a low density foamed concrete block that will self-dispense via fragmentation or pulverization when subjected to incoming fire. The block combines at least one dry component selected from the group consisting of low solubility phosphate compounds, low solubility aluminum compounds, iron compounds; sulfate compounds, and calcium carbonate with a cementing material, water, and an aqueous based foam in substantially stoichiometric amounts. The aqueous based foam is added in a quantity sufficient to adjust the density of the resulting block to be non-buoyant without sinking in the projectile trapping medium. The additive may be employed in a projectile trapping medium to chemically stabilize the medium and environmentally stabilize projectiles trapped therein.

Serial No: 10/911,771.

Date: August 4, 2004.

6. *Title:* Portable System For Measuring Dynamic Pressure in Situ and Method of Employment Therefor. A dynamic pressure testing or calibration system packaged as a portable unit for characterizing pressure sensors, such as transducers. Embodiments are packaged for carry on the body, are battery-operated, compatible with existing transducer mounts, and quickly learned and easily used by a single operator. The system supplies a pre-specified impulse (pressure pulse) of fluid, preferably a benign gas, such as air, or an inert gas such as helium or nitrogen. In select embodiments, the gas pulse has a fast rise time and its amplitude may be varied over a pre-specified dynamic range. For example, the rise time may emulate that of an impulse created during an explosion by a resultant pressure wave, i.e., less than 100 microseconds. Embodiments also incorporate a data acquisition capability that accurately captures and records both the supplied impulse and the response of the sensor under test.

Serial No: 10/991,219.

Date: November 18, 2004.

7. *Title:* An Implant and Forget Mechanism to Interact with Biota. An ''implant and forget'' device for interacting with biota after a pre-established time period. Preferably, the biota are fauna and more particularly fish. In select embodiments, the device comprises packaging enclosing means for timing interaction via opening the packaging. In select embodiments of the present invention, the device is a sealed capsule inserted in fish. Embodiments of the present invention are implanted in triploid grass carp (Ctenopharyngodon idella) to facilitate control of aquatic weeds in bodies of water. When the carp have been in the water for a pre-established approximate period of time, toxins in the device are dispensed via long term bioerosion of the sealed opening in the packaging. Otherwise, the carp may destroy all vegetation and harm the aquatic environment for other aquatic life. Several alternative bioerodible seal configurations are provided as embodiments.

Serial No: 11/179,541.

Date: July 13, 2005.

8. *Title:* Functionality Index (F) For Use With an Engineering Management System (EMS). A top-down tiered process establishes an objective measure of the functional capacity of an asset to address a specified use. The process comprises: Developing Issue Categories and lists of functional impact Sub-issue Types and specific issues under each type that may impact functionality of the asset for a specified use; providing the list to evaluators; employing evaluators to evaluate functionality, evaluators assigning a numerical Severity measure to each Sub-issue Type present during the evaluation; recording occurrences of issues under each Sub-issue Type discovered, summing occurrences to determine a Density of each Sub-issue Type; recording the evaluation in one or more engineering management systems (EMS); and using the recorded evaluation, calculating a value to be inserted on a numerical scale as a functionality index, F1. In select embodiments of the present invention, a numerical scale is used with values from 0–100.

Serial No: 11/194,655.

Date: August 2, 2005.

9. *Title:* A Process For Treating Waste From The Production of Energetics. A waste stream is treated in a pre-filter having media, preferably sand, connected below a zero-valent metal column reactor incorporating a metal with reducing potential, preferably elemental iron (FeO); the combination preferably configured as a single unit. The waste stream is pumped through the pre-filter to trap solids and deoxygenate it, then enters the reactor and is subjected to a reducing process. Most of the FeO is transformed to the ferrous ion (Fe +2), mixed with the reduced product, and fed to a continuous stirred tank reactor (CSTR) in which Fenton oxidation occurs. The output is then sent to a sedimentation tank and pH-neutralized using a strong base such as sodium hydroxide (NaOH). The aqueous portion is drawn off and the sludge pumped from the sedimentation tank. The system is monitored and controlled to optimize required additives, while monitoring of pressure drop across the pre-filter and column reactor establishes replacement requirements.

Serial No: 11/229,441.

Date: September 8, 2005.

10. *Title:* Condition Lifecycle Mathematical Model and Process. Initial assumptions related to the service life of a particular item, such as a component section of a building, are mathematically modeled to construct an initial lifecycle condition relationship as condition index (CI) v. time. To update the model, empirical data may be input at any time. As modeled in an engineering management system, for example, inspections are performed on the item to verify actual condition with that predicted. Quantitative inspection data are then used to update the initial curve. As inspections are performed and data recorded, the curve is updated to accurately capture observed condition and provide realistic estimates of predicted condition, and expected service life. In select embodiments of the present invention, empirical data, such as that from inspections, are weighted, *e.g.*, inspection data may be weighted based on type, level of detail, time in service, time since last inspection and the like.

Serial No: 11/223,251.

Date: August 2, 2005.

11. *Title:* System and Method for Increasing the Bond Strength Between A Structural Material and its Reinforcement Agency. This invention involves the coating of a reinforcing material, such as a metal, increasing the adhesion between the material and the matrix, such as a cement-based mortar or concrete, in which the material is imbedded. In one embodiment, a glass frit mixed with a refractory material, such as dry Portland cement, is bonded by heat to the surface of the reinforcing material. The reaction of the refractory component when the metal is embedded in fresh mortar or concrete prevents the formation of soft precipitates at the interface. One embodiment involves mixing Portland cement with the glass frit as a coating, coating a steel rod and firing the coating to bond to the metal. The frit-refractory coating produces a strong bond between the metal and the concrete or mortar matrix and may significantly reduce the potential for the corrosion of the steel.

Serial No: 11/234,184.
Date: September 8, 2005.

Richard L. Frenette,
Counsel.
[FR Doc. E6–7331 Filed 5–12–06; 8:45 am]
BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Impact Evaluation of the U.S. Department of Education's Student Mentoring Program

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (the Department) publishes this notice of a new system of records entitled ''Impact Evaluation of the U.S. Department of Education's Student Mentoring Program'', 18–13–14. The purpose of the impact evaluation is to determine the effectiveness of the Department's student mentoring program using a rigorous research design. The system will contain information about students and their mentors participating in mentoring programs funded by the Department. The sample of approximately 1,400 students will be drawn from approximately 30 of these mentoring programs. In order to assure that students can be randomly assigned to either treatment or control conditions for the study without denying available mentoring services, the mentoring programs that have been selected for inclusion in the study are likely to recruit more students for mentoring services than could possibly be served by the program. Within each mentoring program, students for the study will be selected from a pool of students who have been nominated by their schools to receive mentoring services and whose parents have enrolled them in the mentoring program. Through random assignment, approximately half of the students in the study will work with a mentor and approximately half will not.

The system will include the students' demographic information, such as date of birth and race/ethnicity, as well as self-reported attitudes about school, delinquent behaviors, personal responsibility, and the quality of their relationships with peers and adults. In addition, the system will include information about students gathered from school records (*e.g.*, grades, standardized test scores, and disciplinary actions taken by the school). For the students in the study who are paired with mentors, the system will also include the mentors' demographic information, their self-reported experiences with the training and support provided by the mentoring program, and the activities in which mentors and students engaged.

DATES: The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records described in this notice on or before June 14, 2006.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on May 10, 2006. This system of records will become effective at the later date of: (1) The expiration of the 40 day period for OMB review on June 19, 2006, or (2) June 14, 2006, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses of this system of records to Dr. Ricky Takai, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0001. Telephone: (202) 208–7083. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov*.

You must include the term ''Student Mentoring'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 502D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Ricky Takai. Telephone: (202) 208–7083. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of new or altered systems of records in the **Federal Register** and to submit reports to the Administrator of the Office of Information and Regulatory Affairs, OMB, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Chair of the House Committee on Government Reform, whenever the agency publishes a new or altered system of records.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department that are published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–

888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the CFR is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 5, 2006.

Grover Whitehurst,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

18–13–14

SYSTEM NAME:

Impact Evaluation of the U.S. Department of Education's Student Mentoring Program.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0001.

(2) Abt Associates, Inc., 55 Wheeler Street, Cambridge, MA 02138.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on students who obtain mentoring services through mentoring programs funded by the Department of Education and who are participating in the Impact Evaluation of the U.S. Department of Education's Student Mentoring Program. The purpose of the impact evaluation is to determine the effectiveness of the Department's student mentoring program using a rigorous research design. The study sample consists of approximately 1,400 students at 30 of the mentoring programs funded by the Department. Approximately half of these students will be paired with a mentor and the other half of the students will not be paired with a mentor. Data will also be collected from these students' mentors. Participation of students and their mentors in the evaluation is voluntary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will include the students' names, demographic information, such as date of birth and race/ethnicity, as well as self-reported attitudes about school, delinquent behaviors, personal responsibility, and the quality of their relationships with peers and adults. The system will also include information gathered from school records (*e.g.*, grades, standardized test scores, and disciplinary actions taken by the school). The system will include mentors' demographic information, their self-reported experiences with the training and support provided by the mentoring program, and activities in which mentors and students are engaged.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation being conducted is authorized under sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563) and Title IV, Part A, sections 4121(a)(2) and 4130 of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) (20 U.S.C. 7131(a)(2) and 7140).

PURPOSE(S):

The information in this system will be used for the following purposes: (1) to support an impact evaluation of the Department's student mentoring program as requested by the Office of Management and Budget (OMB); and (2) to provide information for improvement of the Department's student mentoring program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting and publication of data by the Institute of Education Sciences.

(1) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(2) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher must maintain Privacy Act safeguards with respect to the disclosed records.

(3) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the U.S. Department of Justice and OMB if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD–ROM, and the contractor maintains data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed by a number assigned to each student that is cross referenced by the student's name on a separate list. After students are randomly assigned to the treatment (mentoring) group, a list of those students will be sent to each mentoring program participating in the study, asking for the name of the mentor for each student, along with the contact information for each mentor. This information is entered into a Microsoft Access data base for purposes of tracking. In addition, on the survey form sent out to mentors in the spring, mentors will be asked to update their contact information if necessary.

SAFEGUARDS:

All physical access to the Department's site, and the site of the Department's contractor where this system of records is maintained, is controlled and monitored by security personnel. The computer system

employed by the Department offers a high degree of resistance to tampering and circumvention. This computer system permits data access to Department and contract staff only on a ''need to know'' basis, and controls individual users ability to access and alter records within the system.

The contractor, Abt Associates, Inc. (Abt), has established a set of procedures to ensure confidentiality of data. Abt's system ensures that information identifying individuals is in files physically separated from other research data. Abt will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours and work on hardcopy data will take place in a single room except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include: password-protected accounts that authorize users to use the Abt system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services; and additional security features that the network administrator establishes for projects as needed. The contractor employees who maintain (collect, maintain, use, or disseminate) data in this system must comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules in Part 3 (Research Projects and Management Study Records) and Part 14 (Electronic Records).

SYSTEM MANAGER AND ADDRESS:

Ricky Takai, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208–0001.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

The system will include the students' names, demographic information, such as date of birth and race/ethnicity, as well as self-reported attitudes about school, delinquent behaviors, personal responsibility, and the quality of their relationships with peers and adults. The system will also include information gathered from school records (*e.g.*, grades, standardized test scores, and disciplinary actions taken by the school). The system will also include mentors' demographic information, their self-reported experiences with the training and support provided by the mentoring program, and activities in which mentors and students are engaged.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E6–7345 Filed 5–12–06; 8:45 am]
BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8170–1; Docket No. EPA–HQ-ORD–2006–0260]

Science Assessment for Sulfur Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Call for Information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is undertaking to update and revise, where appropriate, the air quality criteria for sulfur oxides (SO^x), last addressed in EPA/600/FP–93/002, ''Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatic Individuals,'' published in August 1994 by the Office of Research and Development, National Center for Environmental Assessment. Interested parties are invited to assist the EPA in developing and refining the scientific information base for updating this assessment of scientific information for sulfur oxides by submitting research studies that have been published, accepted for publication, or presented at a public scientific meeting. Areas where additional new information will be particularly useful to EPA for this project are described in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: All materials submitted under this call for information should be received on or before June 15, 2006.

ADDRESSES: Submit materials, identified by Docket ID No. EPA–HQ–ORD–2006–0260, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov*.
- Fax: 202–566–1753; Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center.
- Mail: Office of Environmental Information (OEI) Docket (Mail Code 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: The Office of Environmental Information (OEI) Docket is located in the EPA Headquarters Docket Center, Room B102 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the public Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide information in writing, please submit one unbound original, with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the main text, and submit an unbound original and three copies.

Instructions: Direct your materials to Docket ID No. EPA–HQ–ORD–2006–0260. It is EPA's policy to include all submitted materials in the public docket without change and to make the materials available online at *http://www.regulations.gov,* including any personal information provided, unless the included information is claimed as 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 within the submitted material. If you submit information directly to EPA by e-mail without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the information that is placed in the public docket and made available on the Internet. If you submit materials electronically, EPA recommends that you include your name and other contact information with any disk or CD-ROM you submit. If EPA cannot read your submitted material due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your submission. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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, is 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 OEI Docket in the EPA HQ Docket Center.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Mary Ross, facsimile: 919–541–1818 or e-mail: *ross.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does This Action Apply to Me?

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised criteria.

SO_X are one of six principal (or ''criteria'') pollutants for which EPA has established national ambient air quality standards (NAAQS). Periodically, EPA reviews the scientific basis for these standards and prepares a science assessment document (historically referred to as a ''criteria document''). The science assessment provides the scientific basis for additional technical and policy assessments that form the basis for EPA decisions on the adequacy of a current NAAQS and the appropriateness of new or revised standards. One of the first steps in this process is to announce the beginning of this periodic NAAQS review and the start of the development of the science assessment by requesting the public to submit scientific literature that they want to bring to the attention of the Agency. The Clean Air Scientific Advisory Committee (CASAC), a review committee of the EPA's Science Advisory Board (SAB), is mandated by the Clean Air Act with performing an independent expert scientific review of the air quality criteria. This involves review of draft(s) of EPA's science assessment document. As this process proceeds, the public will have opportunities to review and comment on draft(s) of the science assessment document for SO_X. These opportunities will also be announced in the **Federal Register**.

B. What Should I Consider as I Prepare Materials for Submission to EPA?

Since completion of the 1994 ''Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatic Individuals,'' EPA has continued to follow the scientific research on SO_X exposure and its effects on public health and the environment and has gathered appropriate studies. The Agency is particularly interested in additional new information concerning: (1) Atmospheric science aspects (*e.g.*, sources , emissions, atmospheric transformation and transport, air quality concentrations, patterns and trends); (2) exposure and dosimetry aspects; (3) health effects aspects, including information derived from human and animal toxicological studies of SO_2 and transformation products (*e.g.* sulfates, sulfuric acid); and (4) ecological effects of SO_2 and transformation products, such as those arising from wet and dry deposition of sulfates and/or sulfuric acid. These and other selected literature relevant to a review of the NAAQS for sulfur oxides will be assessed in the forthcoming revised science assessment for SO_X. One or more drafts of the science assessment document for SO_X are expected to be made available by EPA for public comment and CASAC review. After this call for information, other opportunities for submission of new peer-reviewed papers (published or in-press) will be possible as part of public comment on the draft documents that will be reviewed by CASAC.

Dated: May 3, 2006.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E6–7340 Filed 5–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8170–2]

Animal Feeding Operations Consent Agreement and Final Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is considering the disclosure of certain information that may be subject to a claim of confidential business information (CBI) in connection with a proceeding before EPA's Environmental Appeals Board (EAB). The information is the name and address of Animal Feeding Operations (AFOs) who have submitted consent agreements and final orders to EPA to resolve potential civil violations related to air emissions from their facilities. EPA is requesting comments from the effected AFOs regarding the potential disclosure of their names and address.

DATES: Comments must be received by May 22, 2006.

ADDRESSES: Submit comments to:

Director, Attn: AFO CAFO Confidential Business Information Comments, Special Litigation and Projects Division (2248A), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Comments may also be submitted via facsimile to (202) 564–0010 or via e-mail at *AFOComments@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, contact Bruce Fergusson at (202) 564–1261 or at *fergusson.bruce@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2005, EPA offered certain Animal Feeding Operations (AFOs) the opportunity to sign a consent agreement and final order resolving potential violations under the Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Emergency Planning and Community Right-to-Know Act (EPCRA) (henceforth referred to as the ''Air Compliance Agreement'' or the ''Agreement''). By the close of the sign-up period on August 12, 2005, EPA had received over 2600 signed Agreements from AFOs. Approximately 1200 of the Agreements included broad claims by the submitting AFOs that the facility specific information that was required to be submitted in Attachment A to the Agreements was entitled to confidential treatment for reasons of business confidentiality (CBI). These broad claims potentially included the name of the facility and its address, which are found in Attachment A to the Agreements. EPA is considering the disclosure of the names and addresses of these AFOs in connection with the submittal of these proposed consent agreements and final orders to the EAB for approval.

With respect to proceedings commenced at EPA Headquarters, EPA is required to obtain a final order from the EAB ratifying any consent agreement that disposes of the proceeding. In accordance with this requirement, EPA submitted 20 Agreements, which did not contain any CBI claims, to the EAB on November 11, 2005, for approval. On January 27, 2006, the Board approved the first 20 Agreements. On April 11, 2006, EPA submitted 702 additional Agreements, which did not contain any CBI claims, to the EAB for approval. These additional Agreements were approved on April 17, 2006.

EPA is preparing to submit most of the approximately 1200 Agreements that contain information claimed as CBI to the EAB for review and approval. In connection with those proceedings, EPA is considering the disclosure of the names and addresses of the AFOs who signed the Agreements (the Respondents) pursuant to 40 CFR 2.301(g) (''Disclosure of information relevant to a proceeding''), notwithstanding that the information may be subject to a CBI claim. EPA's filings with the EAB are public, thus this information would be available to the public upon EPA's filing of the proposed Agreements and final orders. EPA is not considering, at this time, disclosing to the public any other information that has been claimed to be CBI. EPA is considering disclosing names and addresses because, initially, it appears that: (1) The names and addresses of the Respondents are relevant to the subject of the proceedings; (2) the public interest would be served by making available the names and addresses of the businesses with which EPA will be entering into consent agreements; and (3), the names and addresses of these businesses are reasonably attainable by other persons through public records such as telephone books and other business listings.

EPA is hereby providing an opportunity for any affected AFO to provide comments on the proposal by EPA to make their names and addresses available as part of the proceeding before the EAB to approve their Agreement. Such comments should address the issue of whether its name and address are relevant to the proceeding and whether it is in the public interest to disclose that information. The affected AFO may also address the issue of whether its name and address are entitled to confidential treatment pursuant to the criteria set forth in 40 CFR 2.208, including whether the information is reasonably obtainable by other persons through legitimate means. All comments should be submitted within five (5) days of the date of this notice. EPA is not seeking, or considering, comments from anybody other than the affected AFOs.

In accordance with 40 CFR 2.204(e)(1), any failure by an AFO to furnish timely comments will be construed as a waiver of its claim, and EPA will forward their Agreement to the EAB for review and approval no earlier than five (5) days after the close of the comment period. Although the names and addresses of the AFOs will be available to the public at that time, other information about the facility claimed as CBI will continue to be handled in accordance with EPA's CBI regulations. For those AFOs who furnish timely comments, EPA will proceed to make a determination under 40 CFR 2.301(g) after the close of the comment period.

Dated: May 9, 2006.

Robert A. Kaplan,

Director, Special Litigation and Project Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance.

[FR Doc. E6–7330 Filed 5–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8169–6]

Brownfields State and Tribal Response Grant Program

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This action adds the Brownfields State and Tribal Response (BSTR) grant program authorized by section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), to the list of environmental grant programs eligible for inclusion in Performance Partnership Grants (PPGs).

FOR FURTHER INFORMATION CONTACT: Jack Bowles, Office of Congressional and Intergovernmental Relations, Office of the Administrator, Mail Code 1301, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number, 202–564–7178; e-mail address: *bowles.jack@epa.gov;* or Jennifer Wilbur, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response, Mail Code 5105T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number, 202–566–2756; e-mail address: *wilbur.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: The Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134) and the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998 (Pub. L. 105–65), authorize EPA to combine categorical grant funds appropriated in EPA's State and Tribal Assistance Grant (STAG) account and award the funds as PPGs. Public Law 104–134, states, in relevant part, that: ''the Administrator is authorized to make grants annually from funds appropriated under this heading, subject to such terms and conditions as the Administrator shall establish, to any State or federally recognized Indian tribe for multimedia or single media pollution prevention, control and abatement and related environmental activities at the request of the Governor or other appropriate State official or the tribe.'' Public Law 105–65 amended the PPG authority by authorizing ''interstate agencies, tribal consortia, and air pollution control agencies'' to receive PPGs. Pursuant to the authority granted in Public Law 104–134 and Public Law 105–65, EPA promulgated PPG

regulations in January of 2001 as part of the Agency's revision of 40 CFR part 35, the rules governing categorical environmental program grants. The regulation at 40 CFR 35.133(b) states that: ''The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.'' The BSTR grant program authorized by CERCLA 128(a) is funded in the same line item that funds categorical grants for ''multimedia or single media pollution prevention, control and abatement and related environmental activities'' and, therefore, this grant program is eligible for inclusion in PPGs. This notice is made pursuant to 40 CFR 35.133(b), to inform entities eligible to receive PPGs that the BSTR grant program may be included in a PPG subject to any limitations herein defined.

In the fiscal year 2003 Consolidated Appropriations Resolution, Public Law 108–7, EPA was appropriated funds ''for carrying out section 128[(a)] of CERCLA, as amended.'' Congress has included funds for CERCLA 128(a) in subsequent EPA appropriations. Heretofore and hereafter, the BSTR grant program funds, with the exception of funds states and tribes use to capitalize a revolving loan fund under CERCLA 128(a)(1)(B)(ii)(I), are eligible for inclusion in PPGs, and may be included in a PPG at the request of the appropriate official of an eligible entity, subject to EPA's regulations at 40 CFR part 31 and 40 CFR 35.001 through 35.138 and 35.500 through 35.538. A Region should notify the Office of Brownfields Cleanup and Redevelopment in the Office of Solid Waste and Emergency Response when it plans to award Brownfield grant program funds as part of a PPG.

Dated: May 4, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–7335 Filed 5–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8169–7]

Notice of Open Meeting, Environmental Financial Advisory Board (EFAB), Workshop on the Use of Captive Insurance as a Financial Assurance Mechanism

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's Environmental Financial Advisory Board will hold an open meeting of its Financial Assurance Project Workgroup.

EFAB is chartered with providing analysis and advice to the EPA Administrator and EPA program offices on issues relating to environmental finance. The purpose of this meeting is for the EFAB to gather information and ideas with respect to the use of captive insurance as a financial assurance tool in EPA programs. The day will be structured to address this issue via a series of presentations and panel discussions involving Federal environmental officials, State insurance regulators, insurance rating and information analysts, insurance industry professionals, and State environmental regulators.

The meeting is open to the public with seating available on a first come first served basis. Due to building security requirements, all members of the public who wish to attend the meeting must register in advance no later than Monday, June 17, 2006.

DATES: June 27, 2006 from 9 a.m.–3:30 p.m.

ADDRESSES: ConEdison, 4 Irving Place, 19th Floor Auditorium, New York, NY 10003.

FOR FURTHER INFORMATION CONTACT: To register for the workshop or to obtain further information, contact Timothy McProuty, U.S. EPA, EFAB Staff, at 202–564–4996 or *mcprouty.timothy@epa.gov*.

For information on access or services for individuals with disabilities, please contact Timothy McProuty at 202–564–4996 or *mcprouty.timothy@epa.gov*. To request accommodation of disability, please contact Timothy McProuty, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 3, 2006.

Joseph Dillon,

Director, Office of Enterprise Technology and Innovation.

[FR Doc. E6–7339 Filed 5–12–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8169–8; EPA–HQ–OA–2005–0003]

Report on ECOS–EPA Performance-Based Environmental Programs: Proposed Initial Implementation Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice seeks public comment about proposed actions resulting from a collaborative effort between EPA and representatives from the Environmental Council of the States (ECOS). ECOS and EPA have developed a series of action recommendations to: identify, develop, and implement incentives for top environmental performers that are part of state and federal performance-based environmental programs; facilitate the integration of performance based programs into EPA and State Agencies; and enhance marketing and outreach of performance based programs. Today's recommended actions build on preliminary ideas that EPA provided for public comment on August 4, 2005 (70 FR 44921), and a public meeting held in Chicago, IL on October 19, 2005.

DATES: Comments must be received on or before June 14, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2005–0003 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: docket.oei@epa.gov.*
- *Fax:* 202–566–0224.
- *Mail:* Office of Administrator Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West, Room B–102, 1301 Constitution Ave, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. 4:30 p.m. M–F), special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OA–2005–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or via e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, 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 Office of Administrator Docket is (202) 566–1752).

FOR FURTHER INFORMATION CONTACT: Robert D. Sachs, Performance Incentives Division, Office of the Administrator, Mailcode 1808T, Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460, phone number 202–566–2884, fax number 202–566–0966, e-mail address *sachs.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Today's notice applies to you if you are interested in issues regarding performance-based environmental programs, and state and federal roles regarding such programs.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On June 26, 2000, The Environmental Protection Agency (EPA) launched the National Environmental Performance Track program (Performance Track). The program is designed to recognize and encourage top environmental performers who go beyond regulatory requirements to attain levels of environmental performance and management that benefit the environment. The program design was published in the **Federal Register** on July 6, 2000 (65 FR 41655). On April 22, 2004, EPA published a final rule that established certain regulatory incentives for Performance Track members (69 FR 21737). On May 17, 2004, EPA published a number of changes to the program, including the creation of a Corporate Leader designation (69 FR 27922). On April 4, 2006 (71 FR 16862), EPA published a final rule with certain provisions applying to Performance Track Facilities that included alternatives for self-inspections of certain types of Resource Conservation and Recovery Act (RCRA) units. Additional information on Performance Track, including up-to-date member information and program criteria, can be found at *http://www.epa.gov/performancetrack.*

The program's current membership includes about 400 members from 46 states and Puerto Rico and represents virtually every major manufacturing sector as well as public sector facilities at the Federal, State, and local levels. Since the inception of the program, Performance Track members report that they have collectively reduced their water use by more than 1.9 billion gallons—enough to meet the water needs of Atlanta, Georgia for more than two weeks. Members have conserved close to 9,000 acres of land and have increased their use of recycled materials by more than 120,000 tons.

In addition to EPA, more than 20 states have active state-level performance-based environmental programs, and an additional five states are currently developing programs. Nine states established programs before 2000, with the first program being implemented in 1995. The combined number of participants in these state programs is greater than 800. Many of these programs include dual membership with Performance Track at some level, while some exceed the federal program's criteria.

The fundamental goal of performance-based environmental programs is to achieve environmental results greater than those achieved through traditional regulatory approaches. As such, these programs tend to focus on environmental outcomes such as reduced emissions, generating fewer tons of hazardous waste, or lower discharges of toxics to water, rather than operationally-based output measures such as the number of inspections or permits issued. These programs are designed to provide operational flexibility for the purpose of allowing high performers to focus their resources on improving their environmental performance beyond regulatory requirements. They also provide opportunities for State and Federal regulators, as well as the regulated community, to more strategically target their financial and human resources in order to produce better overall environmental results.

III. Proposed Initial Implementation Actions

Introduction

During the past year, staff from the Environmental Council of the States (ECOS) and the Environmental Protection Agency (EPA) collaborated on three workgroups that sought to improve the effectiveness and enhance the value of the National Environmental

Performance Track (Performance Track) program, as well as similar state performance-based environmental programs. State and EPA representatives participated in workgroups which covered incentives, state integration, and outreach and recruiting. Information about, and recommendations from, the two workgroups on integration and incentives were highlighted in an August 2005 **Federal Register** Notice (70 FR 44921). The third workgroup on outreach and recruiting, which met on an informal basis, also offered recommendations and these are included here as well. This document identifies the initial actions the collective workgroups recommend for EPA and the states to take to work towards improved performance-based programs. These recommendations are intended to encourage environmental performance beyond regulatory requirements; no actions will be undertaken that could pose a threat to public health and the environment, or in any way weaken existing environmental laws.

As an overarching measure, the workgroups recommend that the ECOS President and EPA Administrator express their support for the workgroups' planned actions via some type of formal communication. More specifically, this report recommends a series of actions be taken that the workgroups believe will improve the implementation of performance-based environmental programs, resulting in greater protection to human health and the environment beyond those which can be achieved through traditional regulatory efforts alone. To ensure that these recommendations are effectively implemented, the performance-based programs to which these recommendations apply should be able to demonstrate measurable environmental results, include a process for evaluating the extent to which they are achieving environmental outcomes, provide a mechanism for removal of members that fail to meet established compliance criteria, and provide meaningful information on how such programs can be improved over time (similar to the ''continuous improvement'' philosophy embodied in environmental management systems). Finally, the three individual workgroups recommend that the ECOS and EPA performance-based program workgroup members continue to work collaboratively in a combined workgroup to implement these recommendations for Performance Track and state performance-based environmental programs.

Background

In 2004, the Environmental Council of the States conducted a survey to determine the extent of state support for performance-based environmental programs. The information ECOS gathered served as the basis for its report issued in January 2005 (ECOS Report). The ECOS Report acknowledged wide state support for such performance-based programs and their important role in supplementing traditional regulatory approaches to achieve greater environmental protection and encourage facilities to go beyond compliance. The ECOS Report also recommended that EPA take action in four areas: (1) Support state environmental performance-based programs and state efforts to work with Performance Track; (2) assure program support from all EPA program offices; (3) provide better incentives to participants faster; and (4) conduct more strategic marketing and education of performance-based environmental programs.

Beginning in January 2005, two ''formal'' workgroups (incentives and integration), comprised of state and EPA representatives, worked to develop specific recommendations that will lead to the outcomes envisioned in areas 1 through 3 in the ECOS Report. Recommendations from a third ''informal'' workgroup addressing area 4 (marketing and education) began later and also are included here. This Report focuses on the recommendations that the three workgroups propose initially be taken to meet the goals cited by ECOS.

EPA solicited public comment on the activities and preliminary recommendations of the incentives and integration workgroups in an August 2005 **Federal Register** Notice, (70 FR 44921). In addition, EPA held a public meeting in Chicago on October 19, 2005, to solicit additional input. Comments received and EPA's Response to Comments are available in the Federal Government Docket System number: EPA–HQ–OA–2005–0003 at *http://www.regulations.gov/.*

Initial Implementation Actions

1. Incorporate Performance Track and State Performance-Based Environmental Programs Into EPA-State Planning, Budgeting, and Accountability Processes

States and EPA recognize that performance-based environmental programs are an important and necessary tool in encouraging environmental performance beyond regulatory requirements, and not a tool to roll-back or lower environmental compliance. They further recognize that integration of performance-based programs into the various planning, budgeting, and accountability systems will facilitate their use. As such, we recommend that EPA take the following actions to support Performance Track and/or state performance-based environmental programs:

A. Add specific language to the Agency's ''National Environmental Performance Partnership System'' (NEPPS) national guidance to encourage the inclusion of appropriate state-run performance-based environmental programs in Performance Partnership Agreements (PPAs), Performance Partnership Grants (PPGs), and/or state-EPA workplans when and where such programs are in keeping with Federal and State priorities and strategic goals. For compliance-related activities, EPA is engaged with the States in addressing where it may be appropriate to recognize and/or provide resource flexibility for alternative approaches to achieving compliance. [February–May 2006]

B. Include text that supports integration of Performance Track and state performance-based program activities into EPA and State Agency planning documents; e.g., Strategic Plans, Regional Plans, and National Program Guidances. [FY 2006]

C. Educate EPA NEPPS regional coordinators and state performance-based program contacts on ways to integrate performance-based environmental programs into the EPA-State planning and budgeting processes. [FY 2006]

- Conduct a workshop in Denver on January 23, 2006, in conjunction with the Innovations Symposium. [Completed, approximately 80 participants attended]

- Work with those states that did not attend the pre-symposium workshop to ensure they have a working knowledge of the content. [Ongoing]

- Partner with a select number of states to integrate performance-based environmental programs into the EPA-State planning and budgeting processes for FY07; these will serve as models in future years for other interested states. [February–April 2006]

D. EPA will pilot, with one or two states, a review of the state's performance-based program under Element 13 of the State Review

Framework [1] that was developed jointly by EPA and ECOS. To be eligible for this pilot, the state(s) compliance assurance program must have had a successful review under Elements 1–12 of the Framework. EPA will work collaboratively with the pilot state(s) in the development and review of the proposal. EPA will provide the pilot state(s) with a timely and definitive response as to whether the proposals are successful. A successful performance-based program review under Element 13 could result in a state receiving recognition or resource flexibility credit in the context of their compliance assurance program. The preferred nature of the credit would be identified by the state(s) in their proposal, would be determined during the review process, and could include a spectrum of recognition and resource flexibility credit for performance-based programs that provide alternative approaches for assuring and exceeding compliance. [Currently under development]

E. Performance-based environmental programs have been used in certain instances to address specific national, state, or regional environmental challenges. Use of such performance-based programs should be encouraged on a broader scale in cases where a state wants to include language in its work plans to describe how its performance-based program will be used to address a state or regional environmental challenge.

• Develop guidance for FY07 on how states can count reductions achieved through Performance Track or similar state performance-based environmental programs toward the goals of national initiatives such as the reduction in priority chemicals under the Resource Conservation Challenge. [September 2006]

• Partner with the EPA Region 3 Chesapeake Bay Program to develop guidelines providing states within the watershed with credit for the nutrient reductions achieved via performance-based programs. [FY 2006]

• Encourage the use of ''Challenge Commitments.'' Some EPA National Programs and Regional Offices working with their partner states have already implemented, or are in the process of identifying and implementing, Challenge Commitments in the areas of reductions in greenhouse gases, priority chemicals, air emissions, and energy use. [Ongoing]

2. Prioritize and Implement High Value Incentives in the Near Term

EPA will expand its efforts to work with interested states to implement expedited permitting, enhance recognition, and facilitate the use of existing flexibilities for members of Performance Track and state performance-based environmental programs. As part of this effort, EPA and the states will work to communicate effectively with each other, as well as with the public. This will be accomplished through the use of outreach materials targeted at educating staff and the public about performance-based environmental programs and the development of tools that help to expedite the implementation of particular incentives. The combined ECOS–EPA performance-based program workgroup (referenced earlier in this report) intends to track interest and adoption of individual incentives among state and federal program members, as well as to seek and consider appropriate public input. Consistent with program criteria for maintaining membership in performance-based programs, incentives will not result in a net reduction in environmental performance and protection of human health and the environment.

Expedite Permitting

A. Where states are the lead permitting authority, EPA will partner with interested states to give Performance Track facilities priority placement in the state permitting queue. Georgia, Indiana, Texas, Oregon, and other states are either in the process of implementing, or have already implemented, expedited permitting initiatives. To facilitate identification of Performance Track facilities eligible for and interested in expedited priority permitting, EPA will provide states with lists of the permits held by Performance Track member facilities. Where EPA is the lead permitting authority, and a member of a state performance-based program seeks expedited permitting, the state shall inform EPA of the facility's eligibility for this initiative. [Ongoing]

B. EPA will reach out to States that did not attend the pre-symposium workshop in Denver, Colorado, on January 23, 2006, to inform them of the workshop's content and to enlist their participation in expediting permitting. [February–May 2006]

C. EPA will issue state and regional NPDES permitting authorities a one-permit credit, applied to their backlogged, priority NPDES permits, when they expedite review of a NPDES permit re-issuance or modification for a Performance Track facility under competitive pressure. EPA is also developing an ongoing ''tickler list'' of Performance Track facility NPDES permits that will expire within the next 9–12 month period to encourage states to consider, at their discretion, expediting re-issuance of the permits. (**Note:** A state would receive credit for facilities that are members of its own performance-based program as part of the strategy for addressing priority permits that they submit to EPA.) [Currently underway]

D. EPA will be conducting workshops for permit authorities and facilities on how to draft flexible air permits and use flexible air permitting techniques within existing standards and regulations (*http://www.epa.gov/ttn/oarpg/t5/meta/m5279.html*). While any permitted facility interested in working with permitting authorities to obtain a flexible air permit will be eligible, EPA plans to give priority assistance to Performance Track facilities. [Currently under development]

E. EPA will share information with states on expedited processes that have been successfully used in states, work to establish expedited processes for air permitting in states where they do not currently exist, and conduct pilots using innovative components such as electronic permitting to facilitate expedited permitting processes. EPA will then share the lessons learned from these pilot efforts. [March–December 2006]

Enhance Recognition

F. EPA will, and interested States are encouraged to, provide congratulatory letters either together or individually to new members of Performance Track and state performance-based environmental programs. These letters will encourage the facility to apply to its respective state or federal program counterpart. [Semi-annually, at conclusion of Performance Track application rounds]

G. EPA and States will work together to collect and publicize state program or Performance Track member success stories in the monthly Performance Track newsletter. [Ongoing]

H. States and EPA will coordinate recognition ceremonies when appropriate and EPA will communicate to relevant states when EPA conducts recognition ceremonies in their area. [Ongoing]

[1] The State Review Framework incorporates twelve mandatory elements, based on criteria found in long standing policy agreed to by EPA and states. A thirteenth optional element is included in this structure to allow states the opportunity to discuss alternative and innovative approaches to compliance. (For more information see: *http://www.epa.gov/enforcement/resources/publications/data/systems/air/2005conf/framework2.pdf*).

Facilitate Existing Flexibilities

I. EPA will collect and publicize examples of flexibility available through existing guidance and regulations and, in coordination with permitting authorities and state performance-based program contacts, encourage performance-based program facilities to utilize them where appropriate. [Ongoing]

Some examples include:

• The Minnesota Pollution Control Agency developed a Stationary Source Synthetic Minor permit for IBM: Under this permit, in return for meeting lower emissions limits for specified HAPs than otherwise required, IBM is eligible for simpler emissions calculations and recordkeeping. The IBM permit reduces the frequency of calculating and recording emissions from monthly (12-month rolling averages) to annually (total calendar year calculations).

• Permitting approach for Steele County, MN, indirect dischargers: Under the CWA pretreatment program, the POTW serves as the permitting authority for its indirect dischargers. In the Steele County project, in return for meeting a 20% effluent reduction goal for specified metals, participating indirect dischargers are eligible for reduced frequency of monitoring.

J. EPA will document examples of Performance Track facilities that have reached agreement with state permitting authorities to reduce their NPDES effluent monitoring frequencies, consistent with existing EPA policy, while maintaining a high degree of confidence in their monitoring data. EPA will publicize and share these facilities' experiences with Performance Track and state performance-based environmental program members so that other facilities may consider these approaches in consultation with their permitting authorities. [February–June 2006]

3. Improve State/EPA Coordination of Strategic Marketing and Education of Performance-Based Programs.

To improve marketing, outreach, and recruitment coordination, ECOS and EPA will take the following steps:

A. EPA and states will share program branding strategies to increase information sharing, idea generation, and learning from other programs. [Ongoing]

B. Interested states and EPA's Performance Track staff will sponsor a one-day workshop to focus specifically on marketing, outreach, and recruitment. The workshop will highlight the importance of these functions and how to improve coordination. [May 11, 2006]

C. EPA and states will explore the possibility of developing a brochure, fact sheet, and/or slide presentation materials that states can customize for outreach purposes. In addition, EPA will produce standard language about Performance Track and state performance-based programs that interested states may use in their publications. [Ongoing]

D. EPA and states will develop an online catalog identifying those sectors that may be of greatest interest for recruitment each year by EPA and states. Sample criteria for selection of sector candidates include a strong economic presence or high profile, significant progress in improving environmental performance, or opportunities for engaging facilities in efforts to address priority environmental problems. [Ongoing]

4. Continue Work of ECOS/EPA Performance-Based Environmental Program Workgroup

ECOS and EPA workgroup members will continue to work collaboratively to implement the recommendations for Performance Track and state performance-based environmental programs. The workgroup will be led by the chair of the ECOS Cross-media Committee and EPA's Director of the National Center for Environmental Innovation, with members drawn from State and EPA program offices, Performance Track, and state performance-based environmental programs. The workgroup will meet on a regular basis to sustain focus and energy, and will report periodically to the ECOS President, EPA Administrator, and EPA's Innovation Action Network (IAN), comprised of the Agency's Deputy Assistant and Associate Administrators, Deputy Regional Administrators, and the Co-chairs of the ECOS Cross-media Committee. In addition, workgroup reports will be shared with state performance program staff and through regular EPA/state monthly calls.

Dated: May 10, 2006.

Robert S. Benson,

Acting Director, Office of Business and Community Innovation.

[FR Doc. E6–7333 Filed 5–12–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act; Meeting

DATE & **TIME:** Thursday, May 18, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and approval of minutes.

Advisory Opinion 2006–15: TransCanada Corporation by counsel, Jonathan D. Simon. Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–4581 Filed 5–11–06; 2:34 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Bckground.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to mmenchik@omb.eop.gov

Final approval under OMB delegated authority of the extension for three years, without revision, of the following collections of information:

1. Report title: Notice Requirements in Connection with Regulation W (12 CFR Part 223 Transactions Between Member Banks and Their Affiliates)
Agency form number: Reg W
OMB control number: 7100–0304
Frequency: Event–generated
Reporters: Insured depository institutions and uninsured member banks
Estimated annual reporting hours: 250 hours
Estimated average hours per response: Loan participation renewal notice, 2 hours; Acquisition notice, 6 hours; Internal corporate reorganization transactions notice, 6 hours; and Section 23A additional exemption notice, 10 hours.
Estimated number of respondents: 45
General description of report: This information collection is required to evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c(f) and 371c–1(e)). Confidential and proprietary information collected for the purposes of the Loan Participation Renewal notice 12 CFR 223.15(b)(4) may be protected under the authority of the Freedom of Information Act (5U.S.C. § 552(b)(4) and (b)(8)). Section (b)(4) exempts information deemed competitively sensitive from disclosure and Section (b)(8) exempts information ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.''
Abstract: Effective April 1, 2003, the Federal Reserve issued Regulation W to implement comprehensively sections 23A and 23B. The Federal Reserve decided to issue such a rule for several reasons. First, the regulatory framework established by the Gramm–Leach–Bliley Act emphasizes the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. In addition, adoption of a comprehensive rule simplified the interpretation and application of sections 23A and 23B, ensured that the statute is consistently interpreted and applied, and minimized burden on banking organizations to the extent consistent with the statute's goals. Finally, issuing a comprehensive rule allowed the public an opportunity to comment on Federal Reserve interpretations of sections 23A and 23B. On December 12, 2002, the Federal Reserve published a Federal Register notice (67 FR 76603) adopting Reg W.

On March 3, 2006, the Federal Reserve published a notice soliciting comment on this proposal, Regulation W (71 FR 10971). The comment period ended on May 2, 2006. The Federal Reserve did not receive any comments.

2. Report title: Recordkeeping and Disclosure Requirements of Regulation Z
Agency form number: Reg Z
OMB control number: 7100–0199
Frequency: Event–generated
Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act.
Annual reporting hours: Open–end credit—initial disclosure, 28,463 hours; open–end credit—updated disclosures, 41,250 hours; periodic statements, 125,952 hours; error resolution—credit cards, 22,260 hours; error resolution—other open–end credit, 1,312 hours; credit & charge card—solicitations and applications, 29,952 hours; home equity plans—applications disclosure, 13,983 hours; home equity plan—restrictions disclosure, 354 hours; closed–end credit disclosures, 351,354 hours; HOEPA pre–closing disclosures, 425 hours; and advertising, 2,733 hours.
Estimated average hours per response: Open–end credit— initial disclosure, 1.5 minutes; open–end credit—updated disclosures, 1 minute; periodic statements, 8 hours; error resolution—credit cards, 30 minutes; error resolution—other open–end credit, 30 minutes; credit & charge card—solicitations and applications, 8 hours; home equity plans—applications disclosure, 1.5 minutes; home equity plan—restrictions disclosure, 3 minutes; closed–end credit disclosures, 6.5 minutes; HOEPA pre–closing disclosures, 3 minutes; and advertising rules, 25 minutes.
Number of respondents: State member banks, 947; branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), 287; commercial lending companies owned or controlled by foreign banks, 3; and organizations operating under section 25 or 25A of the Federal Reserve Act, 75.
General description of report: This information collection is mandatory (15 U.S.C. 1601, 1604(a)). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Transaction– or account–specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and the consumer. General disclosures of credit terms that appear in advertisements or take–one applications are available to the public.
Abstract: TILA and Regulation Z require disclosure of the costs and terms of credit to consumers. For open–end credit (revolving credit accounts), creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of changes in terms, and statements of rights concerning billing error procedures. There are special disclosure requirements for credit and charge card applications and solicitations, as well as for home equity plans. For closed–end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required of certain products, such as reverse mortgages, certain variable rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising.

On March 3, 2006, the Federal Reserve published a notice soliciting comment on this proposal, Regulation Z (71 FR 10971). The comment period ended on May 2, 2006. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, May 9, 2006.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E6–7303 Filed 5–12–06; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than May 30, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Gary Pfrang, Goff, Kansas; to acquire voting shares of Farmers State Bankshares, Inc., and thereby indirectly acquire voting shares of The Farmers State Bank, both of Circleville, Kansas.

Board of Governors of the Federal Reserve System, May 9, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–7295 Filed 5–12–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. Lloyds TSB Bank PLC, and Lloyds TSB Group PLC, both of London, England, to engage *de novo* through their subsidiary, Hill Samuel, Inc. (to be renamed Lloyds TSB Rail Capital, Inc., New York, New York), in personal property leasing and related lending activities, pursuant to sections 225.28(b)(1) and (b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E6–7294 Filed 5–12–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

TIME AND DATE: 2 p.m., Wednesday, May 17, 2006.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to Public

(1) Oral Argument in the matter of Evanston Northwestern Healthcare Corporation *et al.*, Docket 9315.

Portion Closed to the Public

(2) Executive Session to follow Oral Argument in Evanston Northwestern Healthcare Corporation *et al.,* Docket 9315.

CONTACT PERSON FOR MORE INFORMATION: Mitch Katz, Office of Public Affairs: (202) 326–2180, Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary, (202) 326–2514.

[FR Doc. 06–4586 Filed 5–11–06; 3:55 pm]

BILLING CODE 6750–01–M

GOVERNMENT ACCOUNTABILITY OFFICE

Appointments to the Medicare Payment Advisory Commission

AGENCY: Government Accountability Office (GAO)

ACTION: Notice of appointments.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPac) and gave the Comptroller General responsibility for appointing its members. This notice announces four new appointments and two reappointments to fill the vacancies occurring this year.

DATES: Appointments are effective May 1, 2006 through April 30, 2009.

ADDRESSES: *GAO:* 441 G Street, NW, Washington, DC 20548; *MedPac:* 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: *GAO:* Office of Public Affairs, (202) 512–4800; *MedPac:* Mark E. Miller, Ph.D., (202) 220–3700.

SUPPLEMENTARY INFORMATION: To fill this year's vacancies I am announcing the following:

Newly appointed members are Mitra Behroozi, J.D., executive director, 1199SEIU Benefit and Pension Funds; Karen R. Borman, M.D., professor of surgery and vice-chair for surgical education, University of Mississippi Medical Center, Ronald D. Castellanos, M.D., physician, Southwest Florida Urologic Associates; and Douglas Holtz-Eakin, Ph.D., director, Maurice R. Greenberg Center for Geoeconomic Studies and Paul A. Volcker Chair in International Economics, Council on Foreign Relations.

Reappointed members are Glenn M. Hackbarth, J.D. (chair), independent consultant; and Robert D. Reischauer, Ph.D. (vice chair), president, the Urban Institute.

(Sec. 4022, Pub. L. 105–33, 111 State. 251, 350)

David M. Walker,

Comptroller General of the United States.

[FR Doc. 06–4486 Filed 5–12–06; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Support, Training and Capacity-Building for Infectious Disease Surveillance in the Republic of Panama and Other Countries in Central America

AGENCY: Office of the Secretary, Office of Public Health Emergency Preparedness.

ACTION: Notice.

Announcement Type: Single-Source, Cooperative Agreement.

Funding Opportunity Number: Not applicable.

Catalog of Federal Domestic Assistance Number: The Office of Management and Budget (OMB) Catalog of Federal Domestic Assistance number is pending.

SUMMARY: This is a project to enhance the surveillance, epidemiological investigation, and laboratory diagnostic capabilities in Panama and other

selected countries in Latin America that are at risk for an avian influenza (H5N1) outbreak. Such enhancements will help establish an early-warning system that could prevent and contain the spread of a highly pathogenic avian influenza to the United States and enhance our nation's preparedness for a possible human influenza pandemic.

DATES: To receive consideration, applications must be received no later than 5 p.m. Eastern Time on June 29, 2006.

ADDRESSES: Applications must be received by the Office of Grants Management, Office of Public Health and Science (OPHS), Department of Health and Human Services, 1101 Wootten Parkway, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lily O. Engstrom, Senior Policy Advisor to the Assistant Secretary for Public Health Emergency Preparedness, Office of Public Health Emergency Preparedness, Department of Health and Human Services at 202.205.2882.

SUPPLEMENTARY INFORMATION: In the last century, three influenza pandemics have struck the United States and the world, and viruses from birds contributed to all of them. In 1918, the first pandemic killed over 500,000 Americans and more than 20 million people worldwide. The pandemic of 1918 infected one-third of the U.S. population and reduced American life expectancy by 13 years. Following the 1918 outbreak, influenza pandemics in 1957 and 1968 killed tens of thousands of Americans and millions across the world. The recent limited outbreak of Severe Acute Respiratory Syndrome (SARS) suggests the danger that a modern pandemic would present.

The H5N1 strain of avian flu has become the most threatening influenza virus in the world, and any large-scale outbreak of this disease among humans would have grave consequences for global public health. Influenza experts have warned that the re-assortment of different H5N1 viruses over the past seven years greatly increases the potential for the viruses to be transmitted more easily from person to person. Medical practitioners have also discovered several other, new avian viruses that can be transmitted to humans.

The U.S. Government is concerned that a new influenza virus could become efficiently transmissible among humans. Now spreading through bird populations across Asia, Europe, the Middle East and, most recently, Africa, the H5N1 strain has infected domesticated birds such as ducks and chickens and long-range migratory birds. In 1997, the first recorded H5N1 outbreak in humans took place in Hong Kong. H5N1 struck again in late 2003 and has, as of May 5, 2006, resulted in 206 confirmed cases and 114 deaths in nine countries, a 55 percent mortality rate. As of now, the H5N1 avian flu is primarily an animal disease; H5N1 infection in humans has been the result of contact with sick poultry. Unless people come into direct, sustained contact with infected birds, it is unlikely they will contract the disease. The concern is that the virus will acquire the ability for sustained transmission among humans.

In the fight against avian and pandemic flu, early detection is the first line of defense. A pandemic is like a forest fire. If caught early, it might be extinguished with limited damage. But if left undetected, it can grow into an inferno that spreads quickly. The President has charged the Federal Government to take immediate steps to ensure early warning of an avian flu outbreak among animals and humans anywhere in the world. It is in the interest of the U.S. Government to help establish early-warning surveillance systems and laboratory capabilities in various regions of the world that would enable early detection, reporting, identification and investigation of any H5N1 outbreaks. The development of such capabilities could make a significant difference in preventing and containing the spread of an avian influenza pandemic to the United States.

On November 1, 2005, President Bush announced the *National Strategy for Pandemic Influenza,* and the following day Secretary of Health and Human Services, Michael O. Leavitt, released the *HHS Pandemic Influenza Plan.* The President directed all relevant Federal Departments and agencies to take steps to address the threat of avian and pandemic influenza. Drawing on the combined efforts of Government officials, the public health, medical, veterinary, and law-enforcement communities, as well as the private sector, this strategy is designed to meet three critical goals: Detecting human or animal outbreaks that occur anywhere in the world; protecting the American people by stockpiling vaccines and antiviral drugs, while improving the capacity to produce new vaccines; and preparing to respond at the Federal, State, and local levels in the event an avian or pandemic influenza reaches the United States. The *U.S. National Strategy for Pandemic Influenza* is available at *http://www.pandemicflu.gov.*

One of the primary objectives of both the *National Strategy and the HHS Pandemic Influenza Plan* is to leverage global partnerships to increase preparedness and response capabilities around the world (with the intent of stopping, slowing or otherwise limiting the spread of a pandemic to the United States.'' [1] Pillars Two and Three of the *National Strategy* set out clear goals of ensuring the rapid reporting of outbreaks and containing such outbreaks beyond the borders of the United States, by taking the following actions:

- Working through the International Partnership on Avian and Pandemic Influenza, as well as through other political and diplomatic channels, to ensure transparency, scientific cooperation and rapid reporting of avian and human influenza cases;
- Supporting the development of the proper scientific and epidemiological expertise in affected regions to ensure early recognition of changes in the pattern of avian or human influenza outbreaks;
- Supporting the development and sustainment of sufficient host-country laboratory capacities and diagnostic reagents in affected regions, to provide rapid confirmation of cases of influenza in animals and humans;
- Working through the International Partnership to develop a coalition of strong partners to coordinate actions to limit the spread of an influenza virus with pandemic potential beyond the location where it is first detected; and
- Providing guidance to all levels of Government in affected nations on the range of options for infection-control and containment.

We rely upon our international partnerships with the United Nations (UN), international organizations, foreign governments and private non-profit organizations to amplify our efforts and will engage them on both a multilateral and bilateral basis. Our international effort to contain and mitigate the effects of an outbreak of pandemic influenza is a central component of our overall strategy. In many ways, the character and quality of the U.S. response and that of our international partners could play a determining role in the magnitude and severity of a pandemic.

The International Partnership on Avian and Pandemic Influenza, launched by President Bush at the UN General Assembly in September 2005, stands in support of multinational organizations and National Governments. Members of the

[1] National Strategy for Pandemic Influenza, p. 2.

Partnership have agreed that the following 10 principles will guide their efforts:

1. International cooperation to protect the lives and health of our people;
2. Timely and sustained, high-level, global political leadership to combat avian and pandemic influenza;
3. Transparency in reporting of influenza cases in humans and in animals caused by virus strains that have pandemic potential, to increase understanding and preparedness, especially to ensure rapid and timely response to potential outbreaks;
4. Immediate sharing of epidemiological data and samples with the World Health Organization (WHO) and the international community to detect and characterize the nature and evolution of any outbreaks as quickly as possible by utilizing, where appropriate, existing networks and mechanisms;
5. Rapid reaction to address the first signs of accelerated transmission of H5N1 and other highly pathogenic influenza strains so that appropriate international and national resources can be brought to bear;
6. Prevention and containment of an incipient epidemic through capacity-building and in-country collaboration with international partners;
7. Working in a manner complementary to and supportive of expanded cooperation with and appropriate support of key multilateral organizations (including the WHO, the UN Food and Agriculture Organization (FAO) and the World Organization for Animal Health [OIE]);
8. Timely coordination of bilateral and multilateral resource allocations; dedication of domestic resources (human and financial); improvements in public awareness; and development of economic and trade contingency plans;
9. Increased coordination and harmonization of preparedness, prevention, response and containment activities among nations, complementing domestic and regional preparedness initiatives and encouraging, where appropriate, the development of strategic regional initiatives; and
10. Actions taken based on the best available science.

Through the Partnership and other bilateral and multilateral initiatives, we will promote these principles and support the development of an international capacity to prepare, detect and respond to an influenza pandemic.

In support of the President's *National Strategy* and consistent with the principles of the International Partnership, the program funded by this cooperative agreement intends to combine the efforts and the resources of the Department of Health and Human Services (HHS) and those of other public and private organizations to enhance outbreak surveillance and investigation capacity in affected or at-risk regions of the world. For example, HHS will be collaborating with the Institut Pasteur and its network of research and surveillance institutes to detect, identify, report and investigate any H5N1 outbreaks in S.E. Asia and Africa. HHS intends, with this proposed cooperative agreement, to collaborate similarly with the Gorgas Memorial Institute for Health Studies (GMI) to enhance outbreak surveillance and investigation capacity in Panama and other countries in Central America.

To achieve enhanced laboratory capacity at GMI in support of influenza-like illness (ILI) surveillance, this cooperative agreement will fund the following:

- Costs connected with the shipment and testing of ILI surveillance samples from Panama and other countries in Central America;
- Costs for GMI to undertake surveillance for H5N1 avian influenza in Panama and other countries in Central America. This component of the agreement will include building field-investigation as well as laboratory capacity;
- Enhanced interoperable communications between GMI and HHS agencies, the WHO Secretariat and WHO Regional Office of the Americas/ the Pan American Health Organization (PAHO);
- A portion of annual maintenance costs for the Biosafety-Level (BSL)–3 laboratory at GMI, once it is operational;
- Installation of appropriate enhancements of physical security at GMI to ensure that only authorized persons have access to the BSL–3 suite and to safeguard the equipment and collections of virus samples kept in the laboratory; and
- Support of a post-doctoral position for a well credentialed scientist in the GMI laboratory to focus exclusively on influenza surveillance in Panama and other countries in Central America.

No funds provided under this cooperative agreement may be used to support any activity that duplicates another activity supported by any component of HHS. Funds provided under this cooperative agreement may not be used to supplant funding provided by other sources. All funded activities must be coordinated with the Office of Public Health Emergency Preparedness (HHS), with the respective National Ministries of Health and, where feasible, with the Medical Entomology Research and Training Unit Guatemala (MERTU/G), a research unit of the HHS Centers for Disease Control and Prevention (CDC), and with the U.S. Naval Medical Research Unit (NAMRU–1) in Lima, Peru, a research unit of the U.S. Department of Defense.

I. Funding Opportunity Description

Authority: Sections 301, 307, 1701 and 2811 of the Public Health Service Act, 42 U.S.C. 241, 2421, 300u, 300hh–11.

Purpose: The purposes of the program are to accomplish the following:

- Enhance cooperation between the HHS and GMI to support and increase influenza outbreak investigation, surveillance, and training capacity in Panama and other countries in Central America;
- Enhance laboratory capacities for H5N1 diagnosis in GMI's Influenza-Like Illness (ILI) surveillance program;
- Enhance and expand GMI's capacity to conduct human and animal surveillance activities in Panama and other countries in Central America;
- Enhance and expand the training capacity for H5N1 avian influenza surveillance and epidemiology within Panama and other Central American countries, as well as provide and expand biosafety and biosecurity training for the BSL–3 facilities at GMI (once such facilities are completed);
- Enhance communications and interoperable connectivity between GMI, the WHO Secretariat, PAHO, HHS and its agencies; and
- Enhance security at the BSL–3 laboratory and related physical plant for GMI.

Measurable outcomes of the program will be in alignment with the President's *National Strategy* and the principles of the International Partnership on Avian and Pandemic Influenza, and one (or more) of the following performance goal(s) for the agency pursuant to the President's initiative on pandemic influenza preparedness:

- To detect animal and human outbreaks before they spread around the world;
- To take immediate steps to ensure early warning of an avian flu outbreak among animals or humans in affected regions; and
- To strengthen a new international partnership on avian influenza.

Grantee Activities

Grantee activities for this program are as follows:

- Enhance laboratory capacities for H5N1 diagnosis in GMI, based on the enhancement of diagnostic test

sensitivity, on testing an increased number of in-country samples as well as samples from other countries in Central America;

• Enhance and expand training capacity for H5N1 surveillance and epidemiology in Panama and other countries in Central America;

• Support surveillance for influenza-like illness (ILI), severe pneumonia and other respiratory diseases, carried out through and/or on behalf of the respective Ministries of Health of Panama and other Central American countries;

• Strengthen the capacity for early detection and early warning of avian influenza outbreaks in Panama and other countries in Central America;

• Provide support (financial and technical) to systematic, extensive epidemiological and viral investigations following any confirmed H5N1 human or animal cases in Panama and other countries in Central America; and

• Where appropriate, coordinate activities conducted under this cooperative agreement with member institutes of the Reseau International des Instituts Pasteur in the Americas, with MERTU/G and with NAMRU–1.

GMI will share all influenza virus information obtained or developed as a result of the foregoing activities or other activities funded under this cooperative agreement with HHS, as well as within the WHO Global Influenza Network and WHO Collaborating Centers for Influenza. As part of its proposal, GMI shall submit a plan for ensuring the sharing of such information in a timely, accurate, thorough and reliable manner with HHS and the WHO. Such plan will also address the sharing with HHS of specimens and other viral material obtained by GMI as a result of activities funded under this cooperative agreement.

This cooperative agreement will provide limited and specific funding, as detailed below, for the following activities:

• Enhanced communications and interoperable connectivity between GMI and HHS agencies, as well as with the WHO Secretariat and PAHO.

The occurrence of A/H5N1 avian influenza outbreaks throughout S.E. Asia, Eastern and Western Europe and several countries on the African continent makes clear the swift spread of the virus to various regions of the world. Scientists and public health experts have predicted the arrival of the H5N1 virus in the Americas sometime this summer or fall. It is therefore essential that GMI have the capacity to communicate (by voice, data and video) with the WHO Secretariat, HHS (including both CDC and the National Institutes of Health [NIH]) and PAHO in real time and at high speed. This enhanced capability will enable the GMI laboratories to consult with scientific experts around the world and provide important disease surveillance data in a timely manner. Rapid advancements in the understanding of A/H5N1 and other emerging diseases are often heavily dependent on communications technology.

Funding for this activity, in the amount of $54,000, will support the purchase of hardware and software and the installation required to develop the interoperable connectivity. GMI will provide matching funds in the amount of $54,000 for the upgrading of Internet capabilities and creating a special room for communications equipment. This cooperative agreement will also support maintenance costs for three years, at $10,000 per year. GMI will also provide $10,000 per year for three years for maintenance costs (total of $30,000).

• Enhancements of laboratory capacity at GMI.

Once the BSL–3 facility is near completion, GMI will have to acquire various laboratory equipment to conduct the type of research and sample testing that require this level of biosecurity. This enhanced laboratory capacity will greatly facilitate the identification of H5N1 in humans and animals as well as other viruses responsible for other infectious, respiratory diseases.

This cooperative agreement will fund laboratory equipment in the amount of $485,000 for the first year and $100,000 for the second year. GMI will provide cost-sharing in the amount of $100,000 for the first year only.

• Security enhancements to BSL–3 laboratory and related physical plant for GMI.

A BSL–3 laboratory at GMI will substantially enhance capacity in Panama and Central America to isolate and work with the A/H5N1 virus and other emerging infectious diseases. It is essential that the physical security (including biosecurity and entry-control systems) for the BSL–3 facility be sufficient to ensure the integrity of the laboratory and prevent unauthorized access.

This cooperative agreement will provide one-time funding in the amount of $50,000 for the first year for costs associated with acquiring and installing entry-control systems and other physical-security enhancements (including vehicular barriers, cameras, monitors and locking devices) for the BSL–3 facility. GMI will provide matching funds in the amount of $50,000 for a back-up power plant.

• Support for an international biosafety/biosecurity technical advisor/consultant for the new BSL–3 laboratory suite at GMI.

Since BSL–3 biosafety/biosecurity practices are complicated and require 100 percent compliance at all times that the laboratory is operational, it is essential that GMI and its employees have access to an international technical advisor/consultant with substantial biosafety/biosecurity experience. This will ensure the safe and efficient operation of the laboratory and provide critically important on-the-job training to GMI scientists and technicians who work in the BSL–3 facility.

This cooperative agreement will provide funding in the amount of $50,000 per year for three years.

• Human and animal influenza surveillance capacity-building in Panama and other countries in Central America. A/H5N1 is an avian disease, which makes animal sampling essential to any meaningful surveillance program. GMI has established working relationships with the appropriate health and agriculture authorities in various Central American countries. Coupled with its resources and technical capabilities, GMI is, therefore, uniquely qualified to undertake animal and human H5N1 surveillance in these countries, especially upon completion of its BSL–3 laboratory.

Funding for animal and human ILI surveillance capacity building will be $125,000 for the first year and $250,000 for each of the following two years. GMI will cost-share by paying for laboratory and field epidemiology technicians, reagents, supplies and transport.

• Enhancement of capacity for training personnel in influenza (particularly H5N1) and ILI surveillance, diagnostics and epidemiological investigations in Panama and other Central American countries.

GMI is also an important training asset in the region and can leverage existing and new programs to maximize training opportunities. To ensure that there are sufficient numbers of trained personnel to carry out the surveillance, diagnosis and outbreak investigations of influenza, especially H5N1, and ILI illnesses, GMI must provide training in virology laboratory procedures and epidemiological investigations to include not only personnel in Panama but also trainees from other countries in Central America (and, if feasible, Colombia and other Andean countries).

Total funding for training of Panamanian nationals will be $125,000

for three years ($25,000 in the first year; $50,000 for each of the following two years). Training of nationals from other Central American countries will be $200,000 per year for the second and third year of the project.

• In order to ensure that the GMI Laboratory will adequately support a number of the activities undertaken pursuant to this cooperative agreement, some additional research capacity is required to increase the laboratory's capability to respond in a timely manner to developments in the field. In this regard, GMI will recruit and fill a post-doctoral position with a scientist who will have responsibilities in influenza research.

Funding for this activity will be $30,000 per year for the second and third year of the project. GMI will be providing $30,000 in matching funds and seeking $30,000 in matching funds from the Panamanian Science and Technology Secretariat.

HHS, particularly the Office of Public Health Emergency Preparedness, will be substantially involved with the design and implementation of the described grantee activities. HHS staff activities for this program are as follows:

• Provide expert assistance in the design, implementation and delivery of instruction to individuals selected for epidemiology training and laboratory-support training;

• Provide liaison through HHS employees at U.S. Embassies in host countries with local Ministries of Health and Agriculture and other host-nation organizations, as appropriate, and as relevant to the achievement of the purposes of this cooperative agreement; and

• Provide oversight of activities supported by funds awarded through this cooperative agreement.

II. Award Information

This project will be supported through the cooperative agreement mechanism. OPHEP anticipates making only one award. The anticipated start date is approximately August 1, 2006, and the anticipated period of performance is approximately August 1, 2006, through July 31, 2009.

OPHEP anticipates that approximately $775,000 will be available for the first 12-month budget period. The total amount that the Gorgas Memorial Institute for Health Studies may request is $2,079,000 for three years. The funds in this cooperative agreement will not support indirect costs.

Approximate Current Fiscal Year Funding: $775,000.00.

Approximate Total Project Period Funding: $2,079,000.00.

Funds under this cooperative agreement shall not apply to indirect costs.

Funding Breakdown:

Activity	Current year funding	Year 2 funding	Year 3 funding	Total funding per activity
Enhanced communications (matching funds)	$30,000	$12,000	$12,000	$54,000
Maintenance of communications systems (matching funds)	10,000	10,000	10,000	30,000
Surveillance of H5N1 avian influenza, ILI, and severe pneumonia in humans and animals (cost-sharing with HHS)	125,000	250,000	250,000	625,000
Enhancement of laboratory capacity at GMI (cost-sharing with HHS in Year 1 only)	485,000	100,000	.....	585,000
Virology laboratory and outbreak investigation training	25,000	250,000	250,000	525,000
Security and biosecurity enhancements (matching funds)	50,000	.....	.....	50,000
International biosafety/biosecurity technical advisor/consultant	50,000	50,000	50,000	150,000
Post-doctoral position (matching funds)	.....	30,000	30,000	60,000
Grand Total	775,000	702,000	602,000	2,079,000

Approximate Number of Awards: 1.

Ceiling of Individual Award Range: Maximum dollar amount for the first 12-month budget period is $775,000, and will not include payment of any indirect costs.

Throughout the project period, the commitment of HHS to the continuation of funding will depend on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), demonstrated commitment of the recipient to the principles of the International Partnership on Avian and Pandemic Influenza, and the determination that continued funding is in the best interest of the Federal Government and continues to meet the goals of the U.S. *National Strategy for Pandemic Influenza.*

III. Eligibility Information

1. Eligible Applicants

The only eligible applicant that can apply for this funding opportunity is the Gorgas Memorial Institute for Health Studies of Panama. The Republic of Panama has legacy of biomedical triumphs that began with the building of the Panama Canal. Recognizing the outstanding achievements of William Crawford Gorgas in eliminating Yellow Fever and controlling other tropical infections that made possible the construction of the Panama Canal, Panamanian President Belisario Porras proposed in 1920, the creation of the Gorgas Memorial Institute and Laboratories (GMI). GMI opened its doors in 1928, and since then has produced groundbreaking and internationally recognized work in the field of tropical medicine, emerging and re-emerging diseases.

As a public health organization and a research institution, GMI offers strengths in several areas that are essential to early detection, reporting, identification and investigation of human and animal influenzas, including H5N1.

• *Laboratory:* It has well-established laboratories of virology, parasitology, immunology, genomics, entomology and food and water chemistry. GMI is the national reference laboratory for malaria, tuberculosis and all viral and bacterial diseases. GMI also has departments of epidemiology and biostatistics, chronic disease studies, health policy, and health and human reproduction studies. In addition to all these areas of expertise, GMI is also the locus of the national human subjects committee (National Institutional Review Board). A BLS–3 laboratory currently under construction is part of a modernization plan that will significantly enhance the capability of GMI laboratories to work with highly pathogenic organisms, such as the more virulent strains of the H5N1 virus.

• *Scientific and technical expertise:* GMI is the national reference for influenza, dengue and other pathogenic viruses. It is the reference laboratory for Central America and Panama for HIV/

AIDS, measles, Hanta virus and viral encephalitides. Its parasitologists have worked continue to work in malaria, leishmania and Chagas' disease. GMI has a long and solid reputation in virology, easily confirmed by many distinguished virologists in the United States. The Gorgas Department of Virology has been extremely productive through its collaborations with the Yale University Arbovirus Research Unit, the University of Texas at Galveston and the CDC. GMI began working with influenza in 1976 and has contributed influenza isolates to the WHO, one of which is used in the current influenza vaccines.

• *Staffing:* GMI has 178 workers that include scientists, physicians, technical staff and administrative staff. GMI scientific and technical expertise resides in its excellent group of professionals, six of whom are Ph.D.s and eleven of whom are M.D.s. One of the physicians is a former Minister of Health. GMI has two veterinary physicians, and many technicians with master degrees in science. GMI has a specialist in georeference and a group trained in field isolation of dangerous organisms from animal tissues (developed during the Hanta virus epidemics). There is also an excellent administrative, medical library and informatics staff.

In addition to the factors described above, there are several others that make GMI such a choice partner in Central America for collaboration on H5N1 surveillance.

1. Human Travel Through Panama

The unique geographic characteristics of Panama and its transportation (air, sea and land) infrastructure make it an obligatory pass-through point for millions of travelers. Panama serves as the hub of the Americas for air travel, cargo transport and ship transits through the Panama Canal. It is also the land bridge for truck and bus transport of merchandise and travelers between South, Central and North America. Ten flights depart daily from Panama to different destinations in the United States, and many more to Mexico and countries in Central and South America. Every day, 40 ships cross the Panama Canal, and many more unload passengers and containers in Panamanian ports. Every day more than one hundred trucks and cars cross the Panama-Costa Rica border to transport passengers and cargo to destinations in Central and North America. These activities place Panama in a unique and important position to conduct surveillance of infectious diseases brought in by travelers and cargo, and to carry out epidemiological investigations of cases that emerge.

2. Bird and Animal Travel Through Panama

For the last three million years, Panama has served as a land bridge for migratory birds and a point for the exchange of land species between North and South America. Out of more than the approximately 600+ bird species in the Americas, more than 200 use Panama as a bridge for transit to South America and back to North America as part of their yearly migratory flights. Panama is the narrowest point of land in migratory flight patterns, which also make it a strategic point for the study of avian influenza and its movement in the Americas.

3. Strategic Partnerships

GMI has developed very close relations with the Smithsonian Tropical Research Institute (STRI) in Panama. STRI is the premiere research institution in the world dedicated to the investigation of the biology of the tropics. Scientists at GMI and STRI work on collaborative projects, and their respective directors meet regularly to discuss matters of common scientific interest. STRI has expressed significant interest in studying avian influenza in migratory birds and its impact on other resident and migratory species. GMI recently had conversations that led to the development of formal relations with the U.S. Department of Agriculture (USDA) in Panama. As a first step in this relationship, USDA requested and GMI agreed to train technicians in viral culture and isolation. The USDA will open a BLS–3 facility in Panama dedicated to the testing of commercial animals in the region, and GMI will collaborate in this effort. Gorgas, as a regional reference laboratory for HIV/AIDS, is in the process of developing a formal relationship with HHS/CDC–MERTU in Guatemala, and plans to explore the potential for developing a joint regional influenza surveillance program.

4. Historical Medical Collaboration Between the United States and Panama via GMI

American and Panamanian physicians and scientist have produced significant contributions since 1928, and those relationships continue up to present. This new relation will strengthen the concept of ''forward sentinel laboratories'' to detect pandemic and emerging diseases. It will also strengthen the positive image of the United States in the region.

2. Cost-Sharing or Matching Funds

Matching funds are required for this project. HHS will pay $2,079,000 or 88 percent of the total costs of $2,373,000 while GMI will provide $294,000 or 12 percent of total costs. Furthermore, GMI will also cost-share in expenses related to the surveillance of H5N1 virus, ILI and severe pneumonia in humans and animals by paying for laboratory and field epidemiology technicians, reagents, supplies and transport.

3. Other

If an applicant requests a funding amount greater than the ceiling of the award range, HHS will consider the application non-responsive, and the application will not enter into the review process. HHS will notify the applicant that the application did not meet the submission requirements.

Special Requirements

If the application is incomplete or non-responsive to the special requirements listed in this section, the application will not enter into the review process. HHS will notify the applicant that the application did not meet submission requirements.

• HHS will consider late applications non-responsive. Please see section on ''Submission Dates and Times.''

• Title 2 of the United States Code section 1611 states that ''an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting a grant, loan, or an award.''

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be requested by calling (240) 453–8822 or writing to the Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootten Parkway, Suite 550, Rockville, MD 20852. Applicants may also fax a written request to the OPHS Office of Grants Management at (240) 453–8823 to obtain a hard copy of the application kit. Applications must be prepared usingForm OPHS–1.

2. Content and Form of Submission

Application: Applicants must submit a project narrative in English, along with the application forms, in the following format:

• If possible, the length of the proposal should not exceed 50 pages;
• Font size: 12-point, unreduced;
• Single-spaced;
• Paper size: 8.5 by 11 inches;
• Page-margin size: One inch;
• Number all pages of the application sequentially from page one (Application

Face Page) to the end of the application, including charts, figures, tables, and appendices;

• Print only on one side of page; and

• Hold application together only by rubber bands or metal clips, and do not bind it in any way.

The narrative should address activities to be conducted over the entire project period and must include the following items in the order listed:

• *Understanding of the requirements.* The application shall include a discussion of your organization's understanding of the need, purpose and requirements of this cooperative agreement, as well as the President's *National Strategy* and the principles of the International Partnership on Avian and Pandemic Influenza. The discussion shall be sufficiently specific, detailed and complete to clearly and fully demonstrate that the applicant has a thorough understanding of all the technical requirements of this announcement.

• *A Project Plan.* The project plan must demonstrate that the organization has the technical expertise to carry out the work/task requirements of this announcement. The plan must contain sufficient detail to clearly describe the proposed means for conducting the ''Grantee Activities'' described in Section I, and shall include a complete explanation of the methods and procedures the applicant will use. The project plan shall include discussions of the following elements:

◦ Objectives;

◦ Methods to accomplish the purposes of the cooperative agreement and the ''Grantee Activities'';

◦ Detailed time line for accomplishment of each activity;

◦ Ability to respond to emergencies;

◦ Ability to respond to situations on weekends and after hours; and

◦ Coordination with HHS, the WHO Secretariat, PAHO, the FAO, and the OIE.

• *Staffing and Management Plan.* The applicant must provide a project staffing and management plan, which must include time lines and sufficient detail to ensure that it can meet the Federal Government's requirements in a timely and efficient manner.

◦ The applicant must provide resumes that identify the educational and experience level of any individual(s) who will perform in a key position and other qualifications to show the key individuals' ability to comply with the minimum requirements of this announcement;

◦ The applicant must provide a summary of the qualifications of non-key personnel. Resumes must be limited to three pages per person; and

◦ The proposed staffing plan must demonstrate the applicant's ability to recruit/retain/replace personnel who have the knowledge, experience, local-language skills, training and technical expertise commensurate with the requirements of this announcement. The plan must demonstrate the applicant's ability to provide bi-lingual personnel to train and mentor host-country participants.

• *Performance Measures.* The applicant must provide measures of effectiveness that will demonstrate accomplishment of the objectives of this cooperative agreement and progress toward the goals of the President's *National Strategy.* Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcomes. The applicant must submit a section on measures of effectiveness with its application, and they will be an element for evaluation. In addition, the applicant shall insert the following as measures of applicant's performance:

◦ Number of new epidemiologists actually trained and employed from each designated country;

◦ Number of new laboratorians actually trained in virologic techniques and employed in each designated country;

◦ Whether GMI establishes formal and reliable communication links with the WHO Global Outbreak Alert and Response Network (GOARN), the WHO Global Influenza Surveillance Network, and the equivalent animal-disease surveillance networks at the FAO and OIE;

◦ The number, accuracy, thoroughness and timeliness of reports to the WHO Global Influenza Surveillance Network from GMI;

◦ The number, accuracy, thoroughness, and timeliness of other notifications submitted to the WHO Secretariat and HHS regarding potential or actual outbreaks of ILI or other respiratory diseases in other countries in Central America; and

◦ The timely and successful appointment of a candidate for the post-doctoral position funded under this agreement.

• *Budget Justification.* The budget justification must comply with the criteria for applications. The applicant must submit, at a minimum, a cost proposal fully supported by information adequate to establish the reasonableness of the proposed amount.

The applicant may include additional information in the application appendices, which will not count toward the narrative page limit. This additional information includes the following:

• Curricula Vitae, Resumes, Organizational Charts, Letters of Support, etc.

An agency or organization is required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com,* or call 1–866–705–5711.

Additional requirements that could require submission of additional documentation with the application appear in section VI.2. Administrative and National Policy Requirements.

3. Submission Dates and Times

To be considered for review, applications must be received by the Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services by 5 p.m. Eastern Time on June 29, 2006. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The application due date in this announcement supercedes the instructions in the OPHS–1.

Submission Mechanisms

The Office of Public Health and Science (OPHS), which is serving as the awarding agency for the Office of Public Health Emergency Preparedness, provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines identified below will not be accepted for review. Applications which do not conform to the requirements of the cooperative agreement announcement will not be accepted for review and will be returned to the applicant.

Applications may be submitted electronically only via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or

electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the *http://www.Grants.gov* Web Site Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on the deadline date specified in the ''Submission Dates and Times'' section of this announcement using one of the electronic submission mechanisms specified below. All required hard copy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the ''Submission Dates and Times'' section of this announcement.

Applications will not be considered valid until all electronic application components, hard copy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

The applicant is encouraged to initiate electronic applications early in the application development process, and to submit prior to or early on the due date. This will allow sufficient time to address any problems with electronic submissions prior to the application deadline.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however, these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission, including all electronic application components, required hard copy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of its application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Electronic Submissions via the www.Grants.gov Web Site Portal

The Grants.gov Web Site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the cooperative agreement announcement as well as the application guidance provided within the Grants.gov application package to determine such requirements. Any required hard copy materials or documents that require a signature must be submitted separately via mail to the OPHS Office of Grants Management and, if required, must contain the original signature of an individual authorized to act for the applicant agency and to assume the obligations imposed by the terms and conditions of the cooperative agreement award.

Electronic applications submitted via the Grants.gov Web Site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must received by the due date specified above. Mail-In items may only include publications, resumes or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web Site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation as well as a copy of the entire application package for its records.

All applications submitted via the Grants.gov Web Site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web Site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web Site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web Site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web Site Portal, and the required hard copy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web Site Portal.

Applicants should contact Grants.gov regarding any questions or concerns about the electronic application process used by the Grants.gov Web Site Portal.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the ''Submission Dates and Times'' section of this announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

5. Funding Restrictions

Restrictions, which applicants must take into account while preparing the budget, are as follows:

- Alterations and renovations (A&R) are prohibited under grants/cooperative agreements to foreign recipients. ''Alterations and renovations'' are defined as work that changes the interior arrangements or other physical characteristics of an existing facility or of installed equipment so that it can be used more effectively for its currently designated purpose or adapted to an alternative use to meet a programmatic requirement. Recipients may not use funds for A&R (including modernization, remodeling, or improvement) of an existing building.
- Recipients may not use funds for planning, organizing or convening conferences.
- Reimbursement of pre-award costs is not allowed.
- Recipients may spend funds for reasonable program purposes, including personnel, travel, supplies, and services. Recipients may purchase equipment if deemed necessary to accomplish program objectives; however, *they must request prior approval in writing from HHS/OPHEP officials for any equipment whose purchase price exceeds $10,000 USD.*
- The costs generally allowable in grants/cooperative agreements to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the WHO Secretariat, HHS will not pay indirect costs (either directly or through sub-award) to organizations located outside the territorial limits of the United States, or to international organizations, regardless of their location.
- Recipients may contract with other organizations under this program; however, the applicant must perform a substantial portion of the project activities (including program management and operations) for which it is requesting funds. *Contracts will require prior approval in writing from HHS/OPHEP.*
- Recipients may not use funds awarded under this cooperative agreement to support any activity that duplicates another activity supported by any component of HHS.
- Applicants shall state all requests for funds in the budget in U.S. dollars. Once HHS makes an award, HHS will not compensate foreign recipients for currency-exchange fluctuations through the issuance of supplemental awards.
- The funding recipient must obtain annual audits of these funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant(s business management and fiscal capabilities regarding the handling of U.S. Federal funds.

6. Other Submission Requirements

None.

V. Application Review Information

1. Criteria

HHS will evaluate applications against the following factors:

Factor 1: Project Plan (35 Points)

HHS will evaluate the extent to which the proposal demonstrates that the organization has the technical expertise to carry out the work/task requirements described in this announcement. HHS will evaluate the applicant's project plan to determine the extent to which it provides a clear, logical and feasible technical approach to meeting the goals of this announcement in terms of workflow, resources, communications and reporting requirements for accomplishing work in each of the operational task areas, which HHS will evaluate as equally weighted sub-factors, as follows:

- Design and implementation of a recruitment program that identifies potential participants for training in epidemiology and laboratory procedures with specific focus on influenza and other acute respiratory infections;
- Work with HHS to design and implement a process that identifies local individuals who have experience, training or education relevant to conducting epidemiological surveys or laboratory procedures, recruits those individuals to participate in training, and creates a pool of highly qualified candidates for positions within the host-country Ministries of Health or Agriculture;
- Design and implement a training program that assigns selected participants to work under the tutelage of senior GMI scientists in support of ILI research, disease surveillance and public health activities;
- Train a minimum of one local person in epidemiology each year in Panama and three in other Central American countries (a minimum of four), and a minimum of one local person as a laboratorian skilled in influenza diagnostics each year in Panama and three in other Central American countries (a minimum of four); and
- Provide real-time notification of possible outbreaks of influenza and ILI in humans or animals, and submit notification to HHS, the WHO Secretariat, PAHO, the FAO, and the OIE.

Factor 2: Staffing and Management Plan (30 Points)

(a) *Personnel.* HHS will evaluate the relevant educational, work experience and local-language qualifications of key personnel, senior project staff, and subject-matter specialists to determine the extent to which they meet the requirements listed in this announcement.

(b) *Staffing Plan.* HHS will evaluate the staffing plan to determine the extent to which the applicants proposed organizational chart reflects proper staffing to accomplish the work described in this announcement, and the extent of the applicants ability to recruit/retain/replace personnel who have the knowledge, experience, local-language skills, training and technical expertise to meet requirements of the positions.

Factor 3: Performance Measures (20 Points)

HHS will evaluate the applicant's description of performance measures, including measures of effectiveness, to determine the extent to which the applicant proposes objective and quantitative measures that relate to the performance goals stated in the ''Purpose'' section of this announcement, including the goals of the President's *National Strategy*, and whether the proposed measures will accurately measure the intended outcomes.

Factor 4: Understanding of the Requirements (15 Points)

HHS will evaluate the extent of the applicant's understanding of the operational tasks identified in this announcement to ensure successful performance of the work in this project. Because the focus of the work will be on countries in Central America, the applicant must demonstrate an understanding of the cultural, ethnic, political and economic factors that could affect successful implementation of this cooperative agreement.

The applicant's proposal must also demonstrate understanding of the functions, capabilities and operating procedures of host-country Ministries of Health and Agriculture and international organizations such as the WHO and FAO, and describe the applicant's ability to work with and within those organizations. The applicant must also demonstrate an understanding of the U.S. *National Strategy for Pandemic Influenza* and a commitment to the principles of the International Partnership on Avian and Pandemic Influenza.

2. Review and Selection Process

HHS/OPHEP will review applications for completeness. An incomplete application or an application that is non-responsive to the eligibility criteria will not advance through the review process. HHS will notify applicants if their applications did not meet submission requirements.

An objective review panel, which could include both Federal employees and non-Federal members, will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

VI. Award Administration Information

1. Award Notices

The successful applicant will receive a Notice of Award (NoA). The NoA shall be the only binding, authorizing document between the recipient and HHS. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

2. Administrative and National Policy Requirements

A successful applicant must comply with the administrative requirements outlined in 45 CFR part 74 and part 92 as appropriate. The Fiscal Year 2006 Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the issuance shall clearly state the percentage and dollar amount of the total costs of the program or project to be financed with Federal money and the percentage and dollar amount of the total costs of the project or program to be financed by non-governmental sources.

3. Reporting Requirements

The applicant must provide HHS with an original, plus two hard copies, as well as an electronic copy of the following reports in English:

1. A quarterly progress report, due no less than 30 days after the end of each quarter of the budget period. The progress report for the third quarter of the year will serve as the non-competing continuation application. The quarterly progress report must contain the following elements:

a. Activities and Objectives for the Current Budget Period;

b. Financial Progress for the Current Budget Period;

c. Proposed Activity Objectives for the New Budget Period;

d. Budget;

e. Measures of Effectiveness; and

f. Additional Requested Information.

2. An annual progress report, due 90 days after the end of the budget period, which must contain a detailed summary of the elements required in the quarterly progress report;

3. Final performance reports, due no more than 90 days after the end of the project period; and

4. A Financial Status Report (FSR) SF–269 is due 90 days after the close of each 12-month budget period.

Recipients must mail the reports to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For program technical assistance, contact: Lily O. Engstrom, Senior Policy Advisor to the Assistant Secretary for Public Health Emergency Preparedness, Office of Public Health Emergency Preparedness, Department of Health and Human Services. Telephone: 202.205.4727. E-mail: *lily.engstrom@hhs.gov.*

For financial, grants management, or budget assistance, contact: Grants Management Specialist, Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootten Parkway, Suite 550, Rockville, MD 20857. Telephone: (240) 453–8822. E-Mail Address: *kcampbell@osophs.dhhs.gov.*

Dated: May 9, 2006.

Stewart Simonson,

Assistant Secretary for Public Health Emergency Preparedness, Department of Health and Human Services.

[FR Doc. E6–7325 Filed 5–12–06; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Modifications in Federal Matching Shares for Medicaid and the State Children's Health Insurance Program for Alaska for October 1, 2005 Through September 30, 2006 and October 1, 2006 Through September 30, 2007

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

SUMMARY: The revised Federal Medical Assistance Percentages and Enhanced Federal Medical Assistance Percentages for Alaska for Fiscal Years 2006 and 2007 have been calculated pursuant to section 6053(a) of the Deficit Reduction Act. These percentages will be effective from October 1, 2005 through September 30, 2006 and October 1, 2006 through September 30, 2007.

These revised Federal Medical Assistance Percentages for Alaska replace the percentages previously published for Fiscal Year 2006 (published November 24, 2004) and Fiscal Year 2007 (published November 30, 2005).

This notice announces the revised ''Federal Medical Assistance Percentages'' and ''Enhanced Federal Medical Assistance Percentages'' that we will use in determining the amount of Federal matching for State medical assistance (Medicaid) and State Children's Health Insurance Program (SCHIP) expenditures for Alaska. The

table gives the figure for Alaska, which is the only state affected by section 6053(a) of the Deficit Reduction Act.

Section 6053(a) of the Deficit Reduction Act of 2005 provides for a modification of Alaska's Medicaid FMAP for Fiscal Years 2006 and 2007. The provision permits a maintenance of the Fiscal Year 2005 FMAP for Fiscal Year 2006 and Fiscal Year 2007 if the 2006 or 2007 FMAPs as calculated pursuant to section 1905(b) of the Act are less than the 2005 FMAP. Since the calculated Fiscal Year 2006 and 2007 FMAPs for Alaska are less than the 2005 FMAP, Alaska's 2005 FMAP will apply for Fiscal Years 2006 and 2007.

Section 6053(a) applies to expenditures under Title XIX and Title XXI. Therefore, the Enhanced Federal Medical Assistance Percentages for Alaska for 2006 and 2007 will be calculated from Alaska's revised Federal Medical Assistance Percentages for 2006 and 2007.

Federal Medical Assistance Percentages are used to determine the amount of Federal matching for State expenditures for assistance payments for certain social services such as Temporary Assistance for Needy Families (TANF) Contingency Funds, Child Care Mandatory and Matching Funds for the Child Care and Development Fund, Title IV–E Foster Care Maintenance payments, Adoption Assistance payments, and State medical and medical insurance expenditures for Medicaid and the State Children's Health Insurance Program (SCHIP). However, the modification of the Federal Medical Assistance Percentages and the Enhanced Federal Medical Assistance Percentages under the Deficit Reduction Act of 2005 affect only medical expenditure payments under Title XIX and all expenditure payments for the State Children's Health Insurance Program under Title XXI. The Department believes that the percentages in this notice do not apply to payments under Title IV of the Act. In addition, the Title XIX statute provides separately for Federal matching of administrative costs, which is not affected by the Deficit Reduction Act of 2005.

The Deficit Reduction Act of 2005, section 6053(b) also instructs the Secretary of HHS to disregard Katrina evacuees and income attributable to them in calculating the FMAPs for states with a significant number of evacuees. This provision would affect the calculation of the Federal Medical Assistance Percentages for Fiscal Year 2008, which HHS will publish in Fall 2006.

DATES: *Effective Dates:* The percentages listed will be effective for Fiscal Year 2006 and Fiscal Year 2007.

FOR FURTHER INFORMATION CONTACT: Kate Bloniarz or Robert Stewart, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.778: Medical Assistance Program; 93.767: State Children's Health Insurance Program)

Dated: May 9, 2006.

Michael O. Leavitt,

Secretary of Health and Human Services.

FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES FOR ALASKA, EFFECTIVE OCTOBER 1, 2005–SEPTEMBER 30, 2006 (FISCAL YEAR 2006) AND OCTOBER 1, 2006–SEPTEMBER 30, 2007 (FISCAL YEAR 2007)

State	Federal medical assistance percentage	Enhanced federal medical assistance percentage
Alaska	57.58	70.31

[FR Doc. E6–7315 Filed 5–12–06; 8:45 am]

BILLING CODE 4154–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the Citizens' Health Care Working Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Citizens' Health Care Working Group (the Working Group) mandated by section 1014 of the Medicare Modernization Act.

DATES: A business meeting of the Working Group will be held on Tuesday, May 23, 2006; Wednesday, May 24, 2006; and, Thursday, May 25, 2006. Sessions on May 23 and May 24 will be from 8:30 a.m. to 4 p.m. The session on May 25 will begin at 8:30 a.m. and end at 2 p.m.

ADDRESSES: The meeting will take place at the conference room of the United Food and Commercial Workers International Union, in Washington, DC. The office is located at 1775 K Street, NW., Washington, DC 20006. The main receptionist area is located on the 7th floor; the conference room is located on the 11th floor. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Caroline Taplin, Citizens' health Care Working Group, at (301) 443–1514 or *caroline.taplin@ahrq.hhs.gov.* If sign language interpretation or other reasonable accommodation for a disability is needed, lease contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, at (301) 443–1144.

The agenda for this Working Group meeting will be available on the Citizens' Working Group Web site, *http://www.citizenhealthcare.gov.* Also available a that site is a roster of Working Group members. when a summary of this meeting is completed, it will also be available on the Web Site.

SUPPLEMENTARY INFORMATION: Section 1014 of Public Law 108–173, (known as the Medicare Modernization Act) directs the Secretary of the Department of Health and Human Services (DHHS), acting through the Agency for Healthcare Research and Quality, to establish a Citizens' Health Care Working Group (Citizen Group). This statutory provision, codified at 42 U.S.C. 299 n., directs the Working Group to: (1) Identify options for changing our health care system so that every American has the ability to obtain quality, affordable health care coverage; (2) provide for a nationwide public debate about improving the health care systems; and, (3) submit is recommendations to the President and the Congress.

The Citizens' Health Care Working Group is composed of 15 members: the Secretary of DHHS is designated as a member by statute and the Comptroller General of the U.S. Government Accountability Office (GAO) was directed to name the remaining 14 members whose appointments were announced on February 28, 2005.

Working Group Meeting Agenda

The Working Group business meeting on May 23rd through May 25th will be devoted to ongoing Working Group business. The principal topic to be addressed will be the development of the Working Group's interim recommendations.

Submission of Written Information

To fulfill its change describe above, the Working Group has been conducting a public dialogue on health care in America through public meetings held across the country and through comments received on its Web site, *http://www.citizenshealthcare.gov.* The Working Group invites members of the public to the Web site to be part of that dialogue.

Further, the Working Group will accept written submissions for consideration at the Working Group business meeting listed above. In general, individuals or organizations wishing to provide written information for consideration by the Citizens' Health Care Working Group at this meeting should submit information electronically to *citizenshealth@ahrq.gov.*

This notice is published less than 15 days in advance of the meeting due to logistical difficulties.

Dated: May 10, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–4573 Filed 5–11–06; 1:38 pm]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: National Institute for Occupational Safety and Health (NIOSH) Prevention of Airborne Infections in Occupational Settings, RFA–OH–06–002

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Prevention of Airborne Infections in Occupational Settings, RFA–OH–06–002.

Times And Dates:

7 p.m.–9 p.m., June 5, 2006 (Closed).
8 a.m.–5 p.m., June 6, 2006 (Closed).
8 a.m.–5 p.m., June 7, 2006 (Closed).

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW, Washington, DC 20036, telephone (202) 776–9279.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to Be Discussed: The meeting will include the review, discussion, and evaluation of research grants in response to NIOSH RFA OH–06–002, Prevention of Airborne Infections in Occupational Settings.

For More Information Contact: Bernadine B. Kuchinski, Scientific Review Administrator, Robert A. Taft Laboratory, 4676 Columbia Parkway, MS C–7, Cincinnati, OH 45226, phone (513) 533–8511, e-mail *bbk1@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 8, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–7319 Filed 5–12–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Health Promotion and Disease Prevention Grant Program: Correction

ACTION: Notice; correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on April 5, 2006. The document contained one error.

FOR FURTHER INFORMATION CONTACT: Alberta Becenti, Health Promotion and Disease Prevention Consultant, Indian Health Service, Reyes Building, 801 Thompson Avenue, Suite 307, Rockville, MD 20852, Telephone (301) 443–4305. (This is not a toll-free number.)

Correction

In the **Federal Register** of April 5, 2006, in FR Doc. 06–3257, on page 17111, in the second column, correct by deleting Section VIII. Other Information in its entirety.

Dated: May 9, 2006.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 06–4506 Filed 5–12–06; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Availability of Draft Guideline; Comment Request

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Availability of Guideline—Opportunity for Comment.

SUMMARY: The Center for Substance Abuse Treatment is seeking public comments on the revised draft Guidelines for the Accreditation of Opioid Treatment Programs. These guidelines elaborate upon the Federal opioid treatment standards set forth under 42 CFR part 8.

DATES: Comments should be submitted by July 14, 2006.

ADDRESSES: The draft guideline may be obtained directly from *http://www.dpt.samhsa.gov*, or by contacting the Division of Pharmacologic Therapy with the information provided below. Comments should be submitted to the Division of Pharmacologic Therapy, Center for Substance Abuse Treatment, 1 Choke Cherry Road, Room 2–1080, Rockville, MD, 20857; Attention: DPT Federal Register Representative. Comments may also be faxed to 240–276–2710 or e-mailed to *OTP–Guidelines@samhsa.hhs.gov*. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sarah Crowley, Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapy, 1 Choke Cherry Road, Room 2–1080, Rockville, MD 20857, (240–276–2704, e-mail: *Sarah.Crowley@samhsa.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Federal Regulations codified under 42 CFR part 8 set forth requirements for opioid treatment programs (''OTPs''), also known as methadone treatment programs. The regulations, which were the subject of a Final Rule published in the **Federal Register** on January 17, 2001, (''Final Rule'' 66 FR 4075–4102, January 17, 2001) include standards for opioid treatment. OTPs are required to provide treatment in accordance with these standards as a basis for CSAT certification. These standards address patient admission requirements,

medical and counseling services, drug testing, and other requirements.

The final rule also established an accreditation requirement. Each OTP is required to obtain and maintain accreditation from an accreditation organization approved by SAMHSA under 42 CFR part 8. Accreditation organizations that provide OTP accreditation under the final rule are required to apply for and obtain SAMHSA approval. Under 42 CFR 8.3(a)(3), each accreditation organization must develop a set of accreditation elements or standards together with a detailed discussion of how these elements will assure that each OTP surveyed by the accreditation organization is meeting each for the Federal opioid treatment standards.

The Guidelines for the Accreditation of Opioid Treatment Programs, are intended to guide accreditation organizations in preparing their accreditation standards. In addition, the Guidelines provide useful elaborations on the regulatory standards set forth under 42 CFR part 8. As such, the updated guidelines will assist both accreditation organizations and OTPs in complying with regulatory requirements.

Prepared initially in 1997, Guidelines for the Accreditation of Opioid Treatment Programs are being updated now to reflect new information and research in the field of opioid assisted treatment. CSAT convened an expert panel to provide the draft guideline now being circulated for comment. CSAT is soliciting comments on the guideline from the public, and expects comments from OTPs, accreditation organizations, patients, the medical community and other interested parties.

CSAT will consider all comments submitted by July 16, 2006; in order to publish a revised guideline; however, CSAT will continuously accept and consider comments for future consideration.

Dated: May 8, 2006.

Anna Marsh,

Director of OPS, SAMHSA.

[FR Doc. 06–4498 Filed 5–12–06; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Request for Hearing on a Decision in Naturalization Proceedings under Section 336; Form N–336. OMB Control No. 1615–0050.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 28, 2006 at 71 FR 10049. The notice allowed for a 60-day public comment period. No comments were received by the USCIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 14, 2006. This process is conducted in accordance with 5 CFR 1320.10.

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 Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd Floor, 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 e-mail please make sure to add OMB Control Number 1615–0050 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 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Hearing on a Decision in Naturalization Proceedings under Section 336.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–336. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form provides a method for applicants, whose applications for naturalization are denied, to request a new hearing by an immigration officer of the same or higher rank as the denying officer.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 7,669 responses at 2 hours and 45 minutes (2.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 21,090 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm*.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: May 9, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 06–4487 Filed 5–12–06; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–26]

Notice of Submission of Proposed Information Collection to OMB: Grant Application Program Specific Logic Model

AGENCY: Office of Administration.

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 submission is a request for extension of the currently approval information collection. Applicants of HUD Federal Financial Assistance are required to indicate intended results and impacts. Grant recipients report against their baseline performance standards. This process standardizes grants progress reporting requirements and promotes greater emphasis on performance and results in grant programs.

The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 14, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0114) and should be sent to: Lillian L. Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; telephone (202) 708–2374 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Barbara_Dorf@hud.gov*; telephone (202) 708–0667. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice Also Lists the Following Information

Title of Proposal: Grant Application Logic Model.

OMB Approval Number: 2535–0114.

Form Numbers: HUD–96010 ICDBG, HUD–96010 HSIAC, HUD–96010AN/NHIAC, HUD–96010T TCUP, HUD–96010 ROSS Family/Homeownership, HUD–96010 ROSS Elderly Disabled, HUD–96010 ALCP, HUD–96010 Service Coordinators, HUD–96010 SHOP, HUD–96010 RHED, HUD–96010 Lead TS, HUD–96010 Healthy Homes TS,HUD–96010 Lead Hazard, Lead Reduction Demo and LEAP, HUD–96010 LOP, HUD–96010 Healthy Homes Demo, HUD–96010 HOPE VI Main Street, HUD–96010 FHIP, HUD–96010 HBCU, HUD–96010 Section 202, HUD–96010 Section 811, HUD–96010 Youthbuild, HUD–96010 CoC. *http://www.hud.gov/.*

Description of the Need for the Information and its Proposed Use: Applicants of HUD Federal Financial Assistance are required to indicate intended results and impacts. Grant recipients report against their baseline performance standards. The collection automates response through a drop down table listing. This was done in response to concerns about the difficulty in putting information in the previously approved Logic Model form. The revised collection adds an additional requirement for addressing a series of tailored management questions and a return on investment statement when reporting back to HUD. The return on investment is a new concept for the Logic Model and HUD will issue a separate notice to further address the return on investment concept.

Respondents: Individuals, Not-for-profit institutions, State, Local or Tribal Government, Business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden: This information collection is estimated to average 5 hours per submission. Of the estimated 11,000 grant applicant/recipients, approximately 6,600 report quarterly and 4,400 report annually. Total annual reporting burden is estimated to be 109,175 hours.

Total Estimated Burden Hours: 109,175.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 9, 2006.

Lillian L. Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E6–7350 Filed 5–12–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5044–N–09]

Notice of Proposed Information Collection for Public Comment: Public Housing Reform Act; Changes to Admission and Occupancy Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian 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:* July 14, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

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: Public Housing Reform Act; Changes to Admission and Occupancy Requirements.

OMB Approval Number: 2577–0230.

Form Number: None.

Description of the need for the information and its proposed use: Public Housing Agencies will provide information required by statute for verification of earned income by minors, welfare rent reduction, over-income for small PHAs and the Community Services and Economic Self-Sufficiency Program as part of the admission and occupancy requirements authorized by the Quality Housing and Work Responsibility Act of 1998.

Members of Effected Public: Individuals or households, State, Local, or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,200/2,200	4,200/2,200		1		4,200/2,200

Total Estimated Burden Hours: 4,200/2,200.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 9, 2006.

Bessy Kong,

Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives.

[FR Doc. E6–7351 Filed 5–12–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–16]

Notice of Proposed Information Collection: Comment Request; Mortgagee's Certification and Application for Interest Reduction Payments

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:* July 14, 2006.

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 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or *Lillian_Deitzer@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Munson, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3730 (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: Mortgagee's Certification and Application for Interest Reduction Payments.

OMB Control Number, if applicable: 2502–0445.

Description of the need for the information and proposed use: This information is necessary to authorize and disburse monthly interest reduction payments to approved HUD mortgagees servicing non-insured multifamily mortgages.

Agency form numbers, if applicable: HUD–3111.

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 110 generating approximately 1,320 annual responses; the frequency of response is monthly; the estimated time to prepare the information collection is .33 (20 minutes); and the estimated total annual burden is 436.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: May 10, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. E6–7353 Filed 5–12–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–C–17A]

Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Technical Assistance Areas for the Lead Outreach Program NOFA

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability, Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Technical Assistance Areas for the Lead Outreach Program NOFA.

SUMMARY: On January 20, 2006, HUD published its Fiscal Year (FY) 2006, Notice of Funding Availability Policy Requirements and General Section (General Section) to the SuperNOFA for HUD's Discretionary Programs. On March 8, 2006, HUD published its Fiscal Year (FY) 2006, SuperNOFA, for HUD's Discretionary Grant Programs. Included in the 2006 SuperNOFA Programs is the Lead Outreach Program. This Notice provides additional information on areas in which technical assistance services are potentially needed. It was developed in response to a question asked during the SuperNOFA broadcast for the FY 2006 Lead Outreach NOFA.

SUPPLEMENTARY INFORMATION: On April 4, 2006, HUD held its SuperNOFA broadcast for the Lead Outreach Notice of Funding Availability. A question was asked in regard to page 11848, section II, Terms of Award, third column, on the number of lead grantees in each geographic area and the estimated number of lead grantees requiring technical assistance in each geographic area. This table is posted to HUD's Web site at *http://www.hud.gov/offices/adm/grants/nofa06/grplead.cfm*. The table provides applicants for the Technical Assistance activity category of the FY 2006 Lead Outreach NOFA with the number of current lead grantees by area and the estimated number of grantees that a technical assistance provider may be asked to service. In summary, in the Eastern United States (HUD Regions I, II, III and IV), there are currently 105 lead grantees, of which 22 may need technical assistance; in the Central United States and Midwest (HUD Regions V, VI, VII and VIII), there are currently 84 lead grantees, of which 5 may need technical assistance; in the Western United States (HUD Regions IX and X), there are currently 34 lead grantees, of which 6 may need technical assistance. Nationwide, there are currently 223 lead grantees, of which 33 may need technical assistance.

If you have questions regarding this Notice, please contact Jonnette Hawkins, Office of Healthy Homes and Lead Hazard Control, telephone 202–708–0614, extension 7593 (this is not a toll-free number); or via e-mail at *Jonnette_G._Hawkins@hud.gov*. If you are a hearing-or speech-impaired person, you may reach the above telephone number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

Dated: May 9, 2006.

Jon L. Gant,

Director for the Office of Healthy Homes and Lead Hazard Control.

[FR Doc. E6–7354 Filed 5–12–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–23]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999, notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 25th review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Homeownership centers
AMS Mortgage	482 Notch Road, West Paterson, NJ 07424	Newark, New Jersey	1/5/2006	Philadelphia.
Hilton Mortgage Corporation II.	4800 B Armour Road, Suite D, Columbus, GA 31904.	Atlanta, GA	1/5/2006	Atlanta, GA.
Mercury Financial	24400 Northwestern Highway, Suite 210, Southfield, MI 48075.	Detroit, MI	1/5/2006	Philadelphia.
Willard Hodge Mortgage Co. LLC.	31514 Nichols Sawmill Road, Suite B, Magnolia, TX 77355.	Houston, TX	10/21/2005	Denver.

Dated: April 26, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E6–7293 Filed 5–12–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment, Draft Habitat Conservation Plan, and Receipt of Application for Incidental Take Permits for Cedar City and the Paiute Tribe for the Cedar City Golf Course and Paiute Tribal Lands, Utah

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Cedar City and the Paiute Tribe of Utah (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) of 1973, as amended. The requested permits, which are for a period of 20 years, would authorize incidental take of the Utah prairie dog (UPD) (*Cynomys parvidens*), a species federally-listed as threatened. The proposed take would occur as a result of maintenance of the Cedar City Golf Course and Paiute Tribal recreational grounds in Cedar City, Utah.

We also announce the availability of a draft Environmental Assessment (EA) and a draft Habitat Conservation Plan (HCP) for public review and comment. The Service requests comments from the public on the permit application, EA, and HCP. The permit application includes the proposed HCP and associated draft Implementation Agreement. The HCP describes the proposed action and the measures the Applicants will undertake to minimize and mitigate to the maximum extent practicable the take of UDP. All comments on the EA, HCP, and permit application will become part of the administrative record and will be available to the public. A determination of whether jeopardy to the species will occur, a Finding of No Significant Impact, and/or issuance of the incidental take permits, will not be made before 60 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the ESA and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP must be received on or before July 14, 2006.

ADDRESSES: Comments regarding the permit application, EA, and HCP should be addressed to Henry Maddux, Field Supervisor, U.S. Fish and Wildlife Service, 2369 West Orton Circle #50, West Valley City, Utah 84119. Comments also may be submitted by facsimile to (801) 975–3331. Persons wishing to review the permit application, EA, or HCP may obtain a copy by writing to the above office. Documents will be available for public inspection by written request, or by appointment only, during business hours (8 a.m. to 4:30 p.m.) at the above address. The EA and HCP also will be posted on the Internet at *http://mountainprairie.fws.gov/species/mammals/utprairiedog/.*

FOR FURTHER INFORMATION CONTACT: Henry Maddux, Field Supervisor, at the above address or telephone (801) 975–3330.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the ESA and Federal regulations prohibit the ''take'' of a species listed as endangered or threatened. Take is defined under the ESA, in part, as to kill, harm, or harass a federally-listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Incidental take is defined under the ESA as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Applicants have submitted an application to the Service for permits to incidentally take UPDs, pursuant to section 10(a)(1)(B) of the ESA, in association with maintenance of the Golf Course and Tribal recreational lands. The permits would allow the Cedar City Golf Course and the Paiute

Tribal Lands to be managed free of UPDs. Details of this alternative are found in the Cedar City Golf Course and Paiute Tribal Lands draft HCP. Proposed minimization and mitigation for the action are described in the HCP and include translocation of UPDs to restored Federal lands and the restoration and protection in perpetuity of 123 hectares (303 acres) of privately owned lands occupied by UPDs. The proposed permits would be in effect for 20 years. Authorized take would include harm, harassment, and direct mortality of UPDs. However, if the Service determines that the obligations of the ESA section 10(a)(1)(B) permits are not being met (e.g., unauthorized taking or permit violations by the cooperators is occurring), the permits may be revoked if remedial actions are not immediately implemented to alleviate such violations.

The HCP associated with the permits would be carried out in two phases. In the first phase, 123 hectares (303 acres) known as Wild Pea Hollow would be acquired, protected in perpetuity, and managed for UPDs. Upon protection of the property, the permits would authorize intensive live-trapping of prairie dogs for two consecutive seasons at the Cedar City Golf Course. These animals would be translocated to identified translocation sites on public lands.

The second phase of the HCP will be initiated with the enhancement of approximately 47 hectares (115 acres) at Wild Pea Hollow to increase potential habitat. Once the restoration has been completed, the Paiute Tribe may begin live-trapping UPD for two consecutive seasons. These animals also will be translocated to identified translocation sites on public lands.

On both the Cedar City Golf Course and the Paiute Tribal Lands, once intensive live-trapping has been undertaken for 2 consecutive years and the success criteria of the HCP have been met, the applicants may manage their lands free of UPD through the use of conibear traps.

Take of occupied UPD habitat will not exceed that identified in the HCP. Take of individual animals will depend on unpredictable factors such as weather and plague events but will depend on trapping success.

The Cedar City Golf Course and the Paiute Tribal Lands are located in the center of Cedar City, Utah, and are surrounded by development. Private lands surrounding these lands are covered by the Iron County HCP and will soon be developed. It is unlikely that the animals on the Cedar City Golf Course or the Paiute Tribal Lands contribute to long-term viability of the species due to this isolation.

A no-action alternative to the proposed action was considered. This alternative would result in a small number of UPD being live-trapped and translocated to restored Federal lands under the current Iron County HCP but would not address the continued safety concerns and damage to equipment. An additional alternative considered was to mitigate the loss of habitat and animals in the roughs of the Cedar City Golf Course. This alternative would be difficult to accomplish and would be unlikely to address safety concerns.

We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirement of National Environmental Policy Act regulations and section 10(a) of the ESA. If we determine that those requirements are met, we will issue permits to the Applicants for the incidental take of UPD. We will make our final permit decisions no sooner than 60 days from the date of this notice.

Dated: April 28, 2006.

James J. Slack,

Deputy Regional Director, Region 6.

[FR Doc. E6–7318 Filed 5–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Mexican Wolf Blue Range Reintroduction Project 5-Year Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Re-opening of the notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the re-opening of the availability of the Mexican Wolf Blue Range Reintroduction Project (Reintroduction Project) 5-Year Review for an additional 14 days. The original notice of availability and comment period for the 5-Year Review was open from March 16, 2006 to April 17, 2006. We are re-opening the comment period to allow additional time for public review and comment on the document. The 5-Year Review, authorized by section 10(j) of the Endangered Species Act of 1973 (Act), as amended, was conducted by the Mexican Wolf Blue Range Adaptive Management Oversight Committee (AMOC). The 5-Year Review and public comment will inform our decision to continue, continue with modification, or terminate the Reintroduction Project. This 5-Year Review should not be confused with status reviews (also called 5-year reviews) conducted under section 4(c)(2)(A) of the Act. This 5-year program evaluation of the Reintroduction Project is conducted pursuant to a 1998 section 10(j) final rule.

DATES: The comment period for this 5-Year Review closes May 30, 2006. Comments on the 5-Year Review must be received by the closing date to assure consideration.

ADDRESSES: Mexican Wolf Recovery Coordinator, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113. To review documents or submit comments, see ''Public Comments Solicited'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mexican Wolf Recovery Coordinator, telephone: (800) 299–0196 ¶4748; facsimile: (505) 346–2542; or e-mail: *FW2ESWolf5YReview@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Mexican wolf (*Canis lupus baileyi*) reintroduction in Arizona and New Mexico is conducted under the authority of section 10(j) of the Act (16 U.S.C. 1531 *et seq.*). On January 12, 1998, the Service published a final rule (63 FR 1752) that established a nonessential experimental population of the gray wolf in Arizona and New Mexico and defined the Mexican Wolf Experimental Population Area (MWEPA) and the Blue Range Wolf Recovery Area (BRWRA) within the states of Arizona and New Mexico. Initial releases of captive-reared Mexican wolves into the BRWRA occurred in 1998, and additional initial releases and translocations have occurred annually.

The final rule states that the Service will prepare periodic progress reports, annual reports, and full evaluations after three and five years that will recommend continuation, modification, or termination of the reintroduction effort. In 2004–2005, the AMOC, which consists of the Arizona Game and Fish Department, New Mexico Department of Game and Fish, USDA-Forest Service, USDA–APHIS Wildlife Services, White Mountain Apache Tribe, and the Service, conducted the 5-Year Review of the Reintroduction Project. The AMOC transmitted a final 5-Year Review to the Service on December 31, 2005. The 5-Year Review provides synthesized information on all aspects of the Reintroduction Project, including the status of the wolf population, the social and economic impacts of wolf

reintroduction on surrounding communities, and program management. This information is organized in four primary components: Administrative, Technical, Socio-economic, and Recommendations.

On March 16, 2006, we announced a notice of availability of the 5-Year Review. At the close of the 30-day public comment period, we received a request to re-open the comment period for an additional two weeks to allow additional time for public review. Based on this request, we are re-opening the public comment period for 14 days.

Public Comments Solicited

Persons wishing to review the 5-Year Review may request a printed copy by contacting the Mexican Wolf Recovery Coordinator (see **ADDRESSES**) or by downloading it from the Internet at: *http://www.fws.gov/ifw2es/mexicanwolf/MWNR_FYRD.shtml.*

Comments and materials concerning this 5-Year Review may be mailed to the Mexican Wolf Recovery Coordinator (see **ADDRESSES**), or faxed or e-mailed (see **FOR FURTHER INFORMATION CONTACT**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. We will not, however, consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at our New Mexico Ecological Services Field Office (see **ADDRESSES**).

To ensure that we have conducted a transparent process that is based on the best available scientific and commercial information throughout the development of the 5-Year Review and to inform our subsequent decision to continue, continue with modification, or terminate the Reintroduction Project, we are soliciting written comments on the 5-Year Review from the public, concerned governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties. The Administrative, Technical, and Socioeconomic components of the 5-Year Review have undergone extensive public review under the oversight of the AMOC. The Service is specifically interested in comments from the public pertaining to the Recommendations and whether they follow logically from the background information and analyses provided in the Administrative, Technical, and Socio-economic components. However, comments on all components of the 5-Year Review received by the date specified above will be considered prior to the Service's decision to continue, continue with modifications, or terminate the Reintroduction Project. This 5-Year Review should not be confused with status reviews (also called 5-year reviews) conducted under section 4(c)(2)(A) of the Act. This is a 5-year program evaluation of the Reintroduction Project as required by the section 10(j) final rule (63 FR 1752).

Authority: The authority for this action is section 10(j) of the Endangered Species Act, 16 U.S.C. 1539(j).

Dated: April 27, 2006.

Benjamin N. Tuggle,

Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E6–7317 Filed 5–12–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 14, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin Boydston, Chief, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25401.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6NIA (5330.3D), Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. This information collection is needed to determine if the firearms or Ammunition listed on the application qualify for importation and to certify that a nonimmigrant alien is in compliance with 18 U.S.C. 922(g)(5)(B). This application will also serve as the authorization for importation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 15,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: There are an estimated 7,500 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 9, 2006.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 06–4491 Filed 5–12–06; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Strategic Planning Environmental Assessment Outreach.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 51, pages 13628–13629 on March 16, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 14, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

—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;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Strategic Planning Environmental Assessment Outreach.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: None, Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. Other: Not-for-profit institutions, Federal Government, State, Local, or Tribal Government. Abstract: Under the provisions of the Government Performance and results Act, Federal agencies are directed to improve their effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction. This act requires that agencies update and revise their strategic plans every three years. The Strategic Planning Office at ATF will use the voluntary outreach information to determine the agency's internal strengths and weaknesses.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 1,500 respondents will complete a 18 minute questionnaire.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 450 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 9, 2006.

Lynn Bryant,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 06–4492 Filed 5–12–06; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application for Restoration of Firearms Privileges.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 14, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Enforcement Branch, 650 Massachusetts Avenue, NW., Room 7400, Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Restoration of Firearms Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3210.1, Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for profit. Certain categories of persons are prohibited from possessing firearms. ATF F 3210.1, Application For Restoration of Firearms Privileges is the basis for ATF investigating the merits of an applicant to have his/her rights restored.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 250 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 125 annual total burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Robert B. Briggs, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: May 10, 2006.

Robert B. Briggs,

Department Clearance Officer, Department of Labor.

[FR Doc. 06–4513 Filed 5–12–06; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 14, 2005, and February 14, 2006, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Dihydrocodeine (9120)	II
Oxymorphone (9652)	II

The company plans to manufacture in bulk, for distribution to its customers, who are final dosage manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 14, 2006.

Dated: May 9, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–7338 Filed 5–12–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–218N]

RIN 1117–AA61

Electronic Prescriptions for Controlled Substances; Notice of Meeting

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of meeting.

SUMMARY: The Drug Enforcement Administration (DEA), in conjunction with the Department of Health and Human Services (HHS), is conducting a public meeting to discuss electronic prescriptions for controlled substances. Specifically, this meeting is intended to allow industry—prescribers, pharmacies, software/hardware vendors, and other interested third parties—to address how electronic prescribing systems can meet DEA's prescription requirements under the Controlled Substances Act, without unduly burdening the parties to electronic prescribing transactions.

DATES: This meeting will be held Tuesday, July 11, 2006, and Wednesday, July 12, 2006, 8:30 a.m. until 5:30 p.m. Registration will begin at 7:30 a.m. This meeting will be held at the Marriott Crystal City at Reagan National Airport, 1999 Jefferson-Davis Highway, Arlington, VA 22202; (703) 413–5500. The meeting will take place in the Crystal Forum amphitheatre, adjacent to the hotel.

Meeting Attendance: To ensure proper handling, please reference ''Docket No. DEA–218N'' on all written and electronic correspondence regarding this meeting. Persons wishing to attend this meeting, space permitting, must provide attendee information to the Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, via e-mail to *dea.diversion.policy@usdoj.gov,* or via facsimile, (202) 353–1079, as specified below. Persons wishing to attend the meeting must provide this information to the Liaison and Policy Section no later than June 26, 2006.

Comments: All written comments will be made available at the Diversion Control Program Web site, *http://www.deadiversion.usdoj.gov* prior to the public meeting. Therefore, as this is a public meeting, confidential business information or other proprietary information SHOULD NOT be presented at this meeting.

Persons wishing to provide written comments must do so no later than June 26, 2006. To ensure proper handling of

comments, please reference ''Docket No. DEA–218N'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov.* DEA will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file format other than those specifically listed here.

This meeting will consist of panel presentations. There will be limited opportunities for attendees to make oral comments at the meeting.

FOR FURTHER INFORMATION, CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION: Many within the health care industry are encouraging the adoption of electronic prescriptions because such prescriptions would improve patient safety by eliminating medical errors that arise from misread or misunderstood handwritten prescriptions. These parties also focus on the potential cost savings, both to industry and the public, realized from, among other benefits: fewer medical errors and adverse drug events; fewer callbacks from pharmacies to practitioners to clarify handwritten prescription information; and reduced ability and opportunity to commit fraud and diversion of prescription medications. The focus of these parties is to facilitate adoption of electronic prescribing as quickly as possible to obtain the benefits that are expected to follow.

Both the Drug Enforcement Administration (DEA) and the Department of Health and Human Services (HHS) have an interest in electronic prescribing. DEA is responsible for enforcing the Controlled Substances Act, including the prescribing and dispensing of controlled substances to the public by DEA-registered practitioners and pharmacies. Such enforcement includes the writing and signature of prescriptions and retention of prescription records.

The Department of Health and Human Services has a statutory mandate to facilitate adoption of electronic prescribing. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 requires that ''prescriptions * * * for covered Part D drugs prescribed for Part D eligible individuals that are transmitted electronically shall be transmitted only in accordance with such standards under an electronic prescription drug program'' that meets the requirements of the MMA (Pub. L. 108–173). HHS is required to promulgate transmission standards for the Medicare electronic prescription drug program. HHS adopted foundation standards regarding transmission of electronic prescriptions for covered Part D drugs prescribed for Part D eligible individuals by publication of a Final Rule which became effective January 1, 2006 (70 FR 67567, November 7, 2005).

HHS also has a statutory mandate under the Health Insurance Portability and Accountability Act (HIPAA), the Administrative Simplification provisions of which require HHS to adopt standards for the electronic transmission of health information contained in certain financial and administrative transactions. HIPAA also requires HHS to adopt standards for the security of electronic health information, and, in consultation with the Department of Commerce, to adopt standards for electronic signatures for certain HIPAA transactions. These regulations and standards are applicable to all health plans (including federal health programs), healthcare clearinghouses, and all health care providers who conduct electronic transactions.

Therefore, DEA, in conjunction with HHS, is conducting a public meeting to allow the public, including prescribers, pharmacies, software/hardware vendors, and other interested third parties, to identify electronic signature solutions for electronic prescribing which mitigate, to the greatest extent possible, any cost and burdens associated with adoption of the new technology while addressing the security and accountability requirements under the Controlled Substances Act of 1970 as they relate to controlled substances. Specific questions which persons are encouraged to address are as follows:

- What is your perception of the current risks associated with electronic prescribing?
- How did you identify those risks?
- How does your electronic prescribing system address those risks?
- Are risks pertaining to prescriptions for controlled substances different from prescriptions for non-controlled substances? Please explain.
- What additional modifications would be necessary for your system to be used for electronic prescribing of controlled substances? Please be specific as to how this would be done, and the burden (cost or otherwise) this would entail.
- How does your system authenticate the person signing the prescription?
- How does your system ensure the integrity of the prescription records?
- What current and future threats (*e.g.*, eavesdropping, man-in-the-middle attack, hijacking, impersonation) to system-wide security have you considered during your design, development, and implementation?
- If smart cards, open networks or other methods of transmission are used to facilitate electronic prescribing, can your system work within those environments? Please specifically explain how it can or why it cannot.

Meeting Participation

This meeting is open to the public. Persons and organizations representing prescribers, pharmacies, and vendors who design, develop, or market electronic prescribing software or hardware/software used to permit electronic prescribing [authenticate individuals or used to sign or secure electronic documents] may be particularly interested in this meeting.

Persons wishing to attend this meeting, space permitting, must provide the following information to the Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, no later than June 26, 2006 via e-mail or facsimile using the contact information listed above:

Name: _____

Title: _____

Company/Organization: _____

Address: _____

Telephone: _____

E-mail address: _____

Persons needing accommodations (*e.g.*, sign language interpreter) are requested to notify DEA with their accommodation request no later than June 26, 2006.

This meeting will consist of panel presentations. There will be limited opportunities for attendees to make oral comments at the meeting.

Persons wishing to provide written comments may do so no later than June 26, 2006. All written comments will be made available at the Diversion Control Program Web site, *http://*

www.deadiversion.usdoj.gov prior to the public meeting. Therefore, as this is a public meeting, confidential business information or other proprietary information SHOULD NOT be presented at this meeting. Please see the ''Comments'' section above for further information regarding providing written comments.

Dated: May 9, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. E6–7302 Filed 5–12–06; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL SCIENCE FOUNDATION

Committee Management Renewal

The NSF management officials having responsibility for the Oversight Council for the International Arctic Center (#9535) have determined that renewing this group for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

For more information contact Susanne Bolton at (703) 292–7488.

Dated: May 9, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–4490 Filed 5–12–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7004]

USEC Inc.'s Proposed American Centrifuge Plant; Notice of Availability of Final Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing a Final Environmental Impact Statement (FEIS) for the USEC Inc. (USEC) license application, dated August 23, 2004, for the possession and use of source, byproduct and special nuclear materials at its proposed American Centrifuge Plant (ACP) located near Piketon, Ohio.

The scope of activities conducted under the license would include the construction, operation, and decommissioning of the ACP. Specifically, USEC proposes to use gas centrifuge technology to enrich the uranium-235 isotope found in natural uranium up to 10-weight percent. The enriched uranium would be used to manufacture nuclear fuel for commercial nuclear power reactors.

The FEIS is being issued as part of NRC's decision-making process on whether to issue a license to USEC, pursuant to Title 10 of the U.S. Code of Federal Regulations parts 30, 40, and 70. Based on the evaluation in the FEIS, NRC environmental review staff have concluded that the proposed action will generally have small effects on the environment, though a few resource areas may experience moderate impacts. The FEIS reflects the final analysis of environmental impacts of USEC's proposal and it's alternatives including the consideration of public comments received by NRC.

ADDRESSES: The FEIS may be accessed on the Internet at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting ''NUREG–1834.'' Additionally, NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The FEIS and its appendices may also be accessed through NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov*.

The FEIS is also available for inspection at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland. Upon written request and to the extent supplies are available, a single copy of the FEIS can be obtained for a fee by writing to the Office of Information Services, Reproduction and Distribution Services Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by electronic mail at *DISTRIBUTION@nrc.gov;* or by fax at (301) 415–2289.

A selected group of documents associated with the USEC facility may also be obtained from the Internet on NRC's USEC Web page: *http://www.nrc.gov/materials/fuel-cycle-fac/usecfacility.html.* In addition, all comments of Federal, State and local agencies, Indian tribes or other interested persons will be made available for public inspection when received.

FOR FURTHER INFORMATION CONTACT: For questions related to the safety review or overall licensing of the USEC facility, please contact Mr. Francis S. Echols at (301) 415–6981. For environmental review questions, please contact Mr. Matthew Blevins at (301) 415–7684.

SUPPLEMENTARY INFORMATION: This FEIS was prepared in response to an application submitted by USEC dated August 23, 2004, for the possession and use of source, byproduct and special nuclear materials at its proposed ACP located near Piketon, Ohio. The FEIS for the proposed ACP was prepared by NRC staff and its contractor, ICF Consulting, Inc., in compliance with the National Environmental Policy Act (NEPA) and NRC's regulations for implementing NEPA (10 CFR part 51).

The FEIS is being issued as part of NRC's decision-making process on whether to issue a license to USEC, pursuant to 10 CFR parts 30, 40, and 70. The scope of activities conducted under the license would include the construction, operation, and decommissioning of the ACP. Specifically, USEC proposes to use gas centrifuge technology to enrich the uranium-235 isotope found in natural uranium up to 10-weight percent. The enriched uranium would be used to manufacture nuclear fuel for commercial nuclear power reactors. USEC proposes to locate the ACP in leased portions of the U.S. Department of Energy (DOE) reservation in Piketon, OH. This is the same site as DOE's Portsmouth Gaseous Diffusion Plant. The ACP would consist of refurbished existing facilities and newly constructed facilities, primarily located in the southwestern portion of the central DOE reservation.

NRC staff published a Notice of Intent to prepare an EIS for the proposed ACP and to conduct a scoping process, in the **Federal Register** on October 15, 2004 (69 FR 61268). NRC staff accepted comments through February 1, 2005, and subsequently issued a Scoping Summary Report in April 2005 (ADAMS Accession Number: ML050820008). On September 9, 2005, NRC announced a public meeting to solicit comments on the draft EIS. The public meeting was held on September 29, 2005, in Piketon, Ohio. NRC accepted public comments through October 24, 2005. The FEIS provides summaries of public comments on the draft EIS and responses. The FEIS describes the proposed action and

alternatives to the proposed action, including the no-action alternative. NRC staff assesses the impacts of the proposed action and its alternatives on public and occupational health, air quality, water resources, waste management, geology and soils, noise, ecology resources, land use, transportation, historical and cultural resources, visual and scenic resources, socioeconomics, accidents and environmental justice. Additionally, the FEIS analyzes and compares the costs and benefits of the proposed action.

Based on the evaluation in the FEIS, NRC environmental review staff has concluded that the proposed action would have small effects on the physical environment and human communities with the exception of: (1) Short-term moderate impacts associated with increases in particulate matter released to the air during the construction phase; (2) short-term moderate impacts related to increased traffic congestion during the construction phase; (3) potential moderate impacts due to transportation accidents; (4) potential moderate impacts from facility operation accidents; (5) moderate impacts associated with a potential operating extension of the DOE depleted uranium tails conversion facility; and (6) moderate employment impacts on the local communities associated with the construction and operation phases.

After weighing the impacts, costs, and benefits of the proposed action and comparing alternatives, NRC staff, in accordance with 10 CFR part 51.91(d), set forth their final recommendation regarding the proposed action. NRC staff recommend that, unless safety issues mandate otherwise, the action called for is the approval of the proposed action (i.e., issue a license).

NRC staff in the Division of Fuel Cycle Safety and Safeguards are currently completing the safety review for USEC's license application and is currently scheduled for completion in June 2006.

Dated at Rockville, Maryland, this 9th day of May 2006.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Deputy Director, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–7364 Filed 5–12–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on May 31—June 1, 2006, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Tuesday, November 22, 2005 (70 FR 70638).

Wednesday, May 31, 2006, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–11:30 a.m.: Draft Final Generic Letter, ''Post-Fire Safe-Shutdown Circuit Analysis Spurious Actuations'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Nuclear Energy Institute regarding the draft final Generic Letter, ''Post-Fire Safe-Shutdown Circuit Analysis Spurious Actuations.''

1:30 p.m.–3 p.m.: Draft Final Generic Letter 2006–xx, ''Inaccessible or Underground Cable Failures that Disable Accident Mitigation Systems'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final Generic Letter 2006–xx, ''Inaccessible or Underground Cable Failures that Disable Accident Mitigation Systems.''

3:15 p.m.—4:15 p.m.: Interim Staff Guidance on Aging Management Program for Inaccessible Areas of Boiling Water Reactor (BWR) Mark I Containment Drywell Shell (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Interim Staff Guidance on Aging Management Program for Inaccessible Areas of BWR Mark I Containment Drywell Shell.

4:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, June 1, 2006, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–11 a.m.: Overview of New Reactor Licensing Activities (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding staff's activities associated with the licensing of new reactors; early site permits; and combined license applications, as well as the related schedule and milestones.

11:15 a.m.–11:45 a.m.: Subcommittee Report (Open)—The Committee will hear a report by and hold discussions with the cognizant Chairman of the ACRS Subcommittee on Plant License Renewal regarding interim review of the license renewal application for the Monticello Nuclear Power Plant.

12:45 p.m.–1:15 p.m.: Status Report on the Quality Assessment of Selected NRC Research Projects (Open)—The Committee will hear a report by and hold discussions with the cognizant Panel Chairman regarding the status of the quality assessment of selected NRC research projects.

1:15 p.m.–2 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

2 p.m.–2:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

2:30 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 2005 (70 FR 56936). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the

meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: May 9, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–7348 Filed 5–12–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 30 2006, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, May 30, 2006, 11 a.m.–12:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: May 8, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–7349 Filed 5–12–06; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium for Single-Employer Plans; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site *http://www.pbgc.gov*.

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in May 2006. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in June 2006.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in May 2006 is 4.30 percent (*i.e.*, 85 percent of the 5.06 percent Treasury Securities Rate for April 2006).

The Pension Funding Equity Act of 2004 (''PFEA'')—under which the

required interest rate is 85 percent of the annual rate of interest determined by the Secretary of the Treasury on amounts invested conservatively in long-term investment grade corporate bonds for the month preceding the beginning of the plan year for which premiums are being paid—applies only for premium payment years beginning in 2004 or 2005. Congress is considering legislation that would extend the PFEA rate for one more year. If legislation that changes the rules for determining the required interest rate for plan years beginning in May 2006 is adopted, the PBGC will promptly publish a **Federal Register** notice with the new rate.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between June 2005 and May 2006.

For premium payment years beginning in:	The required interest rate is:
June 2005	4.60
July 2005	4.47
August 2005	4.56
September 2005	4.61
October 2005	4.62
November 2005	4.83
December 2005	4.91
January 2006	3.95
February 2006	3.90
March 2006	3.89
April 2006	4.02
May 2006	4.30

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in June 2006 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of May 2006.

Vincent K. Snowbarger,

Deputy Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. E6–7314 Filed 5–12–06; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register *Citation of Previous Announcement:* [71 FR 27014, May 9, 2006].

STATUS: Closed meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, May 11, 2006 at 1 p.m.

Change in the Meeting: Additional items.

The following items will also be considered during the 1 p.m. Closed Meeting scheduled for Thursday, May 11, 2006: Litigation matters; regulatory matters involving financial institutions; other matters related to enforcement proceedings; and an adjudicatory matter.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 10, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–4585 Filed 5–11–06; 3:55 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53778; File No. SR–Amex–2005–125]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Dual Listing

May 9, 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 5, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend (i) Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to reduce the listing fees for companies listed on another securities market that dual list on the Amex, and (ii) Amex Rule 118 to include in the scope of the Rule securities listed on the Nasdaq Capital Market (formerly referred to as the Nasdaq SmallCap Market) and to accommodate the dual listing of securities listed on the Nasdaq Capital Market and the Nasdaq National Market. Additionally, the Amex proposed minor, technical changes to Amex Rules 7, 24, 109, 115, 126, 128A, 131, 135A, 156, 170, 190 and 205, and Sections 142 and 950 of the Company Guide to reflect the proposed changes to Amex Rule 118. On March 21, 2006, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the **Federal Register** on April 4, 2006.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[4] Specifically, the Commission believes that the proposed rule change is consistent with Sections 6(b)(4) and (5) of the Act,[5] in that it is designed to provide an equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using the Amex's facilities, and to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Amex. The Commission believes that competition among listing markets has the potential

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 53563 (March 29, 2006), 71 FR 16839.

[4] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(4) and (5).

to benefit the public, issuers, and the listing markets.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR–Amex–2005–125), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7324 Filed 5–12–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53774; File No. SR–BSE–2006–10]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Establish Fees Per Contract Traded for Improvement Orders Submitted Into a Price Improvement Period by a Public Customer That Are Not Submitted as Customer PIP Orders

May 9, 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 March 6, 2006, the Boston Stock Exchange, Inc. (''BSE'' 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 substantially by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange (''BOX'') to establish fees per contract traded for Improvement Orders,[3] submitted into a Price Improvement Period (''PIP'') by a Public Customer[4] that are not submitted as Customer PIP Orders (''CPO's'').

The BOX Fee Schedule is available on the BOX Web site at: *www.bostonoptions.com.* The text of the proposed rule change is provided below, with additions *italicized* and deletions in [brackets].

Boston Options Exchange Facility

Fee Schedule

Sec. 1 Trading Fees for Public Customer Accounts

[None] $0.20 per contract traded for Improvement Orders submitted into a Price Improvement Period (''PIP'') by a Public Customer, that are not submitted as Customer PIP Orders (''CPO's'').

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change as amended and discussed any comments it received on the 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

Currently, there are two ways Public Customer Orders can be submitted into a PIP auction as an Improvement Order. The first way is a CPO, which is an order a Public Customer provides to her/his BOX Order Flow Provider (''OFP'') that contains a standard limit order price in a nickel increment and the CPO PIP Reference Price[5] in a penny increment. The premise of a CPO order is for a Public Customer to provide a standard limit order price to be submitted to the BOX book, and the additional penny auction limit price to be submitted into a PIP auction should one occur while her/his limit order is on the BOX book. The CPO PIP Reference Price provided by the Public Customer to OFP allows the Public Customer to participate in PIP auction by the OFP submitting Improvement Orders on her/his behalf up to the CPO PIP Reference Price. The CPO order allows the average investor to participate in penny price PIP auctions when she/he already has an order on the BOX book for that particular series.

The second way a Public Customer Order can be submitted into a PIP auction as an Improvement Order is by submitting instructions to an OFP to submit an Improvement Order on her/his behalf under any instructions the OFP wishes to accept. These Public Customer Improvement Orders that are not submitted as CPO's do not have a limit order on the BOX book coupled with their Improvement Order. These Improvement Orders are being submitted in reaction to the PIP auction broadcast.[6]

A Public Customer receiving and reacting to the PIP broadcast needs highly developed technology similar to the technology used by BOX OFPs and Market Makers, which is not readily available to the average investor. This technology is necessary for the Public Customer to receive significant amounts of data at an extremely high rate of speed and to react to the PIP broadcast, within the time frame of the three-second PIP auction. Typically, a Public Customer who can receive a PIP broadcast and react to it by submitting an Improvement Order would be a sophisticated investor possessing the aforementioned technology. The sophisticated Public Customer investor's possession of the technology, similar to BOX OFPs and Market Makers, allows this Public Customer to compete in PIPs on the same level playing field as OFPs and Market Makers.

The BOX proposes to charge a $0.20 per contract traded fee for Improvement Orders submitted into a PIP by a Public Customer that are not submitted as CPO's. The BOX believes this fee is reasonable because these orders are submitted into a PIP auction, which is a special trading mechanism within the BOX Trading Host that utilizes the PIP broadcast to create these orders. The BOX believes it is fair that customers behaving as ''options professionals'' should be subject to the same trading fees in the interests of a level playing field. The BOX is not proposing to charge a fee for Public Customer Improvement Orders, which are submitted as CPO's. All other Public Customer Orders traded on BOX, including marketable orders, which interact with a PIP already underway, will continue to be free.

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Improvement Orders'' is defined in the BOX Rules Chapter V, Section 18(e)(i).

[4] ''Public Customer'' means a person that is not a broker or dealer in securities. BOX Rules Chapter I, Section 1(a)(50).

[5] The term ''CPO Reference Price'' is defined in BOX Rules Chapter V, Section 18(g)(i).

[6] The PIP broadcast is disseminated once a PIP is initiated and is distributed solely to BOX Options Participants. The broadcasting of this message advises the Options Participants: (1) That a Primary Improvement Order, as that term is defined in the BOX Rules Chapter V, Section 18(e), has been processed; (2) of information concerning series, size, price and side of market, and; (3) when the PIP will conclude (''PIP Broadcast'').

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule

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 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 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–BSE–2006–10 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–BSE–2006–10. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2006–10 and should be submitted by June 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–7321 Filed 5–12–06; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53777; File No. SR–NYSE–2006–27]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Pilot Program Amending Listed Company Manual Section 102.01A

May 9, 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 May 2, 2006, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 Substance of the Proposed Rule Change

The Exchange has amended on a six month pilot program basis (''Pilot Program'') Section 102.01A of the Exchange's Listed Company Manual (''Manual'') regarding minimum numerical standards. The Pilot Program is due to expire on May 31, 2006. The Exchange proposes to extend the Pilot Program until the earlier of: (i) August 31, 2006; or (ii) the approval by the Commission of the Exchange's proposed permanent amendment to Section 102.01A which the Exchange filed with the Commission on March 20, 2006.

The text of the proposed rule changes 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 47 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 has amended, through the Pilot Program,[5] Section 102.01A of the Manual regarding minimum numerical standards. The Exchange has also filed a proposed rule change[6] seeking to make permanent the Pilot Program's amendments to Section 102.01A of the Manual. The Pilot Program is due to expire on May 31, 2006. The Exchange proposes to extend the Pilot Program until the earlier of: (i) August 21, 2006; or (ii) the Commission's approval of the proposed permanent amendment to Section 102.01A of the Manual.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)[7] of the Act that an Exchange have rules that are 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 a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change 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 were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, 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[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.

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–NYSE–2006–27 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–NYSE–2006–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–27 and should be submitted on or before June 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–7322 Filed 5–12–06; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 52887 (December 5, 2005), 70 FR 73501 (December 12, 2005) (SR–NYSE–2005–82).

[6] *See* SR–NYSE–2006–22, filed with the Commission on March 20, 2006.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53776; File No. SR–Phlx–2005–73]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Exchange's Obvious Error Rule

May 9, 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 November 14, 2005, 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, II, and III below, which Items have been prepared by the Exchange. On November 18, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On April 6, 2006, the Phlx 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 Phlx proposes to amend Exchange Rule 1092 (Obvious Errors). The proposed amendments to Phlx Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 corrected technical errors in the proposed rule text.

[4] Amendment No. 2 deleted the proposed revisions to Rule 1092(c) that related to an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market and an erroneous quote in the underlying market. Thus, the Exchange does not propose to make any changes to Rule 1092(c).

1092 would: (1) change the definition of ''obvious error'' to mean a transaction that occurs at an execution price that differs from the Theoretical Price by at least the maximum allowable bid/ask differential; and (2) change the definition of ''Theoretical Price'' for purposes of determining whether an execution price constitutes an ''obvious error.''

Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Obvious Errors

Rule 1092. The Exchange shall either nullify a transaction or adjust the execution price of a transaction that results in an Obvious Error as provided in this Rule.

(a) Definition of Obvious Error. For purposes of this Rule only, an Obvious Error will be deemed to have occurred when *the execution price of a transaction is higher or lower than the Theoretical Price for a series by an amount equal to at least the amount shown below:*

Theoretical price	*Minimum amount*
Below $2	$.25
$2 to $5	$.40
Above $5 to $10	$.50
Above $10 to $20	$.80
Above $20	$1.00

[(i) If the Theoretical Price of the option is less than $3.00:

(A) During regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 35 cents or more; or,

(B) During unusual market conditions (i.e., the Exchange has declared an unusual market condition status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 50 cents or more. (ii) If the Theoretical Price of the option is $3.00 or more:

(A) During regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more; or

(B) During unusual market conditions (i.e., the Exchange has declared an unusual market condition status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least three times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more.]

(b) Definition of Theoretical Price. For purposes of this Rule only, the [t] *T*heoretical Price of an option is:

(i) If the series is traded on at least one other options exchange, the [last bid or offer] *mid-point of the National Best Bid and Offer (''NBBO'')*, just prior to the transaction [, on the exchange that has the most total volume in that option over the most recent 60 calendar days]; or

(ii) If there are no quotes for comparison purposes, as determined by two Floor Officials and designated personnel in the Exchange's Market Surveillance Department.

(c)–(f) No change.

Commentary:

.01 No change.

.02 [The Theoretical Price will be determined under paragraph (b)(i) of this Rule as follows: (i) the bid price from the exchange providing the most total volume in the option over the most recent 60 calendar days will be used with respect to an erroneous bid price entered on the Exchange, and (ii) the offer price from the exchange providing the most total volume in the option over the most recent 60 calendar days will be used with respect to an erroneous offer price entered on the Exchange.

.03] The price to which a transaction is adjusted under paragraph (c)(ii) of this Rule will be determined as follows: (i) the bid price from the exchange disseminating the National Best Bid for the series at the time of the transaction that was the result of an obvious error will be used with respect to an erroneous offer price entered on the Exchange, and (ii) the offer price from the exchange disseminating the National Best Offer for the series at the time of the transaction that was the result of an obvious error will be used with respect to an erroneous bid price entered on the Exchange. If there are no quotes for comparison purposes, the adjustment price will be determined by two Floor Officials and Market Surveillance.

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 states that the purpose of the proposed rule change, as amended, is to modernize the Exchange's Obvious Error rule so that it addresses issues raised by the increasingly electronic options marketplace.

Definition of Obvious Error

Currently, Exchange Rule 1092(a) defines ''obvious error'' as the execution price of a transaction that is higher or lower than the Theoretical Price (if the Theoretical Price is less than $3.00) for the series by an amount of 35 cents or more; or, during unusual market conditions (i.e., the Exchange has declared an unusual market condition status for the option in question), by an amount of 50 cents or more. Where the Theoretical Price is $3.00 or more, ''obvious error'' is defined as the execution price of a transaction that is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the allowable maximum bid/ask spread for the series, so long as the amount is 50 cents or more, and three times the allowable bid/ask spread during unusual market conditions.

The proposed rule change would re-define ''obvious error'' by deeming an ''obvious error'' to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for a series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2	$.25
$2 to $5	$.40
Above $5 to $10	$.50
Above $10 to $20	$.80
Above $20	$1.00

The Exchange believes that the proposed new definition of ''obvious error'' would facilitate the efficient determination by Floor Officials as to whether a trade resulted from an obvious error by setting minimum amounts by which the transaction price differs from the Theoretical Price without requiring such Floor Officials to conduct an inquiry into the volume of all exchanges each time they review a

transaction under the rule. The proposed definition of ''obvious error'' would apply during both normal and unusual market conditions, thus further streamlining the Floor Officials' review process.

Definition of Theoretical Price

Currently, Phlx Rule 1092(b) defines ''Theoretical Price'' as the last bid or offer, just prior to the transaction, on the exchange that has the most total volume in that option over the most recent 60 calendar days; or if there are no quotes for comparison purposes, as determined by two Floor Officials and designated personnel in the Exchange's Market Surveillance Department. The proposed rule change would define ''Theoretical Price'' as, respecting series traded on at least one other options exchange, the mid-point of the National Best Bid and Offer (''NBBO'') just prior to the transaction.

The Phlx notes that currently, all options exchanges, including the Phlx, have rules permitting specialists and market makers to disseminate electronic quotations with a bid/ask differential of up to $5.00, regardless of the price of the bid.[5] For the most part, the Phlx believes that such quotations do not reflect the NBBO. Under the current Exchange rule, the Theoretical Price, defined as the last bid or offer just prior to the transaction on the market with the highest volume, could differ from the NBBO by a significant amount if the bid/ask differential on such market in the series is $5.00 wide. In order to account for this potential discrepancy between the Theoretical Price as established by rule and the actual NBBO, the proposal would re-define the term ''Theoretical Price'' to mean the mid-point of the NBBO just prior to the transaction. This should provide Exchange Floor Officials with a more accurate measure of the price on which to base their determination that a transaction resulted from an obvious error, based on the actual NBBO instead of a quotation with a bid/ask differential of $5.00.

For consistency, the Exchange proposes to delete Commentary .02 to Phlx Rule 1092, which references the Theoretical Price as currently defined, from the Rule.

2. Statutory Basis

The Exchange believes that this 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 national market system, and, in general, to protect investors and the public interest, by establishing objective definitions of Theoretical Price and ''obvious error'' that address issues raised by the increasingly electronic options marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal, 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 the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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–Phlx–2005–73 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–2005–73. 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–Phlx–2005–73 and should be submitted on or before June 5, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–7323 Filed 5–12–06; 8:45 am]

BILLING CODE 8010–01–P

[5] *See, e.g.*, Exchange Rule 1014(c)(i)(A)(2).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of request for comment.

SUMMARY: The Commission requests public comment pertaining to an amendment submitted to the Congress on May 1, 2006, that creates a policy statement governing a reduction in term of imprisonment as a result of a motion by the Director of the Bureau of Prisons (published elsewhere in this issue of the **Federal Register**).

DATES: Written public comment regarding the issue for comment set

forth in this notice should be received by the Commission not later than July 14, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202–502–4590. The amendment to which this issue for comment pertains may be accessed through the Commission's Web site at *http://www.ussc.gov* (see Amendment 1 of the document entitled ''Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary (May 1, 2006)'').

SUPPLEMENTARY INFORMATION: On May 1, 2006, the Commission submitted to the Congress an amendment to the Federal sentencing guidelines that created a new policy statement at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons). This policy statement is a first step toward fulfilling the congressional directive at 28 U.S.C. 994(t). In the 2006–2007 amendment cycle, the Commission will consider developing further criteria and a list of specific examples of extraordinary and compelling reasons for sentence reduction pursuant to such statute. The Commission requests comment and specific suggestions for appropriate criteria and examples, as well as guidance regarding the extent of any such reduction and modifications to a term of supervised release.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.4.

Ricardo H. Hinojosa,

Chair.

[FR Doc. E6–7343 Filed 5–12–06; 8:45 am]

BILLING CODE 2211–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2006.

SUMMARY: Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

DATES: The Commission has specified an effective date of November 1, 2006, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202–502–4590. The amendments set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov*.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on January 27, 2006 (*see* 71 FR 4782). The Commission held a public hearing on the proposed amendments in Washington, DC, on March 15, 2006. On May 1, 2006, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2006.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

Ricardo H. Hinojosa,

Chair.

1. *Amendment*: Chapter One, Part B is amended by adding at the end the following:

''§ 1B1.13. Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons (Policy Statement)

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. 3553(a), to the extent that they are applicable, the court determines that—

(1)(A) Extraordinary and compelling reasons warrant the reduction; or

(B) The defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) The defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. 3142(g); and

(3) The reduction is consistent with this policy statement.

Commentary

Application Notes:

1. Application of Subsection (1)(A).—

(A) Extraordinary and Compelling Reasons.—A determination made by the Director of the Bureau of Prisons that a particular case warrants a reduction for extraordinary and compelling reasons shall be considered as such for purposes of subdivision (1)(A).

(B) Rehabilitation of the Defendant.—Pursuant to 28 U.S.C. 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of subdivision (1)(A).

2. Application of Subdivision (3).—Any reduction made pursuant to a motion by the Director of the Bureau of Prisons for the reasons set forth in subdivisions (1) and (2) is consistent with this policy statement.

Background: This policy statement is an initial step toward implementing 28 U.S.C. 994(t). The Commission intends to develop further criteria to be applied and a list of specific examples of extraordinary and compelling reasons for sentence reduction pursuant to such statute.''.

Reason for Amendment: This amendment creates a new policy statement at § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons) as a first step toward implementing the directive in 28 U.S.C. 994(t) that the Commission ''in promulgating general policy statements regarding the sentence modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.'' The policy statement restates the statutory bases for a reduction in sentence under 18 U.S.C. 3582(c)(1)(A). In addition, the policy statement provides that in all cases there must be a determination made by the court that the defendant is not a danger to the safety of any other person or to the community. The amendment also provides background commentary that states the Commission's intent to

develop criteria to be applied and a list of specific examples pursuant to 28 U.S.C. 994(t).

2. *Amendment:* The Commentary to § 1B1.1 captioned ''Application Notes'' is amended by striking Note 6; and by redesignating Note 7 as Note 6.

Section 2D1.1(c) is amended by striking ''(or the equivalent amount of other Schedule I or II Opiates)'' each place it appears; by striking ''(or the equivalent amount of other Schedule I or II Stimulants)'' each place it appears; and by striking ''(or the equivalent amount of other Schedule I or II Hallucinogens)'' each place it appears.

Section 2D1.1(d)(1) is amended by inserting ''or § 2A1.2 (Second Degree Murder), as appropriate, if the resulting offense level is greater than that determined under this guideline'' after ''Murder)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the first paragraph by striking the third and fourth sentences and inserting the following:

''In the case of a controlled substance that is not specifically referenced in the Drug Quantity Table, determine the base offense level as follows:

(A) Use the Drug Equivalency Tables to convert the quantity of the controlled substance involved in the offense to its equivalent quantity of marihuana.

(B) Find the equivalent quantity of marihuana in the Drug Quantity Table.

(C) Use the offense level that corresponds to the equivalent quantity of marihuana as the base offense level for the controlled substance involved in the offense.

(*See also* Application Note 5.) For example, in the Drug Equivalency Tables set forth in this Note, 1 gm of a substance containing oxymorphone, a Schedule I opiate, converts to an equivalent quantity of 5 kg of marihuana. In a case involving 100 gm of oxymorphone, the equivalent quantity of marihuana would be 500 kg, which corresponds to a base offense level of 28 in the Drug Quantity Table.''

Chapter Two, Part J is amended by striking § 2J1.7 and its accompanying commentary.

Chapter 3, Part C is amended in the heading by adding at the end ''AND RELATED ADJUSTMENTS''.

Chapter Three, Part C is amended by adding at the end the following:

''§ 3C1.3. Commission of Offense While on Release

If a statutory sentencing enhancement under 18 U.S.C. § 3147 applies, increase the offense level by 3 levels.

Commentary

Application Note:

1. Under 18 U.S.C. 3147, a sentence of imprisonment must be imposed in addition to the sentence for the underlying offense, and the sentence of imprisonment imposed under 18 U.S.C. 3147 must run consecutively to any other sentence of imprisonment. Therefore, the court, in order to comply with the statute, should divide the sentence on the judgment form between the sentence attributable to the underlying offense and the sentence attributable to the enhancement. The court will have to ensure that the 'total punishment' (*i.e.*, the sentence for the offense committed while on release plus the statutory sentencing enhancement under 18 U.S.C. 3147) is in accord with the guideline range for the offense committed while on release, as adjusted by the enhancement in this section. For example, if the applicable adjusted guideline range is 30–37 months and the court determines a 'total punishment' of 36 months is appropriate, a sentence of 30 months for the underlying offense plus 6 months under 18 U.S.C. 3147 would satisfy this requirement.

Background: An enhancement under 18 U.S.C. 3147 applies, after appropriate sentencing notice, when a defendant is sentenced for an offense committed while released in connection with another Federal offense.

This guideline enables the court to determine and implement a combined 'total punishment' consistent with the overall structure of the guidelines, while at the same time complying with the statutory requirement.''.

Reason for Amendment: This amendment addresses several problematic areas of guideline application. First, the amendment adds language to the cross reference at subsection (d) of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to allow the application of § 2A1.2 (Second Degree Murder) in cases in which the conduct involved is second degree murder, if the resulting offense level is greater than the offense level determined under § 2D1.1.

Second, the amendment creates a new guideline at § 3C1.3 (Commission of Offense While on Release), which provides a three-level adjustment in cases in which the statutory sentencing enhancement at 18 U.S.C. 3147 (Penalty for an offense committed while on release) applies. The amendment also deletes § 2J1.7 (Commission of Offense While on Release), the Chapter Two guideline to which the statutory enhancement at 18 U.S.C. 3147 had been referenced prior to the amendment. Despite its reference in Appendix A (Statutory Index), 18 U.S.C. 3147 is not an offense of conviction and thus does not require reference in Appendix A. Creating a Chapter Three adjustment for 18 U.S.C. 3147 cases ensures the enhancement is not overlooked and is consistent with other adjustments in Chapter Three, all of which apply to a broad range of offenses.

Third, the amendment deletes from the Drug Quantity Table in § 2D1.1(c) language that indicates the court should apply ''the equivalent amount of other Schedule I or II Opiates'' (in the line referenced to Heroin), ''the equivalent amount of other Schedule I or II Stimulants'' (in the line referenced to Cocaine), and ''the equivalent amount of other Schedule I or II Hallucinogens'' (in the line referenced to LSD). This language caused some guideline users to erroneously calculate the base offense level without converting the controlled substance to its marihuana equivalency, even though Application Note 10 of § 2D1.1 sets forth the marihuana equivalencies for substances not specifically referenced in the Drug Quantity Table. For example, instead of converting 10 KG of morphine (an opiate) to 5000 KG of marihuana and determining the base offense level on that marihuana equivalency (resulting in a base offense level of 34), some guideline users determined the base offense level on the 10 KG of morphine by using the equivalent amount of heroin (resulting in a base offense level of 36). This amendment deletes the problematic language and also clarifies in Application Note 10 that, for cases involving a substance not specifically referenced in the Drug Quantity Table, the court is to determine the base offense level using the marihuana equivalency for that controlled substance.

3. *Amendment:* The Commentary to § 2A1.1 captioned ''Statutory Provisions'' is amended by inserting ''1841(a)(2)(C),'' after ''1111,''.

The Commentary to § 2A1.2 captioned ''Statutory Provisions'' is amended by inserting ''1841(a)(2)(C),'' after ''1111,''.

The Commentary to § 2A1.3 captioned ''Statutory Provisions'' is amended by inserting ''1841(a)(2)(C),'' after ''1112,''.

The Commentary to § 2A1.4 captioned ''Statutory Provisions'' is amended by inserting ''1841(a)(2)(C),'' after ''1112,''.

The Commentary to § 2A2.1 captioned ''Statutory Provisions'' is amended by inserting ''1841(a)(2)(C),'' after ''1751(c),''.

The Commentary to § 2A2.2 captioned ''Statutory Provisions'' is amended by inserting ''1841(a)(2)(C),'' after ''1751(e),''.

Section 2B1.1(b)(6) is amended by inserting ''or veterans' memorial'' after ''national cemetery''.

The Commentary to § 2B1.1 captioned ''Statutory Provisions'' is amended by inserting ''1369,'' after ''1363,''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph that begins '' 'Trade secret' '' the following paragraph:

'' 'Veterans' memorial' means any structure, plaque, statue, or other monument described in 18 U.S.C. 1369(a).''.

Section 2B1.5(b)(2)(E) is amended by inserting ''or veterans' memorial'' after ''cemetery''.

The Commentary to § 2B1.5 captioned ''Statutory Provisions'' is amended by inserting ''1369,'' after ''1361,''.

The Commentary to § 2B1.5 captioned ''Application Notes'' is amended in Note 3 in subdivision (B) by striking ''has the meaning given that term'' and inserting ''and 'veterans' memorial' have the meaning given those terms''.

The Commentary to § 2N2.1 captioned ''Application Notes'' is amended by striking Note 3 and inserting the following:

''3. Upward Departure Provisions.—The following are circumstances in which an upward departure may be warranted:

(A) Death or bodily injury, extreme psychological injury, property damage, or monetary loss resulted. *See* Chapter Five, Part K (Departures).

(B) The defendant was convicted under 7 U.S.C. 7734.''.

Chapter Two, Part T, Subpart 3 is amended in the ''Introductory Commentary'' in the first sentence by inserting ''and 3907,'' after ''1708(b),''; in the second sentence by striking ''It is not intended to deal with the importation of contraband,'' and inserting ''It is intended to deal with some types of contraband, such as certain uncertified diamonds, but is not intended to deal with the importation of other types of contraband,''; in the last sentence by inserting ''not specifically covered by this Subpart'' after ''stolen goods''; and by inserting ''if there is not another more specific applicable guideline'' after ''upward''.

The Commentary to § 2T3.1 captioned ''Statutory Provisions'' is amended by inserting '', 3907'' after ''1708(b)''.

Chapter Two, Part X, Subpart 5 is amended in the heading by inserting ''FELONY'' after ''OTHER''; and by adding at the end ''AND CLASS A MISDEMEANORS''.

Section 2X5.1 is amended in the heading by inserting ''Felony'' after ''Other''.

Section 2X5.1 is amended by striking ''or Class A misdemeanor''; by striking ''(b)'' after ''18 U.S.C. § 3553''; and by adding at the end the following paragraph:

''If the defendant is convicted under 18 U.S.C. 1841(a)(1), apply the guideline that covers the conduct the defendant is convicted of having engaged in, as that conduct is described in 18 U.S.C. 1841(a)(1) and listed in 18 U.S.C. 1841(b).''.

The Commentary the § 2X5.1 is amended by inserting before ''Application Note:'' the following:

''Statutory Provision: 18 U.S.C. 1841(a)(1).''.

The Commentary the § 2X5.1 captioned ''Application Note'' is amended by striking ''Note'' and inserting ''Notes''; in Note 1 by inserting ''In General.'' before ''Guidelines''; and by adding at the end the following:

''2. Convictions under 18 U.S.C. 1841(a)(1).—

(A) In General.—If the defendant is convicted under 18 U.S.C. 1841(a)(1), the Chapter Two offense guideline that applies is the guideline that covers the conduct the defendant is convicted of having engaged in, *i.e.*, the conduct of which the defendant is convicted that violates a specific provision listed in 18 U.S.C. 1841(b) and that results in the death of, or bodily injury to, a child in utero at the time of the offense of conviction. For example, if the defendant committed aggravated sexual abuse against the unborn child's mother and it caused the death of the child in utero, the applicable Chapter Two guideline would be § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(B) Upward Departure Provision.—For offenses under 18 U.S.C. 1841(a)(1), an upward departure may be warranted if the offense level under the applicable guideline does not adequately account for the death of, or serious bodily injury to, the child in utero.

3. Application of § 2X5.2.—This guideline applies only to felony offenses not referenced in Appendix A (Statutory Index). For Class A misdemeanor offenses that have not been referenced in Appendix A, apply § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)).''.

The Commentary to § 2X5.1 captioned ''Background'' is amended in the first paragraph by striking ''Where there is no sufficiently'' and all that follows through ''Sentencing Commission.' '' and inserting the following:

''In a case in which there is no sufficiently analogous guideline, the provisions of 18 U.S.C. 3553 control.''.

Chapter Two, Part X, Subpart 5 is amended by adding at the end the following:

''§ 2X5.2. Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)

(a) *Base Offense Level:* 6.

Commentary

Statutory Provisions: 7 U.S.C. 2156; 18 U.S.C. 1365(f), 1801; 42 U.S.C. 1129(a), 14133.

Application Note:

1. In General.—This guideline applies to Class A misdemeanor offenses that are specifically referenced in Appendix A (Statutory Index) to this guideline. This guideline also applies to Class A misdemeanor offenses that have not been referenced in Appendix A. Do not apply this guideline to a Class A misdemeanor that has been specifically referenced in Appendix A to another Chapter Two guideline.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 7 U.S.C. 2024(c) the following:

''7 U.S.C. 2156 2X5.2'';

by inserting after the line referenced to 18 U.S.C. 1121 the following:

''18 U.S.C. 1129(a) 2X5.2'';

by inserting after the line referenced to 18 U.S.C. 1365(e) the following:

''18 U.S.C. 1365(f) 2×5.2'';

by inserting after the line referenced to 18 U.S.C. 1366 the following:

''18 U.S.C. 1369 2B1.1, 2B1.5'';

by inserting after the line referenced to 18 U.S.C. 1792 the following:

''18 U.S.C. 1801 2×5.2'';

by inserting after the line referenced to 18 U.S.C. 1832 the following:

''18 U.S.C. 1841(a)(1) 2×5.1, 18 U.S.C. 1841(a)(2)(C) 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2'';

by inserting after the line referenced to 19 U.S.C. 2401f the following:

''19 U.S.C. 3907 2T3.1''; and

by inserting after the line referenced to 42 U.S.C. 9603(d) the following:

''42 U.S.C. 14133 2×5.2''.

Reason for Amendment: This five-part amendment makes several additions to various guideline provisions in response to recently-enacted legislation, and creates a new guideline at § 2X5.2 to cover certain Class A misdemeanors.

First, this amendment responds to section 2 of the Veterans' Memorial Preservation and Recognition Act of

2003, Public Law 108–29. This Act created a new offense at 18 U.S.C. 1369 that prohibits the destruction of veterans' memorials and imposes a ten-year statutory maximum term of imprisonment. This amendment refers this new offense to both §§ 2B1.1 (Theft, Property Destruction, and Fraud) and 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources), and broadens the application of the two-level enhancement under both §§ 2B1.1(b)(6) and 2B1.5(b)(2) to include veterans' memorials. The two-level enhancement at § 2B1.1(b)(6), combined with the cross reference at § 2B1.1(c)(4), ensures that the penalty for the destruction of veterans' memorials will reflect the status of a veterans' memorial as a specially protected cultural heritage resource.

Second, this amendment addresses the Plant Protection Act of 2002, Public Law 107–171, which created a new offense under 7 U.S.C. 7734 for knowingly importing or exporting plants, plant products, biological control organisms, and like products for distribution or sale. The statutory maximum term of imprisonment for the first offense is five years, and for subsequent offenses the statutory maximum term of imprisonment is ten years. This amendment modifies Application Note 3 of § 2N2.1 (Violations of Statutes and Regulations Dealing with Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) to provide that an upward departure may be warranted if a defendant is convicted under 7 U.S.C. 7734.

Third, this amendment addresses the Clean Diamond Trade Act of 2003, Public Law 108–19, and accompanying Executive Order 13312, which prohibits (1) ''the importation into, or exportation from, the United States * * * of any rough diamond, from whatever source, unless the rough diamond has been controlled through the [Kimberley Process Certification Scheme]; and (2) any transaction by a United States person anywhere, or any transaction that occurs in whole or in part within the United States, that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this section,'' and conspiracies to commit such acts. This amendment references the new offense at 19 U.S.C. 3907 to 2T3.1 (Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property) because the offense involves importing into the United States ''conflict'' diamonds (so-called because the profits from their sale are frequently used to fund rebel and military activities) without proper certification or payment of duty fees according to the Kimberley Process Certification Scheme, a process that legitimizes the quality and original source of the diamond. Because the essence of this new statutory offense is to avoid proper certification and evade duty fees, penalties for its violation are appropriately covered by § 2T3.1. This amendment also adds language referencing ''contraband diamonds'' to the introductory commentary of Chapter Two, Part T, Subpart Three to indicate that uncertified diamonds are contraband covered by § 2T3.1 even if other types of contraband are covered by other, more specific guidelines.

Fourth, this amendment implements the Unborn Victims of Violence Act of 2004, Public Law 108–212, which created a new offense at 18 U.S.C. 1841 for causing death or serious bodily injury to a child in utero while engaging in conduct violative of any of over 60 offenses enumerated at 18 U.S.C. 1841(b). Under 18 U.S.C. 1841(a)(1) and (a)(2)(A), the statutory maximum term of imprisonment for the conduct that ''caused the death of, or bodily injury to a child in utero shall be the penalty provided under Federal law for that conduct had that injury or death occurred to the unborn child's mother.'' Otherwise, under 18 U.S.C. 1841(a)(2)(C), if the person ''engaging in the conduct * * * intentionally kills or attempts to kill the unborn child, that person shall be punished * * * under sections 1111, 1112, and 1113 for intentionally killing or attempting to kill a human being.'' The amendment references 18 U.S.C. 1841(a)(2)(C) to the guidelines designated in Appendix A for 18 U.S.C. 1111, 1112, and 1113, which are §§ 2A1.1 (First Degree Murder), 2A1.2 (Second Degree Murder), 2A1.3 (Voluntary Manslaughter), and 2A1.4 (Involuntary Manslaughter). This amendment also refers the provisions under 18 U.S.C. 1841(a)(1) and (a)(2)(A) to 2X5.1 (Other Offenses) and adds a special instruction that the most analogous guideline for these offenses is the guideline that covers the underlying offenses.

Fifth, this amendment creates a new guideline at § 2X5.2 (Class A Misdemeanors) that covers all Class A misdemeanors not otherwise referenced to a more specific Chapter Two guideline. The amendment assigns a base offense level of 6 for such offenses, consistent with the guidelines' treatment of many Class A misdemeanor and regulatory offenses. The amendment also references several new Class A Misdemeanors to this guideline. With the promulgation of this new guideline, the Commission will reference new Class A Misdemeanor offenses either to this guideline or to another, more specific Chapter Two guideline, as appropriate.

4. *Amendment:* Chapter Two, Part A, Subpart 6 is amended in the heading by inserting ''HOAXES,'' after ''COMMUNICATIONS,''.

Section 2A6.1 is amended in the heading by adding at the end ''; Hoaxes''.

Section 2A6.1 is amended by adding at the end the following:

''(c) Cross Reference.

(1) If the offense involved any conduct evidencing an intent to carry out a threat to use a weapon of mass destruction, as defined in 18 U.S.C. 2332a(c)(2)(B), (C), and (D), apply § 2M6.1 (Weapons of Mass Destruction), if the resulting offense level is greater than that determined under this guideline.''.

The Commentary to § 2A6.1 captioned ''Statutory Provisions'' is amended by inserting ''1038,'' after ''879,''.

The Commentary to § 2K2.1 captioned ''Statutory Provisions'' is amended by inserting '', 2332g'' after ''(k)–(o)''.

Section 2L1.1(b), as amended by Amendment 10 of this document, is further amended by adding at the end the following:

''(9) If the defendant was convicted under 8 U.S.C. 1324(a)(4), increase by 2 levels.''.

The Commentary to § 2M6.1 captioned ''Statutory Provisions'' is amended by inserting ''175c,'' after ''175b,''; by inserting ''832,'' after ''831,''; and by inserting '', 2332h'' before ''; 42 U.S.C.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 175b the following:

''18 U.S.C. 175c 2M6.1'';

by inserting after the line referenced to 18 U.S.C. 831 the following:

''18 U.S.C. 832 2M6.1'';

by inserting after the line referenced to 18 U.S.C. 1037 the following:

''18 U.S.C. 1038 2A6.1''; and

by inserting after the line referenced to 18 U.S.C. 2332f the following:

''18 U.S.C. 2332g 2K2.1, 18 U.S.C. 2332h 2M6.1''.

Reason for Amendment: This amendment implements various provisions of the Intelligence Reform and Terrorism Prevention Act of 2004 (the ''Act''), Public Law 108–458.

Section 5401 of the Act adds a new subsection (a)(4) to 8 U.S.C. 1324 that

increases the otherwise applicable penalties by up to ten years' imprisonment for bringing aliens into the United States if (A) the conduct is part of an ongoing commercial organization or enterprise; (B) aliens were transported in groups of 10 or more; and (C)(i) aliens were transported in a manner that endangered their lives; or (ii) the aliens presented a life-threatening health risk to people in the United States. Offenses under 18 U.S.C. 1324 are referenced to § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien). In response to the new offense, the amendment adds a two-level specific offense characteristic at § 2L1.1(b)(7) applicable to offenses of conviction under 8 U.S.C. 1324(a)(4), to account for the increased statutory maximum penalty for such offenses.

Section 6702 of the Act creates a new offense at 18 U.S.C. 1038 (False Information and Hoaxes). The amendment references the new offense to § 2A6.1 (Threatening or Harassing Communications) and adds a cross reference to § 2M6.1 (Unlawful Production, Development, Acquisition, Stockpiling, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons of Mass Destruction; Attempt or Conspiracy) if the conduct supports a threat to use a weapon of mass destruction. The Commission referenced the new offense to these guidelines because the conduct criminalized by the new statute is analogous to conduct already covered by other statutes referenced to these two guidelines.

Section 6803 of the Act creates a new offense at 18 U.S.C. 832 (Participation in Nuclear and Weapons of Mass Destruction Threats in the United States), relating to participation in nuclear, and weapons of mass destruction, threats to the United States. Section 6803 also adds this new offense to the list of predicate offenses at 18 U.S.C. 2332b(g)(5)(B)(i) and amends sections 57(b) and 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)) to cover the participation of an individual in the development of special nuclear material. The amendment references 18 U.S.C. 832 to 2M6.1 because this offense is similar to other offenses referenced to this guideline.

Section 6903 of the Act creates a new offense at 18 U.S.C. 2332g (Missile Systems Designed to Destroy Aircraft) prohibiting the production or transfer of missile systems designed to destroy aircraft. The amendment references 18 U.S.C. 2332g to 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) because the types of weapons described in the offense would be covered as destructive devices under 26 U.S.C. 5845(a).

Section 6905 of the Act creates a new offense at 18 U.S.C. 2332h (Radiological Dispersal Devices) prohibiting the production, transfer, receipt, possession, or threat to use, any radiological dispersal device. The amendment references 18 U.S.C. 2332h to 2M6.1 because of the nature of the offense. Section 2M6.1 covers conduct dealing with the production of certain types of nuclear, biological, or chemical weapons or other weapons of mass destruction, including weapons of mass destruction that, as defined in 18 U.S.C. 2332a, are designed to release radiation or radioactivity at levels dangerous to human life.

Section 6906 of the Act creates a new offense at 18 U.S.C. 175c (Variola Virus) that prohibits the production, acquisition, transfer, or possession of, or the threat to use, the variola virus. The amendment references the new offense to § 2M6.1 because the variola virus may be used as a biological agent or toxin and, therefore, it is appropriate to reference this new offense to this guideline.

5. *Amendment:* Section 2B5.3 and Appendix A (Statutory Index), effective October 24, 2005 (*see* USSC Guidelines Manual, Supplement to Appendix C, Amendment 675), are repromulgated with the following changes:

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended in Note 1, in the paragraph that begins ''Uploading'' by striking ''item in an openly shared file'' and inserting ''item as an openly shared file''; and by striking ''placed in''.

Reason for Amendment: This amendment re-promulgates as a permanent amendment the temporary, emergency amendment to § 2B5.3 (Criminal Infringement of Copyright or Trademark), and Appendix A (Statutory Index), which became effective on October 24, 2005. The amendment implements the directive in section 105 of the Family Entertainment and Copyright Act of 2005, Public Law 109–9, which instructs the Commission, under emergency authority, to ''review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes * * *''

''In carrying out [the directive], the Commission shall—

(1) Take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements * * * are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;

(2) Determine whether to provide a sentencing enhancement for those convicted of the offenses [involving intellectual property rights], if the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before it has been authorized by the copyright owner, whether in the media format used by the infringing party or in any other media format;

(3) Determine whether the scope of 'uploading' set forth in application note 3 of section 2B5.3 of the Federal sentencing guidelines is adequate to address the loss attributable to people who, without authorization, broadly distribute copyrighted works over the Internet; and

(4) Determine whether the sentencing guideline and policy statements applicable to the offenses [involving intellectual property rights] adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyrighted material has been reproduced or distributed.''

Pre-Release Works

The amendment provides a separate two-level enhancement if the offense involved a pre-release work. The enhancement and the corresponding definition use language directly from 17 U.S.C. 506(a) (criminal infringement). The amendment adds language to Application Note 2 that explains that in cases involving pre-release works, the infringement amount should be determined by using the retail value of the infringed item, rather than any premium price attributed to the infringing item because of its pre-release status. The amendment addresses concerns that distribution of an item before it is legally available to the consumer is more serious conduct than distribution of other infringing items and involves a harm not addressed by the current guideline.

Uploading

The concern underlying the uploading directive pertains to offenses in which the copyrighted work is transferred through file sharing. The amendment builds on the current definition of ''uploading'' to include making an infringing item available on the Internet by storing an infringing item as an openly shared file. The

amendment also clarifies that uploading does not include merely downloading or installing infringing items on a hard drive of the defendant's computer unless the infringing item is in an openly shared file. By clarifying the definition of uploading in this manner, Application Note 3, which is a restatement of the uploading definition, is no longer necessary and the amendment deletes the application note from the guideline.

Indeterminate Number

The amendment addresses the final directive by amending Application Note 2, which sets forth the rules for determining the infringement amount. The note provides that the court may make a reasonable estimate of the infringement amount using any relevant information including financial records in cases in which the court cannot determine the number of infringing items.

New Offense

Finally, the amendment provides a reference in Appendix A (Statutory Index) for the new offense at 18 U.S.C. 2319B. This offense is to be referenced to § 2B5.3.

6. *Amendment:* Section 2D1.1, effective March 27, 2006 (USSC Guidelines Manual, Supplement to the 2005 Supplement to Appendix C, Amendment 681), is repromulgated without change.

Reason for Amendment: This amendment re-promulgates as a permanent amendment the temporary, emergency amendment that implemented the directive in the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Public Law 109–76. That Act requires the Commission, under emergency amendment authority, to implement section 3 of the Anabolic Steroid Control Act of 2004, Public Law 108–358 (the ''ASC Act''), which directs the Commission to ''review the Federal sentencing guidelines with respect to offenses involving anabolic steroids'' and ''consider amending the* * * guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use * * *'' The emergency amendment became effective on March 27, 2006 (*See* Supplement to Appendix C, Amendment 681).

The amendment implements the directives by increasing the penalties for offenses involving anabolic steroids. It does so by changing the manner in which anabolic steroids are treated under § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). The amendment eliminates the sentencing distinction between anabolic steroids and other Schedule III substances when the steroid is in a pill, capsule, tablet, or liquid form. For anabolic steroids in other forms (*e.g.*, patch, topical cream, aerosol), the amendment instructs the court that it shall make a reasonable estimate of the quantity of anabolic steroid involved in the offense, and in making such estimate, the court shall consider that each 25 mg of anabolic steroid is one ''unit''.

In addition, the amendment addresses two harms often associated with anabolic steroid offenses by providing new enhancements in § 2D1.1(b)(6) and (b)(7). Subsection (b)(6) provides a two-level enhancement if the offense involved the distribution of an anabolic steroid and a masking agent. Subsection (b)(7) provides a two-level enhancement if the defendant distributed an anabolic steroid to an athlete. Both enhancements address congressional concern with distribution of anabolic steroids to athletes, particularly the impact that steroids distribution and steroids use has on the integrity of sport, either because of the unfair advantage gained by the use of steroids or because of the concealment of such use.

The amendment also amends Application Note 8 of § 2D1.1 to provide that an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) ordinarily would apply in the case of a defendant who used his or her position as a coach to influence an athlete to use an anabolic steroid.

7. *Amendment:* Section 2G2.5 is amended in the heading by adding at the end '' Failure to Provide Required Marks in Commercial Electronic Email''.

The Commentary to § 2G2.5 captioned ''Statutory Provision'' is amended by striking ''Provision:'' and inserting ''Provisions: 15 U.S.C. 7704(d);''.

Chapter Three, Part C, as amended by Amendment 2 of this document, is further amended by adding at the end the following:

''§ 3C1.4. False Registration of Domain Name

If a statutory enhancement under 18 U.S.C. 3559(f)(1) applies, increase by 2 levels.

Commentary

Background: This adjustment implements the directive to the Commission in section 204(b) of Public Law 108–482.''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 15 U.S.C. 6821 the following:

''15 U.S.C. 7704(d) 2G2.5''.

Reason for Amendment: This amendment (A) implements the directive to the Commission in section 204(b) of the Intellectual Property Protection and Courts Administration Act of 2004, Public Law 109–9; and (B) addresses the new offense in section 5(d) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Public Law 108–187 (''CAN–SPAM Act'')(15 U.S.C. 7704(d)).

Section 204(b) of the Intellectual Property Protection and Courts Administration Act of 2004 directed the Commission to ensure that the applicable guideline range for a defendant convicted of any felony offense carried out online that may be facilitated through the use of a domain name registered with materially false contact information is sufficiently stringent to deter commission of such acts. The amendment implements this directive by creating a new guideline, at § 3C1.4 (False Registration of Domain Names), which provides a two-level adjustment for cases in which a statutory enhancement under 18 U.S.C. 3559(f)(1) applies. Section 3559(f)(1), created by section 204(a) of the Intellectual Property Protection and Courts Administration Act of 2004, doubles the statutory maximum term of imprisonment, or increases the maximum sentence by seven years, whichever is less, if a defendant who is convicted of a felony offense knowingly falsely registered a domain name and used that domain name in the course of the offense. Basing the adjustment in the new guideline on application of the statutory enhancement in 18 U.S.C. 3559(f)(1) satisfies the directive in a straightforward and uncomplicated manner.

Section 5(d)(1) of the CAN–SPAM Act prohibits the transmission of commercial electronic messages that contain ''sexually oriented material'' unless such messages include certain marks, notices, and information. The amendment references the new offense, found at 15 U.S.C. 7704(d), to 2G2.5 (Recordkeeping Offenses Involving the Production of Sexually Explicit Materials). Prior to this amendment, § 2G2.5 applied to violations of 18 U.S.C. 2257, which requires producers of sexually explicit materials to maintain detailed records regarding their production activities and to make such records available for inspection by

the Attorney General in accordance with applicable regulations. Although offenses under 15 U.S.C. 7704(d) do not involve the same recording and reporting functions, section 7704(d) offenses essentially are regulatory in nature and in this manner are similar to other offenses sentenced under § 2G2.5. In addition to the statutory reference changes, the amendment also expands the heading of § 2G2.5 specifically to cover offenses under 15 U.S.C. 7704(d).

8. *Amendment:* Section 2J1.2 and Appendix A (Statutory Index), effective October 24, 2005 (*see* USSC Guidelines Manual, Supplement to Appendix C, Amendment 676), are repromulgated without change.

Reason for Amendment: This amendment repromulgates as a permanent amendment the temporary, emergency amendment to § 2J1.2 and Appendix A (Statutory Index), which became effective on October 24, 2005 (*see* Supplement to Appendix C, Amendment 676). The amendment implements section 6703 of the Intelligence Reform and Terrorism Prevention Act of 2004 (the ''Act''), Public Law 108–458, which provides an enhanced penalty of not more than 8 years of imprisonment for offenses under sections 1001(a) and 1505 of title 18, United States Code, ''if the offense involves international or domestic terrorism (as defined in section 2331).'' Section 6703(b) requires the Sentencing Commission to amend the sentencing guidelines to provide for ''an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves international or domestic terrorism, as defined in section 2331 of such title.'' Section 3 of the United States Parole Commission Extension and Sentencing Commission Authority Act of 2005, Public Law 109–76, directed the Commission, under emergency authority, to promulgate an amendment implementing section 6703(b).

First, the amendment references convictions under 18 U.S.C. 1001 to 2J1.2 (Obstruction of Justice) ''when the statutory maximum term of imprisonment relating to international or domestic terrorism is applicable.'' It also adds a new specific offense characteristic at § 2J1.2(b)(1)(B) providing for a 12 level increase for a defendant convicted under 18 U.S.C. 1001 and 1505 ''when the statutory maximum term of imprisonment relating to international or domestic terrorism is applicable.'' This 12 level increase is applied in lieu of the current 8 level increase for injury or threats to persons or property. The increase of 12 levels is intended to provide parity with the treatment of federal crimes of terrorism within the limits of the 8 year statutory maximum penalty. It is also provided to ensure a 5 year sentence of imprisonment for offenses that involve international or domestic terrorism.

Second, the amendment adds to Application Note 1 definitions for ''domestic terrorism'' and ''international terrorism,'' using the meanings given the terms at 18 U.S.C. 2331(5) and (1), respectively.

Third, the amendment adds to Application Note 2 an instruction that if § 3A1.4 (Terrorism) applies, do not apply § 2J1.2(b)(1)(B).

9. *Amendment:* Section 2K2.1(a) is amended by striking subdivision (1) and inserting the following:

''(1) 26, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;'';

by striking subdivision (3) and inserting the following:

''(3) 22, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;'';

by striking subdivision (4)(B) and inserting the following:

''(B) the (i) offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. 5845(a); and (ii) defendant (I) was a prohibited person at the time the defendant committed the instant offense; or (II) is convicted under 18 U.S.C. 922(d);'';

and in subdivision (5) by striking ''or 18 U.S.C. 921(a)(30)''.

Section 2K2.1(b) is amended by striking subdivision (4) and inserting the following:

''(4) If any firearm (A) was stolen, increase by 2 levels; or (B) had an altered or obliterated serial number, increase by 4 levels.''.

Section 2K2.1(b) is amended by redesignating subdivisions (5) and (6) as subdivisions (6) and (7), respectively; and by inserting after ''except if subsection (b)(3)(A) applies.'' the following subdivision:

''(5) If the defendant engaged in the trafficking of firearms, increase by 4 levels.''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended by striking Note 2 and inserting the following:

''2. Semiautomatic Firearm Capable of Accepting a Large Capacity Magazine.—For purposes of subsections (a)(1), (a)(3), and (a)(4), a 'semiautomatic firearm capable of accepting a large capacity magazine' means a semiautomatic firearm that has the ability to fire many rounds without reloading because at the time of the offense (A) the firearm had attached to it a magazine or similar device that could accept more than 15 rounds of ammunition; or (B) a magazine or similar device that could accept more than 15 rounds of ammunition was in close proximity to the firearm. This definition does not include a semiautomatic firearm with an attached tubular device capable of operating only with .22 caliber rim fire ammunition.''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended by striking Note 4; by redesignating Notes 5 through 10 as Notes 4 through 9, respectively; by striking Note 11; by redesignating Notes 12 through 14 as Notes 10 through 12, respectively; and by striking Notes 15 and 16.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended by striking Note 8, as redesignated by this amendment, and inserting the following:

''8. Application of Subsection (b)(4)–

(A) Interaction with Subsection (a)(7).—If the only offense to which § 2K2.1 applies is 18 U.S.C. § 922(i), (j), or (u), or 18 U.S.C. § 924(l) or (m) (offenses involving a stolen firearm or stolen ammunition) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(A). This is because the base offense level takes into account that the firearm or ammunition was stolen. However, if the offense involved a firearm with an altered or obliterated serial number, apply subsection (b)(4)(B).

Similarly, if the offense to which § 2K2.1 applies is 18 U.S.C. 922(k) or 26 U.S.C. 5861(g) or (h) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the enhancement in subsection (b)(4)(B). This is because the base offense level takes into account that the firearm had an altered or obliterated serial number. However, if the offense involved a stolen firearm or stolen ammunition, apply subsection (b)(4)(A).

(B) Knowledge or Reason to Believe.—Subsection (b)(4) applies regardless of whether the defendant knew or had reason to believe that the firearm was stolen or had an altered or obliterated serial number.''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 4, as redesignated by this amendment, by inserting ''Application of Subsection (a)(7).—'' before ''Subsection (a)(7)''; in Note 5, as redesignated by this amendment, by inserting ''Application of Subsection (b)(1).—'' before ''For purposes of calculating''; in Note 6, as redesignated by this amendment, by inserting ''Application of Subsection (b)(2).—'' before ''Under subsection (b)(2)''; in Note 7, as redesignated by this amendment, by inserting ''Destructive Devices.—'' before ''A defendant''; in Note 9, as redesignated by this amendment, by inserting ''Application of Subsection (b)(7).—'' before ''Under''; and by striking ''(b)(6), if'' and inserting ''(b)(7), if''; in Note 10, as redesignated by this amendment, by inserting ''Prior Felony Convictions.—'' before ''For purposes of''; in Note 11, as redesignated by this amendment, by inserting ''Upward Departure Provisions.—'' before ''An upward departure''; in Note 12, as redesignated by this amendment, by inserting ''Armed Career Criminal.—'' before ''A defendant who''; and by inserting at the end the following:

''13. Application of Subsection (b)(5).—

(A) In General.—Subsection (b)(5) applies, regardless of whether anything of value was exchanged, if the defendant—

(i) Transported, transferred, or otherwise disposed of two or more firearms to another individual, or received two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual; and

(ii) Knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual—

(I) Whose possession or receipt of the firearm would be unlawful; or

(II) Who intended to use or dispose of the firearm unlawfully.

(B) Definitions.—For purposes of this subsection:

'Individual whose possession or receipt of the firearm would be unlawful' means an individual who (i) has a prior conviction for a crime of violence, a controlled substance offense, or a misdemeanor crime of domestic violence; or (ii) at the time of the offense was under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. 'Crime of violence' and 'controlled substance offense' have the meaning given those terms in § 4B1.2 (Definitions of Terms Used in Section 4B1.1). 'Misdemeanor crime of domestic violence' has the meaning given that term in 18 U.S.C. 921(a)(33)(A).

The term 'defendant', consistent with § 1B1.3 (Relevant Conduct), limits the accountability of the defendant to the defendant's own conduct and conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

(C) Upward Departure Provision.—If the defendant trafficked substantially more than 25 firearms, an upward departure may be warranted.

(D) Interaction with Other Subsections.—In a case in which three or more firearms were both possessed and trafficked, apply both subsections (b)(1) and (b)(5). If the defendant used or transferred one of such firearms in connection with another felony offense (*i.e.*, an offense other than a firearms possession or trafficking offense) an enhancement under subsection (b)(6) also would apply.

14. 'In Connection With'.—

(A) In General.—Subsections (b)(6) and (c)(1) apply if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense or another offense, respectively.

(B) Application When Other Offense is Burglary or Drug Offense.—Subsections (b)(6) and (c)(1) apply (i) in a case in which a defendant who, during the course of a burglary, finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary; and (ii) in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia. In these cases, application of subsections (b)(1) and (c)(1) is warranted because the presence of the firearm has the potential of facilitating another felony offense or another offense, respectively.

(C) Definitions.—

'Another felony offense', for purposes of subsection (b)(6), means any Federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained.

'Another offense', for purposes of subsection (c)(1), means any Federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, regardless of whether a criminal charge was brought, or a conviction obtained.

(D) Upward Departure Provision.—In a case in which the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (*e.g.*, the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under § 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.''.

Section 5K2.17 is amended to read as follows:

''§ 5K2.17. Semiautomatic Firearms Capable of Accepting Large Capacity Magazine (Policy Statement)

If the defendant possessed a semiautomatic firearm capable of accepting a large capacity magazine in connection with a crime of violence or controlled substance offense, an upward departure may be warranted. A 'semiautomatic firearm capable of accepting a large capacity magazine' means a semiautomatic firearm that has the ability to fire many rounds without reloading because at the time of the offense (A) the firearm had attached to it a magazine or similar device that could accept more than 15 rounds of ammunition; or (B) a magazine or similar device that could accept more then 15 rounds of ammunition was in close proximity to the firearm. The extent of any increase should depend upon the degree to which the nature of the weapon increased the likelihood of death or injury in the circumstances of the particular case.''.

Reason for Amendment: This four part amendment addresses various issues pertaining to the primary firearms guideline, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition). First, the amendment modifies four base offense levels that provide enhanced penalties for offenses involving a firearm described in 18 U.S.C. 921(a)(30), the semiautomatic assault weapon ban that expired on September 13, 2004. The Commission received information regarding inconsistent application as to whether the enhanced base offense levels apply to these types of firearms in light of the ban's expiration. The amendment deletes the reference to 18 U.S.C. 921(a)(30) at § 2K2.1(a)(1), (a)(3), and (a)(4) and replaces the reference with the term, ''a semiautomatic firearm capable of accepting a large capacity magazine,'' which is defined in Application Note 2.

While the amendment deletes the reference to 18 U.S.C. 921(a)(30) at 2K2.1(a)(5), it does not include the phrase ''a semiautomatic firearm that is capable of accepting a large capacity magazine'' in this subsection because a defendant sentenced under subsection (a)(5) does not have the same ''prohibited person'' status as a defendant sentenced under subsections (a)(1), (a)(3), or (a)(4).

The amendment also amends § 5K2.17 (High-Capacity, Semiautomatic Firearms) in a manner consistent with § 2K2.1, as amended, except that it excludes the language pertaining to .22 caliber rim fire ammunition in order to remain in conformity with a prior congressional directive. As amended, § 5K2.17 (Semiautomatic Firearms Capable of Accepting Large Capacity Magazine) provides that an upward departure may be warranted if a defendant possesses a semiautomatic firearm capable of accepting a large capacity magazine in connection with a crime of violence or controlled substance offense.

Second, the amendment provides a 4-level enhancement at § 2K2.1(b)(5) if the defendant engaged in the trafficking of firearms. The definition of trafficking encompasses transporting, transferring, or otherwise disposing of two or more firearms, or receipt of two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual. The definition also requires that the defendant know or have reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual whose possession or receipt would be unlawful or who intended to use or dispose of the firearm unlawfully. With respect to an individual whose possession would be unlawful, the amendment includes individuals who previously have been convicted of a crime of violence, a controlled substance offense, or a misdemeanor crime of domestic violence, or who at the time of the offense were under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. Additionally, the definition provides that the enhancement applies regardless of whether anything of value was exchanged.

Third, the amendment modifies § 2K2.1(b)(4) to increase penalties for offenses involving altered or obliterated serial numbers. Prior to this amendment, § 2K2.1(b)(4) provided a 2-level enhancement if the offense involved either a stolen firearm or a firearm with an altered or obliterated serial number. The amendment provides a 4-level enhancement for offenses involving altered or obliterated serial numbers. This increase reflects both the difficulty in tracing firearms with altered or obliterated serial numbers, and the increased market for these types of weapons.

Fourth, the amendment addresses a circuit conflict pertaining to the application of current § 2K2.1(b)(5) (re-designated by this amendment as § 2K2.1(b)(6)) and (c)(1)), specifically with respect to the use of a firearm ''in connection with'' burglary and drug offenses. The amendment, adopting the language from *Smith* v. *United States*, 508 U.S. 223 (1993), provides at Application Note 14 that the provisions apply if the firearm facilitated, or had the potential of facilitating, another felony offense or another offense, respectively. Furthermore, the amendment provides that in burglary offenses, these provisions apply to a defendant who takes a firearm during the course of the burglary, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary. In addition, the provisions apply in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug manufacturing materials, or drug paraphernalia. The Commission determined that application of these provisions is warranted in these cases because of the potential that the presence of the firearm has for facilitating another felony offense or another offense.

10. *Amendment:* Section 2L1.1 is amended by redesignating subsections (a)(1) and (a)(2) as subsections (a)(2) and (a)(3), respectively; and by inserting after ''Base Offense Level:'' the following:

''(1) 25, if the defendant was convicted under 8 U.S.C. 1327 of a violation involving an alien who was inadmissible under 8 U.S.C. 1182(a)(3);''.

Section 2L1.1 is amended by redesignating subsections (b)(4) through (b)(6) as subsections (b)(5) through (b)(7), respectively; and by inserting after subsection (b)(3) the following:

''(4) If the defendant smuggled, transported, or harbored a minor who was unaccompanied by the minor's parent or grandparent, increase by 2 levels.''.

Subsection (b)(7), as redesignated by this amendment, is amended by striking ''8 levels'' and inserting ''10 levels''; and by redesignating subdivisions (1) through (4) as subdivisions (A) through (D), respectively.

Section 2L1.1(b) is amended by adding at the end the following:

''(8) If an alien was involuntarily detained through coercion or threat, or in connection with a demand for payment, (A) after the alien was smuggled into the United States; or (B) while the alien was transported or harbored in the United States, increase by 2 levels. If the resulting offense level is less than level 18, increase to level 18.''.

Subsection 2L1.1(c)(1) is amended to read as follows:

''(1) If death resulted, apply the appropriate homicide guideline from Chapter Two, Part A, Subpart 1, if the resulting offense level is greater than that determined under this guideline.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 1 by striking ''For purposes of this guideline—'' and inserting ''Definitions.—For purposes of this guideline:''; and by adding at the end the following:

'' 'Minor' means an individual who had not attained the age of 16 years.

'Parent' means (A) a natural mother or father; (B) a stepmother or stepfather; or (C) an adoptive mother or father.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''Interaction with § 3B1.1.—'' before ''For''; and by adding at the end the following:

''In large scale smuggling, transporting, or harboring cases, an additional adjustment from § 3B1.1 typically will apply.''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended by striking Notes 3 and 4 and inserting the following:

''3. Upward Departure Provisions.—An upward departure may be warranted in any of the following cases:

(A) The defendant smuggled, transported, or harbored an alien knowing that the alien intended to enter the United States to engage in subversive activity, drug trafficking, or other serious criminal behavior.

(B) The defendant smuggled, transported, or harbored an alien the defendant knew was inadmissible for reasons of security and related grounds, as set forth under 8 U.S.C. 1182(a)(3).

(C) The offense involved substantially more than 100 aliens.'';

by redesignating Notes 5 and 6 as Notes 4 and 5, respectively; in Note 4, as redesignated by this amendment, by inserting ''Prior Convictions Under Subsection (b)(3).—'' before ''Prior felony''; and in Note 5, as redesignated by this amendment, by inserting ''Application of Subsection (b)(6).—''

before ''Reckless''; by striking ''(b)(5)'' each place it appears and inserting ''(b)(6)''; and by striking ''(b)(4)'' and inserting ''(b)(5)''.

The Commentary to § 2L1.1 captioned ''Application Notes'' is amended by adding at the end the following:

''6. Inapplicability of § 3A1.3.—If an enhancement under subsection (b)(8) applies, do not apply § 3A1.3 (Restraint of Victim).''.

The Commentary to § 2L1.1 captioned ''Background'' is amended by striking the last sentence.

Section 2L2.1(b) is amended by adding at the end the following:

''(5) If the defendant fraudulently obtained or used (A) a United States passport, increase by 4 levels; or (B) a foreign passport, increase by 2 levels.''.

Section 2L2.2(b)(3) is amended by inserting ''(A)'' after ''used'' and by inserting ''; or (B) a foreign passport, increase by 2 levels'' after ''4 levels''.

Reason for Amendment: This two-part amendment addresses various issues pertaining to §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien), 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law), and 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport).

The first part of this amendment modifies § 2L1.1. First, this amendment addresses national security concerns pertaining to the smuggling of illegal aliens. Specifically, a new base offense level of 25 at § 2L1.1(a)(1) provides increased punishment for defendants convicted of 8 U.S.C. 1327 involving an alien who is inadmissable because of ''security or related grounds,'' as defined in 8 U.S.C. 1182(a)(3). To further address concerns related to national security, an application note provides that an upward departure may be warranted if the defendant had specific knowledge that the alien the defendant smuggled, transported, or harbored was inadmissible for reasons of security and related grounds, as set forth in 8 U.S.C. 1182(a)(3). This upward departure note applies regardless of whether the defendant is convicted of 8 U.S.C. 1327.

Second, the amendment provides a two-level enhancement for a case in which the defendant smuggled, transported, or harbored a minor unaccompanied by the minor's parent or grandparent. This enhancement addresses concerns regarding the increased risk involved when unaccompanied minors are smuggled into, or harbored or transported within, the United States. Application Note 1 defines ''minor'' as ''an individual who had not attained the age of 16 years'' and defines ''parent'' as ''(A) a natural mother or father; (B) a stepmother or stepfather; or (C) an adoptive mother or father.''

Third, the amendment makes two changes with respect to offenses involving death. First, the amendment increases the enhancement from 8 levels to 10 levels if any person died as a result of the offense. Additionally, the cross reference at § 2L1.1(c)(1) is expanded to cover homicides other than murder. This amendment ensures that any offense involving the death of an alien will be sentenced under the guideline appropriate for the particular type of homicide involved if the resulting offense level is greater than the offense level determined under § 2L1.1.

Fourth, the amendment adds a two-level enhancement and a minimum offense level of 18 in a case in which an alien was involuntarily detained through coercion or threat, or in connection with a demand for payment, after the alien was smuggled into the United States, or while the alien was transported or harbored in the United States. This conduct may not be covered by § 3A1.3 (Restraint of Victim) because an illegal alien, as a participant in the offense, may not be considered a ''victim'' for purposes of that adjustment. Additionally, application of § 3A1.3 requires ''physical restraint,'' as that term is defined in § 1B1.1, and the involuntary detainment involved in offenses sentenced under § 2L1.1 may not involve physical restraint. Finally, the amendment provides an application note, as a corollary to Application Note 2 in § 3A1.3, that instructs the court not to apply § 3A1.3 if the involuntary detainment enhancement applies.

The second part of the amendment modifies §§ 2L2.1 and 2L2.2. First, this part of the amendment adds a new specific offense characteristic at § 2L2.1(b)(5)(A) that provides a four-level enhancement in a case in which the defendant fraudulently used or obtained a United States passport. The same specific offense characteristic was added to § 2L2.2, effective November 1, 2004 (see USSC Guidelines Manual Supplement to Appendix C, Amendment 671). The addition of this specific offense characteristic to § 2L2.1 promotes proportionality between the document fraud guidelines, §§ 2L2.1 and 2L2.2.

Second, the amendment provides, at § 2L2.1(b)(5)(B) and § 2L2.2(b)(3)(B), a two-level enhancement if the defendant fraudulently obtained or used a foreign passport. This modification addresses concern regarding the threat to the security of the United States in document fraud offenses involving foreign passports.

11. *Amendment:* Section 3C1.1 is amended by striking ''during the course of'' and inserting ''with respect to''.

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 1 by inserting ''In General.—'' before ''This adjustment''; by striking ''during the course of'' and inserting ''with respect to''; and by inserting at the end the following:

''Obstructive conduct that occurred prior to the start of the investigation of the instant offense of conviction may be covered by this guideline if the conduct was purposefully calculated, and likely, to thwart the investigation or prosecution of the offense of conviction.''.

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''Limitations on Applicability of Adjustment.—'' before ''This provision''; in Note 3 by inserting ''Covered Conduct Generally.—'' before ''Obstructive''; in Note 5 by inserting ''Examples of Conduct Ordinarily Not Covered.—'' before ''Some types''; in Note 6 by inserting '' 'Material' Evidence Defined.—'' before '' 'Material' evidence''; in Note 7 by inserting ''Inapplicability of Adjustment in Certain Circumstances.—'' before ''If the defendant''; in Note 8 by inserting ''Grouping Under § 3D1.2(c).—'' before ''If the defendant''; and in Note 9 by inserting ''Accountability for § 1B1.3(a)(1)(A) Conduct.—'' before ''Under this section''.

The Commentary to § 3C1.1 captioned ''Application Notes'' is amended in Note 4 by inserting ''Examples of Covered Conduct.—'' before ''The following''; in subdivision (b) by inserting '', including during the course of a civil proceeding if such perjury pertains to conduct that forms the basis of the offense of conviction'' after ''suborn perjury''; by striking the period at the end of subdivision (j) and inserting a semi-colon; and by adding at the end the following subdivision:

''(k) threatening the victim of the offense in an attempt to prevent the victim from reporting the conduct constituting the offense of conviction.''.

Reason for Amendment: This amendment addresses a circuit conflict

regarding the issue of whether pre-investigative conduct can form the basis of an adjustment under § 3C1.1 (Obstructing or Impeding the Administration of Justice). The First, Second, Seventh, Tenth, and District of Columbia Circuits have held that pre-investigation conduct can be used to support an obstruction adjustment under § 3C1.1. *Compare United States* v. *McGovern,* 329 F.3d 247, 252 (1st Cir. 2003)(holding that the submission of false run sheets to Medicare and Medicaid representatives qualified for the enhancement even though ''the fact that there was no pending Federal criminal investigation at the time of the obstruction did not disqualify a defendant from an enhancement when there was a 'close connection between the obstructive conduct and the offense of conviction.' ''(quoting *United States* v. *Emery,* 991 F.2d 907, 911(1st Cir. 1992))); *United States* v. *Fiore,* 381 F.3d 89, 94 (2nd Cir. 2004)(defendant's perjury in an SEC civil investigation into defendant's securities fraud constituted obstruction of justice of the criminal investigation of the same ''precise conduct'' for which defendant was criminally convicted, even though the perjury occurred before the criminal investigation commenced); *United States* v. *Snyder,* 189 F.3d 640, 649 (7th Cir. 1999)(holding the adjustment appropriate in case in which defendant made pre-investigation threat to victim and did not withdraw his threat after the investigation began, thus obstructing justice during the course of the investigation); United States v. Mills, 194 F.3d 1108, 1115 (10th Cir. 1999)(holding that destruction of tape that occurred before an investigation began warranted application of the enhancement because the defendant knew an investigation would be conducted and understood the importance of the tape to that investigation); and *United States* v. *Barry,* 938 F.2d 1327, 1333–34 (D.C. Cir. 1991)(''Given the commentary and the case law interpreting § 3C1.1, we conclude that the enhancement applies if the defendant attempted to obstruct justice in respect to the investigation or prosecution of the offense of conviction, even if the obstruction occurred before the police or prosecutors began investigating or prosecuting the specific offense of conviction.''), *with United States* v. *Baggett,* 342 F.3d 536, 542 (6th Cir. 2003)(holding that the obstruction of justice enhancement could not be justified on the basis of the threats that the defendant made to the victim prior to the investigation, prosecution, or sentencing of the offense); United States v. Stolba, 357 F.3d 850, 852–53 (8th Cir. 2004)(holding that an obstruction adjustment is not available when destruction of documents occurred before an official investigation had commenced); *United States* v. *DeGeorge,* 380 F.3d 1203,1222 (9th Cir. 2004)(perjury during a civil trial as part of a scheme to defraud was not an obstruction of justice of a criminal investigation of the fraudulent scheme because the criminal investigation had not yet begun at the time the defendant perjured himself); see also *United States* v. *Clayton,* 172 F.3d 347, 355 (5th Cir. 1999)(holding that defendant's threats to witnesses warrant the enhancement under § 3C1.1, but stating in dicta that the guideline ''specifically limits applicable conduct to that which occurs during an investigation * * *'').

The amendment, which adopts the majority view, permits application of the guideline to obstructive conduct that occurs prior to the start of the investigation of the instant offense of conviction by allowing the court to consider such conduct if it was purposefully calculated, and likely, to thwart the investigation or prosecution of the offense of conviction. The amendment also adds, as examples of covered conduct in Application Note 4, (A) perjury that occurs during the course of a civil proceeding if such perjury pertains to the conduct that forms the basis of the offense of conviction; and (B) conduct involving threats to the victim of the offense if those threats were intended to prevent the victim from reporting the conduct constituting the offense of conviction. Finally, the amendment changes language in § 3C1.1(A) from ''during the course of'' to ''with respect to.''

12. *Amendment:* Chapter Six is amended in the heading by striking ''AND'' and inserting a comma; and by adding at the end '', AND CRIME VICTIMS' RIGHTS''.

Chapter Six, Part A is amended by adding at the end the following:

''§ 6A1.5. Crime Victims' Rights (Policy Statement)

In any case involving the sentencing of a defendant for an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in 18 U.S.C. 3771 and in any other provision of Federal law pertaining to the treatment of crime victims.

Commentary

Application Note:

1. Definition.—For purposes of this policy statement, 'crime victim' has the meaning given that term in 18 U.S.C. 3771(e).''.

Reason for Amendment: This amendment creates a new policy statement at § 6A1.5 (Crime Victims' Rights) in response to the Justice for All Act of 2004, Public Law 108–405, which sets forth at 18 U.S.C. 3771 various rights for crime victims during the criminal justice process, including at subsection (a)(4) the right to be ''reasonably heard at any public proceeding * * * involving release, plea, sentencing, or any parole proceeding.'' The amendment also changes the title of Chapter Six to reflect the addition of the policy statement.

13. *Amendment:* The Commentary to § 8C2.5 captioned ''Application Notes'' is amended in Note 12 by striking the last sentence.

Reason for Amendment: This amendment deletes the last sentence of Application Note 12 to § 8C2.5 (Culpability Score), which stated that ''[w]aiver of attorney-client privilege and of work product protections is not a prerequisite to a reduction in culpability score . . . unless such waiver is necessary in order to provide timely and thorough disclosure of all pertinent information known to the organization.'' The Commission added this sentence to address some concerns regarding the relationship between waivers and § 8C2.5(g), and at the time stated that ''[t]he Commission expects that such waivers will be required on a limited basis.'' *See* Supplement to Appendix C (Amendment 673, effective November 1, 2004). Subsequently, the Commission received public comment and heard testimony at public hearings on November 15, 2005, and March 15, 2006, that the sentence at issue could be misinterpreted to encourage waivers.

[FR Doc. E6–7344 Filed 5–12–06; 8:45 am]
BILLING CODE 2211–01–P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council; Public Meeting Notice

In accordance with the Women's Business Ownership Act, Public Law 106–554 as amended, the National Women's Business Council (NWBC) would like to announce a forthcoming Council meeting. The National Women's Business Council will join women members of the United States Senate for an afternoon of dialogue. The meeting will be held on Tuesday, May 23, 2006, starting at 3 p.m. until 4:30 p.m. The meeting will take place at the Hart Senate Office Building, 2nd & D Streets,

NE., Room SH–902, Washington, DC 20510.

The purpose of the meeting is to discuss the impact of current policies on women's entrepreneurship and exchange ideas about goals for the women's business community for the next three, five and ten years.

Anyone wishing to attend or to make a presentation must contact Katherine Stanley in writing or by fax, in order to be put on the agenda. Katherine Stanley, Operations Manager, National Women's Business Council, 409 3rd Street, SW., Washington, DC 20416, phone (202) 205–3850, fax (202) 205–6825.

Matthew Becker,

Committee Management Officer.

[FR Doc. E6–7347 Filed 5–12–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5388]

Renewal of Charter of Advisory Committee on International Law

SUMMARY: The Charter of the Department of State's Advisory Committee on International Law (ACIL) has been renewed for an additional two years.

The Charter of the Advisory Committee on International Law is being renewed for a two-year period. Through this Committee, the Department of State will continue to obtain the views and advice of a cross-section of the country's outstanding members of the legal profession on significant issues of international law. The Committee's consideration of these legal issues in the conduct of our foreign affairs provides a unique contribution to the creation and promotion of U.S. foreign policy. The Committee comprises all former Legal Advisers of the Department of State and up to twenty individuals appointed by the current Legal Adviser.

FOR FURTHER INFORMATION CONTACT: Judith L. Osborn, Executive Director, Office of the Assistant Legal Adviser for United Nations Affairs, 202–647–2767 or *osbornjl@state.gov*.

Judith L. Osborn,

Attorney-Adviser, Office of United Nations Affairs, Office of the Legal Adviser, Executive Director, Advisory, Committee on International Law, Department of State.

[FR Doc. E6–7337 Filed 5–12–06; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5408]

Culturally Significant Objects Imported for Exhibition Determinations: ''Rembrandt: Master Etchings From St. Louis Collections''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Rembrandt: Master Etchings from St. Louis Collections,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Saint Louis Art Museum, from on or about October 20, 2006, until on or about January 14, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 5, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–7334 Filed 5–12–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5392]

U.S. National Commission for UNESCO Notice of Meeting

The annual conference of the U.S. National Commission for UNESCO will take place on Thursday, June 1, 2006 and Friday, June 2, 2006, at the Doubletree Hotel, Washington, DC (1515 Rhode Island Avenue, NW.). This will be the second annual conference of the Commission following its re-establishment in 2004; the theme of the meeting is the 60th Anniversary of the creation of the United Nations Educational, Scientific, and Cultural Organization.

On Thursday, June 1 from 9 a.m. to 12 p.m. and from 2:15 p.m. to 5:15 p.m. and on Friday, June 2 from 9 a.m. to 12 p.m., the Commission will hold a series of informational plenary sessions and subject-specific committee breakout sessions, which will be open to the public. These sessions will focus on UNESCO's budget and six-year Medium Term Strategy as well as various issues that relate to the established subcommittees within the Commission's committees of education, culture, natural sciences and engineering, social and human sciences, and communications and information. On Friday, June 2, 2006, the Commission will meet from 1:45 p.m. until 4 p.m. to discuss recommendations on these issues.

Members of the public who wish to attend any of these meetings should contact the U.S. National Commission for UNESCO no later than Wednesday, May 24th for further information about admission, as seating is limited. Written comments should also be submitted by Wednesday, May 24th to allow time for distribution to the Commission members prior to the meeting. Additionally, those who wish to make oral comments during the public comment section held during the concluding Friday session should request to be scheduled by Wednesday, May 24th. Each individual will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes. The National Commission may be contacted via e-mail at *DCUNESCO@state.gov*, or via phone at (202) 663–0026. Its Web site can be accessed at: *http://www.state.gov/p/io/unesco/.*

Dated: May 8, 2006.

Alexander Zemek,

U.S. National Commission for UNESCO, Department of State.

[FR Doc. 06–4537 Filed 5–12–06; 8:45 am]

BILLING CODE 4710–19–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 33.87–1, Calibration Test, Endurance Test, and Teardown Inspection for Turbine Engine Certification (§§ 33.85, 33.87, 33.93)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular 9AC) 33.87–1, Calibration Test, Endurance Test, and Teardown Inspection for Turbine Engine Certification. This AC sets forth acceptable methods of compliance for aircraft engines with the provisions of §§ 33.85, 33.87, and 33.93 of Title 14 of the Code of Federal Regulations. This AC provides guidance for part 33 type certification endurance testing of all classes of turbine engines.

DATES: The Engine and Propeller Directorate issued Advisory Circular 33.87–1 on April 13, 2006.

FOR FURTHER INFORMATION CONTACT: The Federal Aviation Administration, Attn: Robert McCabe, Engine and Propeller Standards Staff, Rulemaking and Policy Branch, ANE–111, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7138; fax (781) 238–7199; e-mail: *robert.mccabe@faa.gov*.

We have filed in the docket all substantive comments received, and a report summarizing them. If you wish to review the docket in person, you may go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to contact the above individual directly, you can use the above telephone number or e-mail address provided.

How to Obtain Copies: A paper copy of AC 33.87–1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394. The AC will also be available on the Internet at *http://www.faa.gov.*

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

Issued in Burlington, Massachusetts on April 13, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–4526 Filed 5–12–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Draft Order 8040.2, Airworthiness Directive Process for Mandatory Continuing Airworthiness Information

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of, and requests comments on draft Order 8040.2, Airworthiness Directive Process for Mandatory Continuing Airworthiness Information. The draft order describes new policy and procedures for developing and issuing Federal Aviation Administration (FAA) airworthiness directives (AD) on imported products where the State of Design Authority issued mandatory continuing airworthiness information (MCAI). The process will allow for a timelier issuance of ADs.

DATES: Comments must be received on or before June 14, 2006.

ADDRESSES: Send your comments on the draft Order electronically by logging onto the following Web site: *http://www.faa.gov/aircraft/draft__docs/.* You may submit a hard copy of your comments to the address specified below, to the attention of the individual identified as point of contact for the document.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Walker, AIR–140, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 813, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9592, Fax (2020 267–5340.

SUPPLEMENTARY INFORMATION:

Comments Invited

When commenting on the draft Order, you should identify the Order by its number, 8040.2. Comments received may be examined, both before and after the closing date, in room 815 at the above address, weekdays except Federal holidays, between 8:30 a.m. and 4:40 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing a final document. You may obtain a paper copy of the draft Order by contacting the individual listed above, or obtain an electronic copy of the draft Order at: *http://www.faa.gov/aircraft/draft__docs/.* For Internet retrieval assistance, contact the AIR Internet Content Program Manager at (202) 267–8361.

Background

The FAA proposes prototyping a new process for the issuance of airworthiness directives (AD) for imported products where the State of Design Authority issued mandatory continuing airworthiness information (MCAI). In the draft order we describe policies and procedures for developing streamlined ADs issued against imported products. This streamlining will allow publishing of the ADs in a more expeditious manner, thereby ensuring the continued safety of the flying public in a more timely fashion. This process will continue to follow all existing AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements.

Our Aircraft Certification Directorates will soon begin issuing individual ADs to prototype the streamlined process described in the draft order. Please note, in addition to the normal request for comments pertaining to the actual AD, we will request your comments, views, or arguments on the new process.

How to Obtain Copies

You may view or download the draft order from its online location at *http://www.faa.gov/aircraft/draft__docs/* . At this Web page, under Draft Documents Open for Comment, select ''Orders.'' At the Orders page, select ''Proposed Orders.''

Issued in Washington, DC, on May 9, 2006.

David Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 06–4525 Filed 5–12–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Kandiyohi County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 71 and TH 23 from the Willmar Bypass to the north junction of TH 71 and TH 23, located northeast of the City of Willmar in Dovre Township, a distance of approximately 3.5 miles, in Kandiyohi County, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, Suite 500,

380 Jackson Street, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Lowell Flaten, Project Manager, Minnesota Department of Transportation—District 8, 2505 Transportation Road, Willmar, Minnesota 56201, Telephone (320) 214–3698; (800) 627–3529 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT), will prepare an EIS to improve safety on the shared alignment section of TH 71 and TH 23 in Dovre Township, northeast of the City of Willmar, a distance of approximately 3.5 miles, in Kandiyohi County, Minnesota. This segment of highway is a rural four-lane divided facility with at-grade intersections at public roadways. The proposed action includes the construction of highway access modifications, new bridges and ramps for grade-separated highway crossings, frontage road extensions and local roadway connections between the existing TH 71/TH 23 highway slit on the north and TH 71/TH 23 at TH 294 (Business 71) on the south. Improvements to the corridor are being considered to improve safety and mobility. Improvements will also assist in managing additional traffic growth that will occur with local and regional planned commercial and residential developments.

The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build and (2) ''Build'' alternatives with variations in design and interchange locations along the existing highway corridor, including design variations of grade and alignment. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area from summer 2006 to early 2008. The ''Trunk Highway 71/23 Improvement Project Scoping Document/Draft Scoping Decision Document'' will be published in early summer 2006. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS. Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: Issued on: May 8, 2006.

Cheryl B. Martin,

Environmental Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 06–4496 Filed 5–12–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than July 14, 2006.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number _____.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Mr. Angelo at *victor.angelo@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Victor Angelo, Office of Support Systems, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the

methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: State Safety Participation Regulations and Remedial Actions.

OMB Control Number: 2130–0509.

Abstract: The collection of information is set forth under 49 CFR part 212, and requires qualified state inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

Form Number(s): FRA F 6180.33/61/67/96/96A/109/110/111/112.

Affected Public: Businesses.

Respondent Universe: States and Railroads.

Reporting Burden:

CFR section	Respondent universe	Total annual esponses	Average time per response	Total annual burden hours	Total annual burden cost
Application For Participation	15 States	15 updates	2.5 hours	38	$1,748
Training Funding Agreement	30 States	30 agreements	1 hour	30	1,380
Inspector Training Reimbursement	30 States	300 vouchers	1 hour	300	12,600
Annual Work Plan	30 States	30 reports	15 hours	450	20,700
Inspection Form (Form FRA F 6180.96)	30 States	18,000 forms	15 minutes	4,500	189,000
Violation Report—Motive, Power, and Equipment Regulations (Form FRA F 6180.109).	19 States	200 reports	4 hours	800	33,600
Violation Report—Operating Practices Regulations (Form FRA F 6180.67).	13 States	40 reports	4 hours	160	6,720
Violation Report—Hazardous Materials Regulations (Form FRA F 6180.110).	14 States	100 reports	4 hours	400	16,800
Violation Report—Hours of Service Law (F 6180.33).	13 States	21 reports	4 hours	84	3,528
Violation Report—Accident/Incident Reporting Rules (Form FRA F 6180.61).	17 States	10 reports	4 hours	40	1,680
Violation Report—Track Safety Regulations (Form FRA F 6180.111).	17 States	158 reports	4 hours	632	26,544
Violation Report—Signal and Train Control Regulations (Form FRA F 6180.112).	17 States	100 reports	4 hours	400	16,800
Remedial Actions Reports	573 Railroads	5,048 reports	15 minutes	1,262	80,768
Violation Report Challenge	573 Railroads	1,010 challenges	1 hours	1,010	64,640
Delayed Reports	573 Railroads	505 reports	30 minutes	253	16,192

Total Responses: 25,567.

Estimated Total Annual Burden: 10,359 hours.

Status: Extension of a currently approved collection.

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525.

Abstract: The collection of information is set forth under 49 CFR part 223, which requires the certification and permanent marking of glazing materials by the manufacturer. The manufacturer is also responsible for making available test verification data to railroads and FRA upon request.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 5 Manufacturers.

Total Responses: 25,211.

Estimated Total Annual Burden: 119 hours.

Status: Extension of a currently approved collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on May 10, 2006.

D.J. Stadlter,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E6–7361 Filed 5–12–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34828]

Gregg Haug—Continuance in Control Exemption—Northern Plains Railroad, Inc., Mohall Railroad, Inc. and Mohall Central Railroad, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323 for Gregg Haug, an individual, to continue in control of three Class III rail carriers: Northern Plains Railroad, Inc. (NPR), Mohall Railroad, Inc. (MRI), and Mohall Central Railroad, Inc. (MHC). Each of the foregoing corporations owns or operates

rail lines located in whole or in major part within the State of North Dakota.

DATES: This exemption will be effective on June 14, 2006. Petitions to stay must be filed by May 30, 2006. Petitions to reopen must be filed by June 9, 2006.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to STB Finance Docket No. 34828 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of pleadings to Mark S. Radke, of Felhaber, Larson, Fenlon & Vogt, P.A., 220 South Sixth Street, Suite 2200, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609 [assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* telephone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339].

Board decisions and notices are available on our Web site at *''http://www.stb.dot.gov''.*

Decided: May 9, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–7329 Filed 5–12–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 254X); STB Docket No. AB–290 (Sub-No. 274X); STB Docket No. AB–149 (Sub-No. 2X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Stanly County, NC; Yadkin Railroad Company—Discontinuance of Service Exemption—in Stanly County, NC; Winston-Salem Southbound Railway Company—Discontinuance of Service Exemption—in Stanly County, NC

On April 25, 2006 Norfolk Southern Railway Company (NSR), Yadkin Railroad Company (YRC), a wholly owned subsidiary of NSR, and Winston-Salem Southbound Railway Company (WSSB), a Class III switching carrier owned equally by NSR and CSX Transportation, Inc., jointly filed with the Board an amended petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903: (1) For NSR to discontinue service over 11.11 miles of rail line (the Line) between milepost WF–0.00 at Halls Ferry Junction and milepost WF–11.11 at Badin in Stanly County, NC, which it operates under lease from YRC; (2) for YRC to discontinue service over the Line, which it leases from Alcoa, Inc. (Alcoa), the owner of the Line's right-of-way, track, and improvements; [1] and (3) for WSSB to discontinue service over the 5.21-mile portion of the Line between milepost WF–5.90 at Whitney, NC, and milepost WF–11.11 at Badin, which it and YRC jointly lease from Alcoa. The Line traverses United States Postal Service Zip Code 28001 and serves the station of Badin. NSR will continue to serve the Halls Ferry Junction station, and WSSB will continue to serve the Whitney station.

The Line was constructed by Tallassee Power Company (Tallassee), an Alcoa predecessor. In March 1916, shortly after the Line's construction was completed, Tallassee leased the 5.90-mile segment of the Line between Halls Ferry Junction and Whitney to YRC and the 5.21-mile segment between Whitney and Badin jointly to YRC and WSSB. The leases, which have no fixed term, provide that the lessees are to operate and maintain (except for extraordinary maintenance and capital improvements) the Line as common carriers providing motive power and equipment as needed to serve Alcoa's aluminum smelting facility at Badin and local traffic.

Alcoa is the Line's only shipper. One other shipper, Yadkin Brick Company (Yadkin Brick), has used the Line. According to petitioners, Yadkin Brick was located on the Halls Ferry Junction-Whitney segment in the mid to late 1990s and perhaps for some time earlier.

NSR is the only carrier that has conducted operations over the Line since 1996. In that year, NSR entered into a haulage agreement to move cars for CSXT over the Whitney-Badin segment, replacing the switching service WSSB was providing for CSXT.

YRC ceased operations over the Line in 1951 when its property was leased to the Carolina and Northwestern Railway Company (CNR), a subsidiary of Southern Railway Company (SOR). *Carolina & Northwestern Railway Company, Control, Etc.*, 282 I.C.C. 802 (1951). In 1988, CNR was merged into SOR, which became successor lessee of YRC's properties, *Southern Railway Company—Merger Exemption—Carolina and Northwestern Railway Company*, Finance Docket No. 31255 (ICC served May 12, 1988). SOR changed its name to NSR in 1990, and in 2000 NSR renewed its lease of, and authority to operate, YRC's properties. *Norfolk Southern Railway Company—Corporate Family Transaction Exemption—Yadkin Railroad Company*, STB Finance Docket No. 33951 (STB served Dec. 12, 2000).

The line does not contain federally granted rights-of-way. Any documentation in petitioners' possession will be made available promptly to those requesting it.[2]

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 11, 2006.

Petitioners assert that the Line will revert to Alcoa as private line or real estate following the discontinuances and will not be subject to offers of financial assistance (OFA). Under 49 U.S.C. 10904, any person may file an OFA to subsidize NSR's operation of the Line for up to a year. Any OFA to subsidize the Line under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,300 filing fee. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update*, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006); 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket Nos. AB–290 (Sub-No. 254X), AB–290 (Sub-No. 274X) and AB–149 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) James R. Paschall, Three Commercial Place, Norfolk, VA 23510. Replies to the joint petition are due on or before June 5, 2006.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

[1] Interested persons, including Alcoa, are invited to comment on whether Alcoa or another entity requires abandonment authorization before the Line can be abandoned.

[2] Petitioners state that such documentation is unlikely to exist because Alcoa owns the right-of-way.

Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and any agencies or other persons who commented during its preparation. EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the amended petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 5, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–7328 Filed 5–12–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will conduct a site visit on June 12–16, 2006, at the North Chicago VA Medical Center (VAMC), 3001 Green Bay Road, North Chicago, IL. Site visit briefings, updates, and tours will be held from 8:15 a.m. until 3:30 p.m. each day and will be open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

On June 12, the agenda topics for this meeting will include briefings and updates from key leadership of the VAMC and Veterans Integrated Services Network (VISN) 12, as well as a tour of the surgical and emergency departments, acute medicine, Women's Wellness Clinic, and the Skilled Geriatric Rehabilitation Center. On June 13, the Committee will receive briefings and updates from VISN 12's Women Veterans Program Managers, VISN Seamless Transition Coordinator, and a VISN 12 official on mammography services. On June 14, the Committee will receive briefings and updates on resident training at the VAMC and Rosalind Franklin University of Health Sciences, the Chicago Regional Office operations to include women veterans activities, the Illinois State Department of Veterans Affairs Office, and the National Cemetery Administration. The Committee will also tour the Naval Hospital Great Lakes in Great Lakes, Illinois. On June 15, the Committee will receive briefings and updates on polytrauma services at the Hines VAMC, inpatient/outpatient mental health services for women, the Evanston Vet Center, domiciliary and substance abuse programs, and the acute psychiatry unit. On June 16, there will be an open forum and town hall meeting with the women veterans' community.

Any member of the public wishing to attend the meeting should contact Ms. Rebecca Schiller at the Department of Veterans Affairs, Center for Women Veteran (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Schiller may be contacted either by phone at (202) 273–6193, fax at (202) 273–7092, or e-mail at *00W@mail.gov*. Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting or within 10 days after the meeting.

Dated: May 9, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–4528 Filed 5–12–06; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 71, No. 93
Monday, May 15, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 06–C0003]

West Bend Housewares, LLC, a Limited Liability Corporation, Provisional Acceptance of a Settlement Agreement and Order

Correction

In notice document 06–4291 beginning on page 26754 in the issue of Monday, May 8, 2006, make the following correction:

On page 26754, in the second column, in the **SUMMARY** paragraph, in the last line, ''$100,000,000'' should read ''$100,000.00''.

[FR Doc. C6–4291 Filed 5–12–06; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Applications for the HIV Prevention Program for Young Women Attending Minority Institutions—Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities

Correction

In notice document E6–6726 beginning on page 26373 in the issue of Thursday, May 4, 2006, make the following correction:

On page 26373, in the second column, under the ''**DATES**'' section, in the last line ''May 4, 2006'' should read ''June 5, 2006''.

[FR Doc. Z6–6726 Filed 5–12–06; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC85

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Fixed and Floating Platforms and Structures and Documents Incorporated by Reference

Correction

In rule document 05–14038 beginning on page 41556 in the issue of Tuesday, July 19, 2005, make the following correction:

§ 250.910 [Corrected]

On page 41579, in § 250.910(b), in the table, in the second column, in the last line of entry (2)(i), ''riser a ship-shaped tensioning systems'' should read ''riser tensioning systems''.

[FR Doc. C5–14038 Filed 5–12–06; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
May 15, 2006

Part II

Environmental Protection Agency

40 CFR Part 60

Update of Continuous Instrumental Test Methods; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–OAR–2002–0071; FRL–8165–1]

RIN 2060–AK61

Update of Continuous Instrumental Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 10, 2003, the EPA proposed amendments to update five instrumental test methods that are used to measure air pollutant emissions from stationary sources. These amendments are finalized in this document and reflect changes to the proposal to accommodate the public comments. This action is made to improve the methods by simplifying, harmonizing, and updating their procedures. A large number of industries are already subject to provisions that require the use of these methods. Some of the affected industries and their North American Industrial Classification System (NAICS) are listed under **SUPPLEMENTARY INFORMATION.**

DATES: This final rule is effective on August 14, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2002–0071. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, Docket ID No. OAR–2003–0071, EPA Docket Center (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: Foston Curtis, Measurement Technology Group (E143–02), Air Quality Assessment Division, EPA, Research Triangle Park, North Carolina 27711; telephone (919) 541–1063; fax number (919) 541–0516; electronic mail address: *curtis.foston@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. *Affected Entities.* Categories and entities potentially regulated by the final rule include the following:

Examples of regulated entities	SIC codes	NAICS codes
Fossil Fuel Steam Generators	3569	332410
Industrial, Commercial, Institutional Steam Generating Units	3569	332410
Electric Generating	3569	332410
Stationary Gas Turbines	3511	333611
Petroleum Refineries	2911	324110
Municipal Waste Combustors	4953	562213
Kraft Pulp Mills	2621	322110
Sulfuric Acid Plants	2819	325188

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists examples of the types of entities EPA is now aware could potentially be affected by the final rule. Other types of entities not listed could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. *Worldwide Web.* In addition to being available in the docket, an electronic copy of today's final rule amendments will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

C. *Judicial Review.* Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 14, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Under CAA section 307(b)(2), the requirements established by the final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

D. *Outline.* The information presented in this preamble is organized as follows:

I. Background
II. Summary of Major Comments and Revisions Since Proposal
A. Uncertainty Calculation
B. Sampling System Bias
C. Calibration Drift Test
D. Analyzer Calibration Error Test
E. Interference Test
F. Alternative Dynamic Spike Procedure
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I. Background

Methods 3A, 6C, 7E, 10, and 20 are instrumental procedures used to measure oxygen, carbon dioxide, sulfur dioxide, nitrogen oxides, and carbon monoxide emissions in stationary sources. They are prescribed for determining compliance with a number of Federal, State, and Local regulations. Amendments to update these methods were originally proposed on August 27,

1997 (62 FR 45369) as part of an action to update the test methods in 40 CFR parts 60, 61, and 63. Eight comment letters were received from this proposal with comments pertinent to Methods 3A, 6C, 7E, 10, and 20. Some commenters thought insufficient notification was given in the preamble for the changes being proposed and asked that the instrumental method revisions be reproposed as a separate action. This separate proposal was published on October 10, 2003 (68 FR 58838) and contained additional revisions not included in the first proposal. Sixty one comment letters were received from this second proposal. These comments along with the comments received from the first proposal were used to make the appropriate changes to the proposed revisions.

II. Summary of Major Comments and Revisions Since Proposal

A. *Uncertainty Calculation.* Numerous commenters disliked the proposed requirement to calculate data uncertainty in the method results and thought it inappropriate and confusing. It was noted that existing emission limitations were developed using emission data derived principally from these same test methods with no consideration of uncertainty. Further, the purpose of the Federal test methods is to provide a means of demonstrating compliance with the applicable requirements on the basis of the test method results. Most commenters objected to allowing regulatory agencies (or data end users) the discretion of accepting data close to an emission limit if the uncertainty determination is questionable, especially since no criteria for acceptable uncertainty were identified. The commenters thought that measurement uncertainty and data quality objectives present a number of very serious issues that are too easy for those without a thorough understanding of statistics to misapply. The resulting gray areas would incite many frivolous lawsuits by those who would use the perception of uncertainty to continuously challenge any decision made related to compliance. The commenters noted that the proposed revisions failed to provide a definition for uncertainty and the proposed uncertainty calculation reflected only two factors (sampling system bias and converter efficiency) that contribute to uncertainty, rather than all potential measurement factors. They preferred the tester and facility have a reasonable assurance that they have met the test requirements based on a properly quality assured test, not on an untenable uncertainty calculation.

A number of commenters recommended retaining the bias-corrected data calculation currently in Method 6C in place of the proposed data uncertainty calculation.

We agree with the commenters and have dropped the proposed requirement to calculate measurement uncertainty. The methods will retain a bias-correction for the sample concentration similar to what is current in Method 6C.

B. *Sampling System Bias.* Several commenters found the proposed sampling system bias calculation that is based on the emission standard problematic because some units have no emission limit, others have more than one limit, and still others have limits in units other than concentration (*e.g.*, lbs/hr, lb/mm BTU, or lb/ton feed). Most believed analyzer performance and accuracy are best evaluated as a function of analyzer span. One commenter wondered why the proposed bias test was based on the emission standard, while the other performance tests were not.

In the proposal, the conversion table for sources that have standards in units other than concentration and the note in section 1.3.3 advising the test to be designed around the most stringent standard in cases of multiple standards were attempts to alleviate the problems the commenters noted. We proposed using the emission limit in place of the span in the bias calculation to relieve what was thought to be an increased burden of passing the test when lower spans are chosen. The intent was to have testers use a consistent value in the denominator of the bias equation and emphasize the greatest accuracy in the range of the emission standard. This approach appears to have added more complication than it was intended to relieve.

In the final rule, the proposed change to calculate the bias relative to the emission standard has been dropped. The bias determination as a percentage of the span is retained. However, ''span'' has been changed to ''calibration span'' which is equivalent to the concentration of the high calibration gas as in the proposal. In the current methods, the span is any number that doesn't result in the emission standard being less than 30 percent of the span. The high calibration gas chosen for this span must then be 80–100 percent of the span. This allows a concentration interval between the high calibration gas and the span that is not quality assured. This interval has been eliminated.

The traditional ''span'' was often mistaken for and used interchangeably with ''analyzer range.'' With the ''calibration span,'' only the calibrated portion of the analyzer range is of concern, and any value that exceeds the calibration span is considered invalid.

This approach offers several additional advantages. First, it gives the tester flexibility to set the calibration range at a convenient number that is not excessive. Second, it alleviates concern about the quality of data points that are currently allowed between the high calibration concentration and the span. Third, if it is properly chosen with the majority of measurements in the 20-to-100 percent range, it would prevent a tester from choosing an inordinately high calibration range which reduces measurement accuracy.

C. *Calibration Drift Test.* Commenters generally thought that the between-run calibration drift requirement should not be eliminated as in the proposal. We have taken this recommendation and retained the between-run drift determination.

D. *Analyzer Calibration Error Test.* Two commenters thought the proposed limit for calibration error of 2 percent of the certified gas concentration was unnecessarily restrictive when compared to the existing 2 percent of span specification. They noted that EPA gave no technical basis for such increased restriction and recommended the proposed change be dropped. Others wondered why the same gases were required for the analyzer setup and the calibration error test? This seemed redundant.

The proposed requirement that the analyzer calibration error be within 2 percent of the tag value has been changed to 2 percent of the calibration span. The proposed requirement to calibrate the instrument with the same gases used in the calibration error test has been dropped.

E. *Interference Test.* Commenters in general objected to EPA's proposed requirement to conduct the interference test on an annual basis. They noted that little evidence was provided to show that annual interference testing was necessary. They believed the test should only be repeated after major instrument modifications. Annual interference testing was thought to put a major burden on the testing companies.

The commenters raised valid concerns. The proposed requirement to conduct the interference test on an annual basis has been dropped. The interference test will remain a one-time test except for major instrument modifications, as is the current requirement. The current interference test in Method 6C, where the analyzer is compared to modified Method 6

samples in the field, is now listed as the alternative interference test procedure since this approach was considered archaic by some commenters. An interference test where the analyzer is challenged by potential interferent gases is now the primary procedure.

F. *Alternative Dynamic Spike Procedure.* Commenters thought the dynamic spiking procedure was confusing and lacked sufficient detail to perform. Some commenters thought adding the procedure was a good idea; others strenuously objected to even allowing it as an option.

We have retained the allowance to use dynamic spiking as an alternative to the interference and bias tests, except for part 75 applications, where Administrative approval is required to use the procedure. We purposely made the procedure general and performance-based instead of making it prescriptive because different procedures may be followed to perform it successfully. We believe that dynamic spiking is a valuable tool for evaluating a method and should be retained as an alternative for testers able to perform it. Clarity has been added to the procedure details where possible to remove confusion.

G. *Sampling Traverse Points.* Comments were mixed on the proposed requirement to use Method 1 unless a stratification test showed fewer sampling point are justified. The majority did not think a Method 1 determination was justified for gaseous sampling in all cases and that this made the methods burdensome and significantly more costly to use. Others proposed reducing the number of points to three, as are allowed in relative accuracy testing of continuous emission monitoring systems. Two commenters recommended dropping the proposed requirement to correct the pollutant concentration for diluent in the stratification test.

In the final rule, the tester may either sample at twelve Method 1 points or a stratification test (3-point or 12-point) may be performed. If the stratification test is done and results in a concentration deviation of any point from the mean concentration by more than 10 percent, then a minimum of twelve traverse points located according to Method 1 must be sampled. If the concentrations of all stratification test points are less than 10 percent from the mean, the testing may resume using 3 traverse points. If the concentrations at all stratification test points are less than 5 percent from the mean, then single-point testing may be performed. Note that these traverse point layout rules are not intended to apply to relative accuracy test audits (RATA) of continuous emission monitoring systems (CEMS) where applicable CEMS quality assurance requirements specify specific traverse point selection requirements for RATA.

H. *Sampling Dilution Systems.* Commenters recommended that EPA specifically state that dilution-based sampling technology is an acceptable technique. These systems have been approved by the Emission Measurement Center (EMC) as alternative method ALT–007 (Use of Dilution Probes with Instrumental Methods). Guidance Document 18 from EMC also indicates that dilution sampling systems are acceptable for use with Methods 6C, 7E, 20, and 10, and the special requirements of dilution-based sampling are addressed. This information, or the discussions found in Chapter 21 of the Part 75 Emissions Monitoring Policy Manual were recommended for addition to the methods.

The instrumental methods have been modified to clearly note that dilution systems are acceptable. We have included discussions of calibration gas needs relative to the sample gas molecular weight, calibration drift test variations, and other instructions pertinent to dilutions systems that were a part of EMC Guidance Document GD–18.

I. *Equipment Heating Specifications.* Several commenters criticized the numerous references to equipment heating that were thought to preclude the use of other techniques of preventing sample loss. We were urged to require that the sample be maintained at a temperature above the dew point of the sample gas rather than specifying minimum equipment temperatures to provide a technology-neutral approach.

The language has been changed to allow the tester to choose which procedure or technology to use for preventing condensation. The final rule requires the sample gas be maintained above the dew point of the stack gas (including all gas components, e.g. acid gas constituents) so that no loss of sample results. This may be done by heating, diluting, drying, desiccating, a combination thereof, or by other means.

J. *Technology-Specific Analyzers.* Various references to specific technologies throughout the methods were noted. Most commenters wanted us to remove these references. One commenter implicated electrochemical cells for providing completely unreliable results when not operated in diffusion limiting conditions even though such analyzers could meet the performance criteria of the proposal while operating outside of diffusion-limiting conditions. The commenter recommended this technology be subject to special procedures such as those included in ASTM D6522–00.

We have removed the references to specific technologies in the methods to make them flexible and performance-based, not technology-based. It may be difficult to set performance requirements that appropriately evaluate all analytical techniques 100 percent of the time. However, we believe the interference, calibration error, and bias tests provide adequate assessments of performance for the majority of the time. The electrochemical analyzer has been shown capable of producing reliable results in an Environmental Technology Verification study, and we do not believe special restrictions should be placed on this technology.

K. *Calibration Gases.* Commenters asked that we list all of the allowable calibration gas blends in the methods. They wanted the wording changed to allow the flexibility of blending standards with other gases that can be shown not to interfere. One commenter thought the proposed mid-level calibration gas range of 20 to 70 percent of the span-level gas was an improvement over the existing 40 to 60 percent range. Another commenter thought this would allow for poor selection of mid-level gases. Other commenters wondered if it was acceptable to prepare calibration gases from a single high-concentration EPA Traceability Protocol gas using Method 205.

Blended calibration gases are allowed in the final rule provided they are made from Traceability Protocol gases and any additional gas components are shown not to interfere with the analysis. After considering the comments, the EPA has decided to retain the current 40- to 60-percent of span requirement for the mid-level gas. We believe this ensures a better evaluation of the analyzer's linear response, as noted by one of the commenters. In the final rule, Method 205 is allowed to prepare calibration gases from high-concentration gases of EPA Traceability Protocol quality, except for part 75 applications, which require administrative approval to use this technique.

L. *Method 7E Converter Test.* Several commenters noted that the nitrogen dioxide (NO_2) calibration gas used in the converter efficiency test is not available as an EPA Traceability Protocol Standard as required. This prevents one from performing the test. Because NO_2 has unusual storage problems, it is difficult to maintain the gas at its certified concentration. A search of vendors has shown that gas of

traceability protocol quality is available commercially, but in limited concentrations and from limited sources. We also concur with the long-term stability problems noted with NO_2 cylinder gas. Because of these concerns, we have retained the original procedures cited in Method 20 for determining converter efficiency and have listed the proposed procedure for direct evaluation with NO_2 as an allowable alternative. Numerous commenters pointed out the error in the converter efficiency correction in the uncertainty calculation. This error has been corrected through a new equation.

Commenters generally thought that requiring the converter efficiency gas be in the concentration range of the source emissions was too restrictive and would require numerous gas cylinders be transported into the field. We understand the difficulty in preparing test gases to match anticipated emission levels. Therefore, we have dropped the proposed requirement to match the stack NO_2 concentration within 50 percent and instead require gas in the 40 to 60 ppm range for all cases.

IV. Summary of Environmental, Energy, and Economic Impacts

A. Executive Order 12866: Regulatory Planning and Reviews

Under Executive Order 12866 (58 FR 51735 October 4, 1993), the EPA must determine whether this regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. We have determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard.

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*. These criteria do not add information collection requirements beyond those currently required under the applicable regulation. The amendments being made to the test methods do not add information collection requirements but make needed updates to existing testing methodology.

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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Entities potentially affected by this action include those listed in Table 1 of **SUPPLEMENTARY INFORMATION.**

After considering the economic impacts of today's final rule on small entities, I have concluded that this action will not have a significant economic impact on a substantial number of small entities. This rule reflects changes to the proposal to accommodate the public comments and is made to improve the test methods by simplifying, harmonizing, and updating their procedures. A large number of the regulated industries are already subject to the provisions that require the use of these methods and this rule does not impose any new emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard but makes needed updates to existing testing methodology. This rule would also add some flexibility by giving testers more choice in selecting their test equipment which could translate into reduced costs for the regulated industries.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, Local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially

affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Local, or Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local, or Tribal governments or the private sector. In any event, 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.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With 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.'' ''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 final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. In this final rule, we are simply updating existing pollutant test methods. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 applies to any rule that EPA determines (1) is ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

I. NTTAA: National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272), directs us to use voluntary consensus standards (VCS) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by VCS bodies. The NTTAA requires us to provide Congress, through OMB, explanations when we decide not to use available and applicable VCS. We are requiring new test methods in this rulemaking. Therefore, NTTAA does not apply.

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. The EPA will submit a report containing the final rule amendments 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 final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after its publication in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule amendments will be effective on July 14, 2006.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, New sources, Test methods and procedures, Performance specifications, and Continuous emission monitors.

Dated: April 28, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

■ 2. Appendix A–2 is amended by revising Method 3A to read as follows:

Appendix A–2 to Part 60—Test Methods 2G Through 3C

* * * * *

Method 3A—Determination of Oxygen and Carbon Dioxide Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedure)

1.0 Scope and Application

What is Method 3A?

Method 3A is a procedure for measuring oxygen (O_2) and carbon dioxide (CO_2) in stationary source emissions using a continuous instrumental analyzer. Quality assurance and quality control requirements are included to assure that you, the tester, collect data of known quality. You must document your adherence to these specific requirements for equipment, supplies, sample collection and analysis, calculations, and data analysis.

This method does not completely describe all equipment, supplies, and sampling and analytical procedures you will need but refers to other methods for some of the details. Therefore, to obtain reliable results, you should also have a thorough knowledge of these additional test methods which are found in appendix A to this part:

(a) Method 1—Sample and Velocity Traverses for Stationary Sources.

(b) Method 3—Gas Analysis for the Determination of Molecular Weight.

(c) Method 4—Determination of Moisture Content in Stack Gases.

(d) Method 7E—Determination of Nitrogen Oxides Emissions from Stationary Sources (Instrumental Analyzer Procedure).

1.1 *Analytes. What does this method determine?* This method measures the concentration of oxygen and carbon dioxide.

Analyte	CAS No.	Sensitivity
Oxygen (O_2)	7782–44–7	Typically <2% of Calibration Span.
Carbon dioxide (CO_2)	124–38–9	Typically <2% of Calibration Span.

1.2 *Applicability. When is this method required?* The use of Method 3A may be required by specific New Source Performance Standards, Clean Air Marketing rules, State Implementation Plans and permits, where measurements of O_2 and CO_2 concentrations in stationary source emissions must be made, either to determine compliance with an applicable emission standard or to conduct performance testing of a continuous emission monitoring system (CEMS). Other regulations may also require the use of Method 3A.

1.3 *Data Quality Objectives. How good must my collected data be?* Refer to Section 1.3 of Method 7E.

2.0 Summary of Method

In this method, you continuously or intermittently sample the effluent gas and convey the sample to an analyzer that measures the concentration of O_2 or CO_2. You must meet the performance requirements of this method to validate your data.

3.0 Definitions

Refer to Section 3.0 of Method 7E for the applicable definitions.

4.0 Interferences [Reserved]

5.0 Safety

Refer to Section 5.0 of Method 7E.

6.0 Equipment and Supplies

Figure 7E–1 in Method 7E is a schematic diagram of an acceptable measurement system.

6.1 What do I need for the measurement system? The components of the measurement system are described (as applicable) in Sections 6.1 and 6.2 of Method 7E, except that the analyzer described in Section 6.2 of this method must be used instead of the analyzer described in Method 7E. You must follow the noted specifications in Section 6.1 of Method 7E except that the requirements to use stainless steel, Teflon, or non-reactive glass filters do not apply. Also, a heated sample line is not required to transport dry gases or for systems that measure the O_2 or CO_2 concentration on a dry basis, provided that the system is not also being used to concurrently measure SO_2 and/or NO_X.

6.2 What analyzer must I use? You must use an analyzer that continuously measures O_2 or CO_2 in the gas stream and meets the specifications in Section 13.0.

7.0 Reagents and Standards

7.1 Calibration Gas. What calibration gases do I need? Refer to Section 7.1 of Method 7E for the calibration gas requirements. Example calibration gas mixtures are listed below.

(a) CO_2 in nitrogen (N_2).
(b) CO_2 in air.
(c) CO_2/SO_2 gas mixture in N_2.
(d) O_2/SO_2 gas mixture in N_2.
(e) $O_2/CO_2/SO_2$ gas mixture in N_2.
(f) CO_2/NO_X gas mixture in N_2.
(g) $CO_2/SO_2/NO_X$ gas mixture in N_2.

The tests for analyzer calibration error and system bias require high-, mid-, and low-level gases.

7.2 Interference Check. What reagents do I need for the interference check? Potential interferences may vary among available analyzers. Table 7E–3 of Method 7E lists a number of gases that should be considered in conducting the interference test.

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Sampling Site and Sampling Points. You must follow the procedures of Section 8.1 of Method 7E to determine the appropriate sampling points, unless you are using Method 3A only to determine the stack gas molecular weight and for no other purpose. In that case, you may use single-point integrated sampling as described in Section 8.2 of Method 3. If the stratification test provisions in Section 8.1.2 of Method 7E are used to reduce the number of required sampling points, the alternative acceptance criterion for 3-point sampling will be ± 0.5 percent CO_2 or O_2, and the alternative acceptance criterion for single-point sampling will be ± 0.3 percent CO_2 or O_2.

8.2 Initial Measurement System Performance Tests. You must follow the procedures in Section 8.2 of Method 7E. If a dilution-type measurement system is used, the special considerations in Section 8.3 of Method 7E apply.

8.3 Interference Check. The O_2 or CO_2 analyzer must be documented to show that interference effects to not exceed 2.5 percent of the calibration span. The interference test in Section 8.2.7 of Method 7E is a procedure that may be used to show this. The effects of all potential interferences at the concentrations encountered during testing must be addressed and documented. This testing and documentation may be done by the instrument manufacturer.

8.4 Sample Collection. You must follow the procedures in Section 8.4 of Method 7E.

8.5 Post-Run System Bias Check and Drift Assessment. You must follow the procedures in Section 8.5 of Method 7E.

9.0 Quality Control

Follow quality control procedures in Section 9.0 of Method 7E.

10.0 Calibration and Standardization

Follow the procedures for calibration and standardization in Section 10.0 of Method 7E.

11.0 Analytical Procedures

Because sample collection and analysis are performed together (see Section 8), additional discussion of the analytical procedure is not necessary.

12.0 Calculations and Data Analysis

You must follow the applicable procedures for calculations and data analysis in Section 12.0 of Method 7E, substituting percent O_2 and percent CO_2 for ppmv of NO_X as appropriate.

13.0 Method Performance

The specifications for the applicable performance checks are the same as in Section 13.0 of Method 7E except for the alternative specifications for system bias, drift, and calibration error. In these alternative specifications, replace the term ''0.5 ppmv'' with the term ''0.5 percent O_2'' or ''0.5 percent CO_2'' (as applicable).

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 Alternative Procedures [Reserved]

17.0 References

1. ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards'' September 1997 as amended, EPA–600/R–97/121.

18.0 Tables, Diagrams, Flowcharts, and Validation Data

Refer to Section 18.0 of Method 7E.

* * * * *

■ 3. Appendix A–4 is amended by revising Methods 6C, 7E, and 10 to read as follows:

Appendix A–4 to Part 60—Test Methods 6 Through 10B

* * * * *

Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

1.0 Scope and Application

What is Method 6C?

Method 6C is a procedure for measuring sulfur dioxide (SO_2) in stationary source emissions using a continuous instrumental analyzer. Quality assurance and quality control requirements are included to assure that you, the tester, collect data of known quality. You must document your adherence to these specific requirements for equipment, supplies, sample collection and analysis, calculations, and data analysis.

This method does not completely describe all equipment, supplies, and sampling and analytical procedures you will need but refers to other methods for some of the details. Therefore, to obtain reliable results, you should also have a thorough knowledge of these additional test methods which are found in appendix A to this part:

(a) Method 1—Sample and Velocity Traverses for Stationary Sources.

(b) Method 4—Determination of Moisture Content in Stack Gases.

(c) Method 6—Determination of Sulfur Dioxide Emissions from Stationary Sources.

(d) Method 7E—Determination of Nitrogen Oxides Emissions from Stationary Sources (Instrumental Analyzer Procedure).

1.1 Analytes. What does this method determine? This method measures the concentration of sulfur dioxide.

Analyte	CAS No.	Sensitivity
SO_2	7446–09–5	Typically <2% of Calibration Span.

1.2 Applicability. When is this method required? The use of Method 6C may be required by specific New Source Performance Standards, Clean Air Marketing rules, State Implementation Plans, and permits where SO_2 concentrations in stationary source emissions must be measured, either to determine compliance with an applicable emission standard or to conduct performance testing of a continuous emission monitoring system (CEMS). Other regulations may also require the use of Method 6C.

1.3 Data Quality Objectives. How good must my collected data be? Refer to Section 1.3 of Method 7E.

2.0 Summary of Method

In this method, you continuously sample the effluent gas and convey the sample to an analyzer that measures the concentration of SO_2. You must meet the performance requirements of this method to validate your data.

3.0 Definitions

Refer to Section 3.0 of Method 7E for the applicable definitions.

4.0 Interferences

Refer to Section 4.1 of Method 6.

5.0 Safety

Refer to Section 5.0 of Method 7E.

6.0 Equipment and Supplies

Figure 7E–1 of Method 7E is a schematic diagram of an acceptable measurement system.

6.1 What do I need for the measurement system? The essential components of the measurement system are the same as those in Sections 6.1 and 6.2 of Method 7E, except that the SO_2 analyzer described in Section 6.2 of this method must be used instead of the analyzer described in Section 6.2 of Method 7E. You must follow the noted specifications in Section 6.1 of Method 7E.

6.2 What analyzer must I use? You may use an instrument that uses an ultraviolet, non-dispersive infrared, fluorescence, or other detection principle to continuously measure SO_2 in the gas stream and meets the performance specifications in Section 13.0. The low-range and dual-range analyzer provisions in Section 6.2.8.1 of Method 7E apply.

7.0 Reagents and Standards

7.1 Calibration Gas. What calibration gases do I need? Refer to Section 7.1 of Method 7E for the calibration gas requirements. Example calibration gas mixtures are listed below.

(a) SO_2 in nitrogen (N_2).

(b) SO_2 in air.

(c) SO_2 and CO_2 in N_2.

(d) SO_2 andO_2 in N_2.

(e) $SO_2/CO_2/O_2$ gas mixture in N_2.

(f) CO_2/NO_X gas mixture in N_2.

(g) $CO_2/SO_2/NO_X$ gas mixture in N_2.

7.2 Interference Check. What additional reagents do I need for the interference check? The test gases for the interference check are listed in Table 7E–3 of Method 7E. For the alternative interference check, you must use the reagents described in Section 7.0 of Method 6.

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Sampling Site and Sampling Points. You must follow the procedures of Section 8.1 of Method 7E.

8.2 Initial Measurement System Performance Tests. You must follow the procedures in Section 8.2 of Method 7E. If a dilution-type measurement system is used, the special considerations in Section 8.3 of Method 7E also apply.

8.3 Interference Check. You must follow the procedures of Section 8.2.7 of Method 7E to conduct an interference check, substituting SO_2 for NO_X as the method pollutant. For dilution-type measurement systems, you must use the alternative interference check procedure in Section 16 and a co-located, unmodified Method 6 sampling train.

8.4 Sample Collection. You must follow the procedures of Section 8.4 of Method 7E.

8.5 Post-Run System Bias Check and Drift Assessment. You must follow the procedures of Section 8.5 of Method 7E.

9.0 Quality Control

Follow quality control procedures in Section 9.0 of Method 7E.

10.0 Calibration and Standardization

Follow the procedures for calibration and standardization in Section 10.0 of Method 7E.

11.0 Analytical Procedures

Because sample collection and analysis are performed together (see Section 8), additional discussion of the analytical procedure is not necessary.

12.0 Calculations and Data Analysis

You must follow the applicable procedures for calculations and data analysis in Section 12.0 of Method 7E as applicable, substituting SO_2 for NO_X as appropriate.

13.0 Method Performance

13.1 The specifications for the applicable performance checks are the same as in Section 13.0 of Method 7E.

13.2 Alternative Interference Check. The results are acceptable if the difference between the Method 6C result and the modified Method 6 result is less than 7.0 percent of the Method 6 result for each of the three test runs. For the purposes of comparison, the Method 6 and 6C results must be expressed in the same units of measure.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 Alternative Procedures

16.1 Alternative Interference Check. You may perform an alternative interference check consisting of at least three comparison runs between Method 6C and Method 6. This check validates the Method 6C results at each particular facility of known potential interferences. When testing under conditions of low concentrations (< 15 ppm), this alternative interference check is not allowed.

Note: The procedure described below applies to non-dilution sampling systems only. If this alternative interference check is used for a dilution sampling system, use a standard Method 6 sampling train and extract the sample directly from the exhaust stream at points collocated with the Method 6C sample probe.

(1) Build the modified Method 6 sampling train (flow control valve, two midget impingers containing 3 percent hydrogen peroxide, and dry gas meter) shown in Figure 6C–1. Connect the sampling train to the sample bypass discharge vent. Record the dry gas meter reading before you begin sampling. Simultaneously collect modified Method 6 and Method 6C samples. Open the flow control valve in the modified Method 6 train as you begin to sample with Method 6C. Adjust the Method 6 sampling rate to 1 liter per minute (.10 percent). The sampling time per run must be the same as for Method 6 plus twice the average measurement system response time. If your modified Method 6 train does not include a pump, you risk biasing the results high if you over-pressurize the midget impingers and cause a leak. You can reduce this risk by cautiously increasing the flow rate as sampling begins.

(2) After completing a run, record the final dry gas meter reading, meter temperature, and barometric pressure. Recover and analyze the contents of the midget impingers using the procedures in Method 6. You must analyze performance audit samples as described in Method 6 with this interference check. Determine the average gas concentration reported by Method 6C for the run.

17.0 References

1. ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards'' September 1997 as amended, EPA–600/R–97/121

18.0 Tables, Diagrams, Flowcharts, and Validation Data

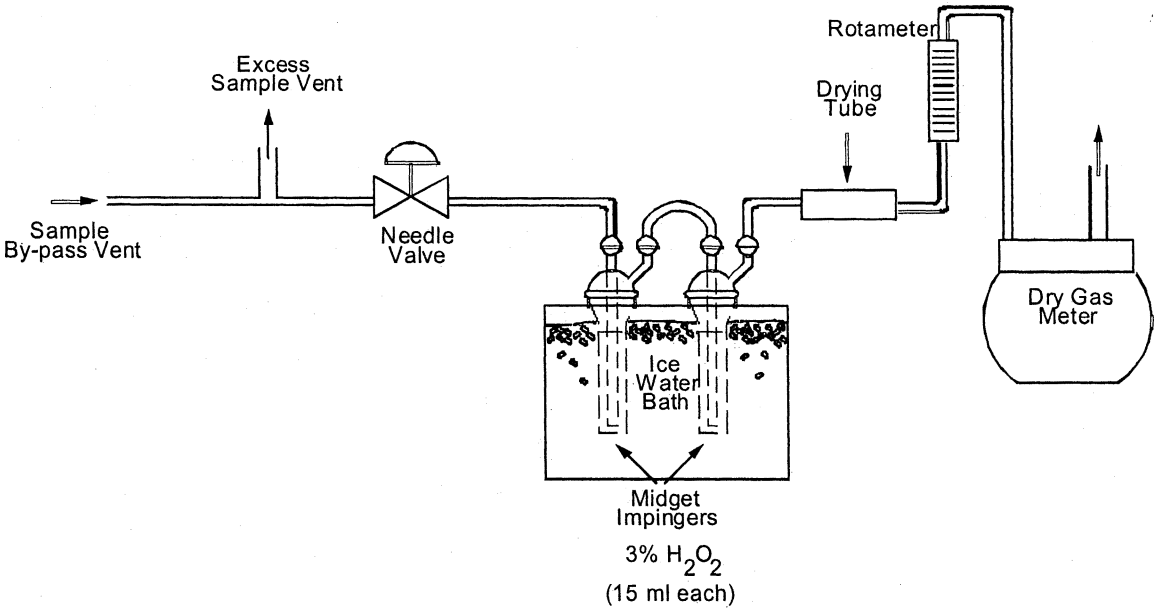

Figure 6C-1. Modified Method 6 Alternative Interference Check Sampling Train

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Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure)

1.0 Scope and Application

What is Method 7E?

Method 7E is a procedure for measuring nitrogen oxides (NO_X) in stationary source emissions using a continuous instrumental analyzer. Quality assurance and quality control requirements are included to assure that you, the tester, collect data of known quality. You must document your adherence to these specific requirements for equipment, supplies, sample collection and analysis, calculations, and data analysis. This method does not completely describe all equipment, supplies, and sampling and analytical procedures you will need but refers to other methods for some of the details. Therefore, to obtain reliable results, you should also have a thorough knowledge of these additional test methods which are found in appendix A to this part:

(a) Method 1—Sample and Velocity Traverses for Stationary Sources.

(b) Method 4—Determination of Moisture Content in Stack Gases.

1.1 Analytes. What does this method determine? This method measures the concentration of nitrogen oxides as NO_2.

Analyte	CAS No.	Sensitivity
Nitric oxide (NO)	10102–43–9	Typically <2% of
Nitrogen dioxide (NO_2)	10102–44–0	Calibration Span.

1.2 Applicability. When is this method required? The use of Method 7E may be required by specific New Source Performance Standards, Clean Air Marketing rules, State Implementation Plans, and permits where measurement of NO_X concentrations in stationary source emissions is required, either to determine compliance with an applicable emissions standard or to conduct performance testing of a continuous monitoring system (CEMS). Other regulations may also require the use of Method 7E.

1.3 Data Quality Objectives (DQO). How good must my collected data be? Method 7E is designed to provide high-quality data for determining compliance with Federal and State emission standards and for relative accuracy testing of CEMS. In these and other applications, the principal objective is to ensure the accuracy of the data at the actual emission levels encountered. To meet this objective, the use of EPA traceability protocol calibration gases and measurement system performance tests are required.

1.4 Data Quality Assessment for Low Emitters. Is performance relief granted when testing low-emission units? Yes. For low-emitting sources, there are alternative performance specifications for analyzer calibration error, system bias, drift, and

response time. Also, the alternative dynamic spiking procedure in Section 16 may provide performance relief for certain low-emitting units.

2.0 Summary of Method

In this method, a sample of the effluent gas is continuously sampled and conveyed to the analyzer for measuring the concentration of NO_X. You may measure NO and NO_2 separately or simultaneously together but, for the purposes of this method, NO_X is the sum of NO and NO_2. You must meet the performance requirements of this method to validate your data.

3.0 Definitions

3.1 Analyzer Calibration Error, for non-dilution systems, means the difference between the manufacturer certified concentration of a calibration gas and the measured concentration of the same gas when it is introduced into the analyzer in direct calibration mode.

3.2 Calibration Curve means the relationship between an analyzer's response to the injection of a series of calibration gases and the actual concentrations of those gases.

3.3 Calibration Gas means the gas mixture containing NO_X at a known concentration and produced and certified in accordance with ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, as amended August 25, 1999, EPA–600/R–97/121 or more recent updates. The tests for analyzer calibration error, drift, and system bias require the use of calibration gas prepared according to this protocol.

3.3.1 Low-Level Gas means a calibration gas with a concentration that is less than 20 percent of the calibration span and may be a zero gas.

3.3.2 Mid-Level Gas means a calibration gas with a concentration that is 40 to 60 percent of the calibration span.

3.3.3 High-Level Gas means a calibration gas with a concentration that is equal to the calibration span.

3.4 Calibration Span means the upper limit of valid instrument response during sampling. To the extent practicable, the measured emissions should be between 20 to 100 percent of the selected calibration span

3.5 Centroidal Area means the central area of the stack or duct that is no greater than 1 percent of the stack or duct cross section. This area has the same geometric shape as the stack or duct.

3.6 Converter Efficiency Gas means a calibration gas with a known NO or NO_2 concentration and of Traceability Protocol quality.

3.7 Data Recorder means the equipment that permanently records the concentrations reported by the analyzer.

3.8 Direct Calibration Mode means introducing the calibration gases directly into the analyzer (or into the assembled measurement system at a point downstream of all sample conditioning equipment) according to manufacturer's recommended calibration procedure. This mode of calibration applies to non-dilution-type measurement systems.

3.9 Drift means the difference between the measurement system readings obtained in the pre-run and post-run system bias (or system calibration error) checks at a specific calibration gas concentration level (i.e. low-, mid-, or high-).

3.10 Gas Analyzer means the equipment that senses the gas being measured and generates an output proportional to its concentration.

3.11 Interference Check means the test to detect analyzer responses to compounds other than the compound of interest, usually a gas present in the measured gas stream, that is not adequately accounted for in the calibration procedure and may cause measurement bias.

3.12 Low-Concentration Analyzer means any analyzer that operates with a calibration span of 20 ppm NO_X or lower. Each analyzer model used routinely to measure low NO_X concentrations must pass a Manufacturer's Stability Test (MST). A MST subjects the analyzer to a range of potential effects to demonstrate its stability following the procedures provided in 40 CFR 53.23, 53.55, and 53.56 and provides the information in a summary format. A copy of this information must be included in each test report. Table 7E–5 lists the criteria to be met.

3.13 Measurement System means all of the equipment used to determine the NO_X concentration. The measurement system comprises six major subsystems: Sample acquisition, sample transport, sample conditioning, calibration gas manifold, gas analyzer, and data recorder.

3.14 Response Time means the time it takes the measurement system to respond to a change in gas concentration occurring at the sampling point when the system is operating normally at its target sample flow rate or dilution ratio.

3.15 Run means a series of gas samples taken successively from the stack or duct. A test normally consists of a specific number of runs.

3.16 System Bias means the difference between a calibration gas measured in direct calibration mode and in system calibration mode. System bias is determined before and after each run at the low- and mid- or high-concentration levels. For dilution-type systems, pre- and post-run system calibration error is measured, rather than system bias.

3.17 System Calibration Error applies to dilution-type systems and means the difference between the measured concentration of low-, mid-, or high-level calibration gas and the certified concentration for each gas when introduced in system calibration mode. For dilution-type systems, a 3-point system calibration error test is conducted in lieu of the analyzer calibration error test, and 2-point system calibration error tests are conducted in lieu of system bias tests.

3.18 System Calibration Mode means introducing the calibration gases into the measurement system at the probe, upstream of the filter and all sample conditioning components.

3.19 Test refers to the series of runs required by the applicable regulation.

4.0 Interferences

Note that interferences may vary among instruments and that instrument-specific interferences must be evaluated through the interference test.

5.0 Safety

What safety measures should I consider when using this method? This method may require you to work with hazardous materials and in hazardous conditions. We encourage you to establish safety procedures before using the method. Among other precautions, you should become familiar with the safety recommendations in the gas analyzer user's manual. Occupational Safety and Health Administration (OSHA) regulations concerning cylinder and noxious gases may apply. Nitric oxide and NO_2 are toxic and dangerous gases. Nitric oxide is immediately converted to NO_2 upon reaction with air. Nitrogen dioxide is a highly poisonous and insidious gas. Inflammation of the lungs from exposure may cause only slight pain or pass unnoticed, but the resulting edema several days later may cause death. A concentration of 100 ppm is dangerous for even a short exposure, and 200 ppm may be fatal. Calibration gases must be handled with utmost care and with adequate ventilation. Emission-level exposure to these gases should be avoided.

6.0 Equipment and Supplies

The performance criteria in this method will be met or exceeded if you are properly using equipment designed for this application.

6.1 What do I need for the measurement system? You may use any equipment and supplies meeting the following specifications.

(1) Sampling system components that are not evaluated in the system bias or system calibration error test must be glass, Teflon, or stainless steel. Other materials are potentially acceptable, subject to approval by the Administrator.

(2) The interference, calibration error, and system bias criteria must be met.

(3) Sample flow rate must be maintained within 10 percent of the flow rate at which the system response time was measured.

(4) All system components (excluding sample conditioning components, if used) must maintain the sample temperature above the moisture dew point.

Section 6.2 provides example equipment specifications for a NO_X measurement system. Figure 7E–1 is a diagram of an example dry basis measurement system that is likely to meet the method requirements and is provided as guidance. For wet-basis systems, you may use alternative equipment and supplies as needed (some of which are described in Section 6.2), provided that the measurement system meets the applicable performance specifications of this method.

6.2 Measurement System Components

6.2.1 Sample Probe. Glass, stainless steel, or other approved material, of sufficient length to traverse the sample points.

6.2.2 Particulate Filter. An in-stack or out-of-stack filter. The filter media must be included in the system bias test and made of material that is non-reactive to the gas being sampled. This particulate filter requirement may be waived in applications where no significant particulate matter is expected

(*e.g.*, for emission testing of a combustion turbine firing natural gas).

6.2.3 Sample Line. The sample line from the probe to the conditioning system/sample pump should be made of Teflon or other material that does not absorb or otherwise alter the sample gas. For a dry-basis measurement system (as shown in Figure 7E–1), the temperature of the sample line must be maintained at a sufficiently high level to prevent condensation before the sample conditioning components. For wet-basis measurement systems, the temperature of the sample line must be maintained at a sufficiently high level to prevent condensation before the analyzer.

6.2.4 Conditioning Equipment. For dry basis measurements, a condenser, dryer or other suitable device is required to remove moisture continuously from the sample gas. Any equipment needed to heat the probe or sample line to avoid condensation prior to the sample conditioning component is also required.

For wet basis systems, you must keep the sample above its dew point either by: (1) Heating the sample line and all sample transport components up to the inlet of the analyzer (and, for hot-wet extractive systems, also heating the analyzer) or (2) by diluting the sample prior to analysis using a dilution probe system. The components required to do either of the above are considered to be conditioning equipment.

6.2.5 Sampling Pump. For systems similar to the one shown in Figure 7E–1, a leak-free pump is needed to pull the sample gas through the system at a flow rate sufficient to minimize the response time of the measurement system. The pump may be constructed of any material that is non-reactive to the gas being sampled. For dilution-type measurement systems, an ejector pump (eductor) is used to create a vacuum that draws the sample through a critical orifice at a constant rate.

6.2.6 Calibration Gas Manifold. Prepare a system to allow the introduction of calibration gases either directly to the gas analyzer in direct calibration mode or into the measurement system, at the probe, in system calibration mode, or both, depending upon the type of system used. In system calibration mode, the system should be able to block the sample gas flow and flood the sampling probe. Alternatively, calibration gases may be introduced at the calibration valve following the probe. Maintain a constant pressure in the gas manifold. For in-stack dilution-type systems, a gas dilution subsystem is required to transport large volumes of purified air to the sample probe and a probe controller is needed to maintain the proper dilution ratio.

6.2.7 Sample Gas Manifold. For the type of system shown in Figure 7E–1, the sample gas manifold diverts a portion of the sample to the analyzer, delivering the remainder to the by-pass discharge vent. The manifold should also be able to introduce calibration gases directly to the analyzer (except for dilution-type systems). The manifold must be made of material that is non-reactive to the gas sampled or the calibration gas and be configured to safely discharge the bypass gas.

6.2.8 NO_X Analyzer. An instrument that continuously measures NO_X in the gas stream and meets the applicable specifications in Section 13.0. An analyzer that operates on the principle of chemiluminescence with an NO_2 to NO converter is one example of an analyzer that has been used successfully in the past. Analyzers operating on other principles may also be used provided the performance criteria in Section 13.0 are met.

6.2.8.1 Dual Range Analyzers. For certain applications, a wide range of gas concentrations may be encountered, necessitating the use of two measurement ranges. Dual-range analyzers are readily available for these applications. These analyzers are often equipped with automated range-switching capability, so that when readings exceed the full-scale of the low measurement range, they are recorded on the high range. As an alternative to using a dual-range analyzer, you may use two segments of a single, large measurement scale to serve as the low and high ranges. In all cases, when two ranges are used, you must quality-assure both ranges using the proper sets of calibration gases. You must also meet the interference, calibration error, system bias, and drift checks. However, we caution that when you use two segments of a large measurement scale for dual range purposes, it may be difficult to meet the performance specifications on the low range due to signal-to-noise ratio considerations.

6.2.8.2 Low Concentration Analyzer. When the calibration span is less than or equal to 20 ppmv, the manufacturer's stability test (MST) is required. See Table 7E–5.

6.2.9 Data Recording. A strip chart recorder, computerized data acquisition system, digital recorder, or data logger for recording measurement data may be used.

7.0 Reagents and Standards

7.1 Calibration Gas. What calibration gases do I need? Your calibration gas must be NO in nitrogen and certified (or recertified) within an uncertainty of 2.0 percent in accordance with ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards'' September 1997, as amended August 25, 1999, EPA–600/R–97/121. Blended gases meeting the Traceability Protocol are allowed if the additional gas components are shown not to interfere with the analysis. The calibration gas must not be used after its expiration date.

Except for applications under part 75 of this chapter, it is acceptable to prepare calibration gas mixtures from EPA Traceability Protocol gases in accordance with Method 205 in M to part 51 of this chapter. For part 75 applications, the use of Method 205 is subject to the approval of the Administrator. The goal and recommendation for selecting calibration gases is to bracket the sample concentrations.

The following calibration gas concentrations are required:

7.1.1 High-Level Gas. This concentration sets the calibration span and results in measurements being 20 to 100 percent of the calibration span.

7.1.2 Mid-Level Gas. 40 to 60 percent of the calibration span.

7.1.3 Low-Level Gas. Less than 20 percent of the calibration span.

7.1.4 Converter Efficiency Gas.What reagents do I need for the converter efficiency test? The converter efficiency gas for the test described in Section 8.2.4.1 must have a concentration of NO_2 that is between 40 and 60 ppmv. For the alternative converter efficiency tests in Section 16.2, NO is required. In either case, the test gas must be prepared according to the EPA Traceability Protocol.

7.2 Interference Check. What reagents do I need for the interference check? Use the appropriate test gases listed in Table 7E–3 (i.e., the potential interferents for the test facility, as identified by the instrument manufacturer) to conduct the interference check.

8.0 Sample Collection, Preservation, Storage, and Transport

Emission Test Procedure

Since you are allowed to choose different options to comply with some of the performance criteria, it is your responsibility to identify the specific options you have chosen, to document that the performance criteria for that option have been met, and to identify any deviations from the method.

8.1 What sampling site and sampling points do I select?

8.1.1 Unless otherwise specified in an applicable regulation or by the Administrator, when this method is used to determine compliance with an emission standard, conduct a stratification test as described in Section 8.1.2 to determine the sampling traverse points to be used. For performance testing of continuous emission monitoring systems, follow the sampling site selection and traverse point layout procedures described in the appropriate performance specification or applicable regulation (e.g., Performance Specification 2 in appendix B to this part).

8.1.2 Determination of Stratification. To test for stratification, use a probe of appropriate length to measure the NO_X (or pollutant of interest) concentration at twelve traverse points located according to Table 1–1 or Table 1–2 of Method 1. Alternatively, you may measure at three points on a line passing through the centroidal area. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Sample for a minimum of twice the system response time (see Section 8.2.6) at each traverse point. Calculate the individual point and mean NO_X concentrations. If the concentration at each traverse point differs from the mean concentration for all traverse points by no more than: (a) ± 5.0 percent of the mean concentration; or (b) ± 0.5 ppm (whichever is less restrictive), the gas stream is considered unstratified and you may collect samples from a single point that most closely matches the mean. If the 5.0 percent or 0.5 ppm criterion is not met, but the concentration at each traverse point differs from the mean concentration for all traverse points by no more than: (a) ± 10.0 percent of the mean; or (b) ± 1.0 ppm (whichever is less restrictive), the gas stream is considered to be minimally stratified, and you may take samples from three points. Space the three points at 16.7, 50.0, and 83.3 percent of the measurement line. Alternatively, if a twelve

point stratification test was performed and the emissions shown to be minimally stratified (all points within ± 10.0 percent of their mean or within ± 1.0 ppm), and if the stack diameter (or equivalent diameter, for a rectangular stack or duct) is greater than 2.4 meters (7.8 ft), then you may use 3-point sampling and locate the three points along the measurement line exhibiting the highest average concentration during the stratification test, at 0.4, 1.0 and 2.0 meters from the stack or duct wall. If the gas stream is found to be stratified because the 10.0 percent or 1.0 ppm criterion for a 3-point test is not met, locate twelve traverse points for the test in accordance with Table 1–1 or Table 1–2 of Method 1.

8.2 Initial Measurement System Performance Tests. What initial performance criteria must my system meet before I begin collecting samples? Before measuring emissions, perform the following procedures:

(a) Calibration gas verification,

(b) Measurement system preparation,

(c) Calibration error test,

(d) NO_2 to NO conversion efficiency test, if applicable,

(e) System bias check,

(f) System response time test, and

(g) Interference check

8.2.1 Calibration Gas Verification. How must I verify the concentrations of my calibration gases? Obtain a certificate from the gas manufacturer and confirm that the documentation includes all information required by the Traceability Protocol. Confirm that the manufacturer certification is complete and current. Ensure that your calibration gases certifications have not expired. This documentation should be available on-site for inspection. To the extent practicable, select a high-level gas concentration that will result in the measured emissions being between 20 and 100 percent of the calibration span.

8.2.2 Measurement System Preparation. How do I prepare my measurement system? Assemble, prepare, and precondition the measurement system according to your standard operating procedure. Adjust the system to achieve the correct sampling rate or dilution ratio (as applicable).

8.2.3 Calibration Error Test. How do I confirm my analyzer calibration is correct? After you have assembled, prepared and calibrated your sampling system and analyzer, you must conduct a 3-point analyzer calibration error test (or a 3-point system calibration error test for dilution systems) before the first run and again after any failed system bias test (or 2-point system calibration error test for dilution systems) or failed drift test. Introduce the low-, mid-, and high-level calibration gases sequentially. For non-dilution-type measurement systems, introduce the gases in direct calibration mode. For dilution-type measurement systems, introduce the gases in system calibration mode.

(1) For non-dilution systems, you may adjust the system to maintain the correct flow rate at the analyzer during the test, but you may not make adjustments for any other purpose. For dilution systems, you must operate the measurement system at the appropriate dilution ratio during all system calibration error checks, and may make only the adjustments necessary to maintain the proper ratio.

(2) Record the analyzer's response to each calibration gas on a form similar to Table 7E–1. For each calibration gas, calculate the analyzer calibration error using Equation 7E–1 in Section 12.2 or the system calibration error using Equation 7E–3 in Section 12.4 (as applicable). The calibration error specification in Section 13.1 must be met for the low-, mid-, and high-level gases. If the calibration error specification is not met, take corrective action and repeat the test until an acceptable 3-point calibration is achieved.

8.2.4 NO_2 to NO Conversion Efficiency Test. Before each field test, you must conduct an NO_2 to NO conversion efficiency test if your system converts NO_2 to NO before analyzing for NO_X. Follow the procedures in Section 8.2.4.1, or 8.2.4.2. If desired, the converter efficiency factor derived from this test may be used to correct the test results for converter efficiency if the NO_2 fraction in the measured test gas is known. Use Equation 7E–8 in Section 12.8 for this correction.

8.2.4.1 Introduce a concentration of 40 to 60 ppmv NO_2 to the analyzer in direct calibration mode and record the NO_X concentration displayed by the analyzer. If a dilution-system is used, introduce the NO_2 calibration gas at a point before the dilution takes place. Calculate the converter efficiency using Equation 7E–7 in Section 12.7. The specification for converter efficiency in Section 13.5 must be met. The user is cautioned that state-of-the-art NO_2 calibration gases may not be sufficiently stable and thus make it more difficult to pass the 90 percent conversion efficiency requirement. The NO_2 must be prepared according to the EPA Traceability Protocol and have an accuracy within 2.0 percent.

8.2.4.2 Alternatively, either of the procedures for determining conversion efficiency using NO in Section 16.2 may be used.

8.2.5 Initial System Bias and System Calibration Error Checks. Before sampling begins, determine whether the high-level or mid-level calibration gas best approximates the emissions and use it as the upscale gas. Introduce the upscale gas at the probe upstream of all sample conditioning components in system calibration mode. Record the time it takes for the measured concentration to increase to a value that is within 95 percent or 0.5 ppm (whichever is less restrictive) of the certified gas concentration. Continue to observe the gas concentration reading until it has reached a final, stable value. Record this value on a form similar to Table 7E–2.

(1) Next, introduce the low-level gas in system calibration mode and record the time required for the concentration response to decrease to a value that is within 5.0 percent or 0.5 ppm (whichever is less restrictive) of the certified low-range gas concentration. If the low-level gas is a zero gas, use the procedures described above and observe the change in concentration until the response is 0.5 ppm or 5.0 percent of the upscale gas concentration (whichever is less restrictive).

(2) Continue to observe the low-level gas reading until it has reached a final, stable value and record the result on a form similar to Table 7E–2. Operate the measurement system at the normal sampling rate during all system bias checks. Make only the adjustments necessary to achieve proper calibration gas flow rates at the analyzer.

(3) From these data, calculate the measurement system response time (see Section 8.2.6) and then calculate the initial system bias using Equation 7E–2 in Section 12.3. For dilution systems, calculate the system calibration error in lieu of system bias using equation 7E–3 in Section 12.4. See Section 13.2 for acceptable performance criteria for system bias and system calibration error. If the initial system bias (or system calibration error) specification is not met, take corrective action. Then, you must repeat the applicable calibration error test from Section 8.2.3 and the initial system bias (or 2-point system calibration error) check until acceptable results are achieved, after which you may begin sampling.

(**Note:** For dilution-type systems, data from the 3-point system calibration error test described in Section 8.2.3 may be used to meet the initial 2-point system calibration error test requirement of this section, if the calibration gases were injected as described in this section, and if response time data were recorded).

8.2.6 Measurement System Response Time. As described in section 8.2.5, you must determine the measurement system response time during the initial system bias (or 2-point system calibration error) check. Observe the times required to achieve 95 percent of a stable response for both the low-level and upscale gases. The longer interval is the response time.

8.2.7 Interference Check. Conduct an interference response test of the gas analyzer prior to its initial use in the field. If you have multiple analyzers of the same make and model, you need only perform this alternative interference check on one analyzer. You may also meet the interference check requirement if the instrument manufacturer performs this or similar check on the same make and model of analyzer that you use and provides you with documented results.

(1) You may introduce the appropriate interference test gases (that are potentially encountered during a test, see examples in Table 7E–3) into the analyzer (or measurement system for dilution-type systems) separately or as mixtures. This test must be performed both with and without NO_X (NO and NO_2) (the applicable pollutant gas). For analyzers measuring NO_X greater than 20 ppm, use a calibration gas with an NO_X concentration of 80 to 100 ppm and set this concentration equal to the calibration span. For analyzers measuring less than 20 ppm NO_X, select an NO concentration for the calibration span that reflects the emission levels at the sources to be tested, and perform the interference check at that level. Measure the total interference response of the analyzer to these gases in ppmv. Record the responses and determine the interference using Table 7E–4. The specification in Section 13.4 must be met.

(2) A copy of this data, including the date completed and signed certification, must be

available for inspection at the test site and included with each test report. This interference test is valid for the life of the instrument unless major analytical components (*e.g.*, the detector) are replaced. If major components are replaced, the interference gas check must be repeated before returning the analyzer to service. The tester must ensure that any specific technology, equipment, or procedures that are intended to remove interference effects are operating properly during testing.

8.3 Dilution-Type Systems—Special Considerations. When a dilution-type measurement system is used, there are three important considerations that must be taken into account to ensure the quality of the emissions data. First, the critical orifice size and dilution ratio must be selected properly so that the sample dew point will be below the sample line and analyzer temperatures. Second, a high-quality, accurate probe controller must be used to maintain the dilution ratio during the test. The probe controller should be capable of monitoring the dilution air pressure, eductor vacuum, and sample flow rates. Third, differences between the molecular weight of calibration gas mixtures and the stack gas molecular weight must be addressed because these can affect the dilution ratio and introduce measurement bias.

8.4 Sample Collection. (1) Position the probe at the first sampling point. Purge the system for at least two times the response time before recording any data. Then, traverse all required sampling points and sample at each point for an equal length of time, maintaining the appropriate sample flow rate or dilution ratio (as applicable). You must record at least one valid data point per minute during the test run. The minimum time you must sample at each point is two times the system response time. Usually the test is designed for sampling longer than this to better characterize the source's temporal variation.

(2) After recording data for the appropriate period of time at the first traverse point, you may move to the next point and continue recording, omitting the requirement to wait for two times the system response time before recording data at the subsequent traverse points. For example, if you use a sampling system with a two-minute system response time, initially purge the system for at least four minutes, then record a minimum of four one-minute averages at each sample point. However, if you remove the probe from the stack, you must recondition the sampling system for at least two times the system response time prior to your next recording. If the average of any run exceeds the calibration span value, the run is invalidated.

(3) You may satisfy the multipoint traverse requirement by sampling sequentially using a single-hole probe or a multi-hole probe designed to sample at the prescribed points with a flow within 10 percent of mean flow rate. Notwithstanding, for applications under part 75 of this chapter, the use of multi-hole probes is subject to the approval of the Administrator.

8.5 Post-Run System Bias Check and Drift Assessment. How do I confirm that each sample I collect is valid? After each run, repeat the system bias check or 2-point system calibration error check (for dilution systems) to validate the run. Do not make adjustments to the measurement system (other than to maintain the target sampling rate or dilution ratio) between the end of the run and the completion of the post-run system bias or system calibration error check. Note that for all post-run system bias or 2-point system calibration error checks, you may inject the low-level gas first and the upscale gas last, or vice-versa.

(1) If you do not pass the post-run system bias (or system calibration error) check, then the run is invalid. You must diagnose and fix the problem and pass another initial 3-point calibration error test (see Section 8.2.3) and another system bias (or 2-point system calibration error) check (see Section 8.2.5) before repeating the run. In these additional bias and calibration error tests, the gases may be injected in any order. Record the system bias (or system calibration error) check results on a form similar to Table 7E–2.

(2) After each run, calculate the low-level and upscale drift, using Equation 7E–4 in Section 12.5. If the post-run low- and upscale bias (or 2-point system calibration error) checks are passed, but the low-or upscale drift exceeds the specification in Section 13.3, the run data are valid, but a 3-point calibration error test and a system bias (or 2-point system calibration error) check must be performed and passed before any more test runs are done.

(3) For dilution systems, data from a 3-point system calibration error test may be used to met the pre-run 2-point system calibration error requirement for the first run in a test sequence. Also, the post-run bias (or 2-point calibration error) check data may be used as the pre-run data for the next run in the test sequence at the discretion of the tester.

8.6 Alternative Interference and System Bias Checks (Dynamic Spike Procedure). If I want to use the dynamic spike procedure to validate my data, what procedure should I follow? Except for applications under part 75 of this chapter, you may use the dynamic spiking procedure and requirements provided in Section 16.1 during each test as an alternative to the interference check and the pre- and post-run system bias checks. The calibration error test is still required under this option. Use of the dynamic spiking procedure for Part 75 applications is subject to the approval of the Administrator.

8.7 Moisture correction. You must determine the moisture content of the flue gas and correct the measured gas concentrations to a dry basis using Method 4 or other appropriate methods, subject to the approval of the Administrator, when the moisture basis (wet or dry) of the measurements made with this method is different from the moisture basis of either: (1) The applicable emissions limit; or (2) the CEMS being evaluated for relative accuracy. Moisture correction is also required if the applicable limit is in lb/mmBtu and the moisture basis of the Method 7E NO_X analyzer is different from the moisture basis of the Method 3A diluent gas (CO_2 or O_2) analyzer.

9.0 Quality Control

What quality control measures must I take?

The following table is a summary of the mandatory, suggested, and alternative quality assurance and quality control measures and the associated frequency and acceptance criteria. All of the QC data, along with the sample run data, must be documented and included in the test report.

SUMMARY TABLE OF QA/QC

Status	Process or element	QA/QC specification	Acceptance criteria	Checking frequency
S	Identify Data User		Regulatory Agency or other primary end user of data.	Before designing test.
S	Analyzer Design	Analyzer resolution or sensitivity.	<2.0% of full-scale range	Manufacturer design.
M		Interference gas check	Sum of responses ≤2.5% of calibration span. Alternatively, sum of responses:. ≤0.5 ppmv for calibration spans of 5 to 10 ppmv. ≤0.2 ppmv for calibration spans < 5 ppmv. See Table 7E–3.	
M	Calibration on Gases	Traceability protocol (G1, G2).	Valid certificate required. Uncertainty ≤2.0% of tag value.	
M		High-level gas	Equal to the calibration span	Each test.
M		Mid-level gas	40 to 60% of calibration span	Each test.
M		Low-level gas	<20% of calibration span	Each test.
S	Data Recorder Design	Data resolution	≤0.5% of full-scale range	Manufacturer design.
S	Sample Extraction	Probe material	SS or quartz if stack >500 °F	Each test.

SUMMARY TABLE OF QA/QC—Continued

Status	Process or element	QA/QC specification	Acceptance criteria	Checking frequency
M	Sample Extraction	Probe, filter and sample line temperature.	For dry-basis analyzers, keep sample above the dew point by heating, prior to sample conditioning. For wet-basis analyzers, keep sample above dew point at all times, by heating or dilution.	Each run.
S	Sample Extraction	Calibration valve material.	SS	Each test.
S	Sample Extraction	Sample pump material	Inert to sample constituents	Each test.
S	Sample Extraction	Manifolding material	Inert to sample constituents	Each test.
S	Moisture Removal	Equipment efficiency	<5% target compound removal	Verified through system bias check.
S	Particulate Removal	Filter inertness	Pass system bias check	Each bias check.
M	Analyzer & Calibration Gas Performance.	Analyzer calibration error (or 3-point system calibration error for dilution systems).	Within ±2.0% of the calibration span of the analyzer for the low-, mid-, and high-level calibration gases. Alternative specification: 0.5 ppmv absolute difference.	Before initial run and after a failed system bias test or dilution drift test.
M	System Performance	System bias (or pre- and post-run 2-point system calibration error for dilution systems).	Within ±5.0% of the analyzer calibration span for low-scale and upscale calibration gases. Alternative specification: 0.5 ppmv absolute difference.	Before and after each run.
M	System Performance	System response time	Determines minimum sampling time per point	During initial sampling system bias test.
M	System Performance	Drift	3.0% of calibration span for low-level and mid- or high-level gases. Alternative specification: 0.5 ppmv absolute difference.	After each test run.
M	System Performance	NO_2–NO conversion efficiency.	≥90% of certified test gas concentration	Before each test.
M	System Performance	Purge time	≥2 times system response time	Before starting the first run and when probe is removed from and re-inserted into the stack.
M	System Performance	Minimum sample time at each point.	Two times the system response time	Each sample point.
M	System Performance	Stable sample flow rate (surrogate for maintaining system response time).	Within 10% of flow rate established during system response time check.	Each run.
M	Sample Point Selection	Stratification test	All points within: ±5% of mean for 1-point sampling. ±10% of mean for 3-point. Alternatively, all points within: ±0.5 ppm of mean for 1-point sampling. ±1.0 ppm of mean for 3-point sampling.	Prior to first run.
A	Multiple sample points simultaneously.	No. of openings in probe	Multi-hole probe with verifiable constant flow through all holes within 10% of mean flow rate (requires Administrative approval for Part 75).	Each run.
M	Data Recording	Frequency	1 minute average	During run.
S	Data Parameters	Sample concentration range.	All 1-minute averages within calibration span	Each run.
M	Data Parameters	Average concentration for the run.	Run average ≤calibration span	Each run.

S = Suggested.
M = Mandatory.
A = Alternative.

10.0 Calibration and Standardization

What measurement system calibrations are required?

(1) The initial 3-point calibration error test as described in Section 8.2.3 and the system bias (or system calibration error) checks described in Section 8.2.5 are required and must meet the specifications in Section 13 before you start the test. Make all necessary adjustments to calibrate the gas analyzer and data recorder. Then, after the test commences, the system bias or system calibration error checks described in Section 8.5 are required before and after each run. Your analyzer must be calibrated for all species of NO_X that it detects. If your analyzer measures NO and NO_2 separately, then you must use both NO and NO_2 calibration gases.

(2) You must include a copy of the manufacturer's certification of the calibration gases used in the testing as part of the test report. This certification must include the 13 documentation requirements in the EPA Traceability Protocol For Assay and Certification of Gaseous Calibration Standards, September 1997, as amended August 25, 1999. When Method 205 is used to produce diluted calibration gases, you must document that the specifications for the gas dilution system are met for the test. You must also include the date of the most recent dilution system calibration against flow standards and the name of the person or manufacturer who carried out the calibration in the test report.

11.0 Analytical Procedures

Because sample collection and analysis are performed together (see Section 8), additional discussion of the analytical procedure is not necessary.

12.0 Calculations and Data Analysis

You must follow the procedures for calculations and data analysis listed in this section.

12.1 *Nomenclature.* The terms used in the equations are defined as follows:

ACE = Analyzer calibration error, percent of calibration span.
B_{WS} = Moisture content of sample gas as measured by Method 4 or other approved method, percent/100.
C_{Avg} = Average unadjusted gas concentration indicated by data recorder for the test run, ppmv.
C_D = Pollutant concentration adjusted to dry conditions, ppmv.
C_{Dir} = Measured concentration of a calibration gas (low, mid, or high) when introduced in direct calibration mode, ppmv.
C_{Gas} = Average effluent gas concentration adjusted for bias, ppmv.
C_M = Average of initial and final system calibration bias (or 2-point system calibration error) check responses for the upscale calibration gas, ppmv.
C_{MA} = Actual concentration of the upscale calibration gas, ppmv.
C_O = Average of the initial and final system calibration bias (or 2-point system calibration error) check responses from the low-level (or zero) calibration gas, ppmv.
C_S = Measured concentration of a calibration gas (low, mid, or high) when introduced in system calibration mode, ppmv.
C_{SS} = Concentration of NO_X measured in the spiked sample, ppmv.
C_{Spike} = Concentration of NO_X in the undiluted spike gas, ppmv.
C_{Calc} = Calculated concentration of NO_X in the spike gas diluted in the sample, ppmv.
C_V = Manufacturer certified concentration of a calibration gas (low, mid, or high), ppmv.
C_W = Pollutant concentration measured under moist sample conditions, wet basis, ppmv.
CS = Calibration span, ppmv.
D = Drift assessment, percent of calibration span.
Eff_{NO2} = NO_2 to NO converter efficiency, percent.
NO_{Final} = The average NO concentration observed with the analyzer in the NO mode during the converter efficiency test in Section 16.2.2, ppmv.
NO_{XCorr} = The NO_X concentration corrected for the converter efficiency, ppmv.
NOX_{Final} = The final NO_X concentration observed during the converter efficiency test in Section 16.2.2, ppmv.
NO_{XPeak} = The highest NO_X concentration observed during the converter efficiency test in Section 16.2.2, ppmv.
Q_{Spike} = Flow rate of spike gas introduced in system calibration mode, L/min.
Q_{Total} = Total sample flow rate during the spike test, L/min.
R = Spike recovery, percent.
SB = System bias, percent of calibration span.
SB_i = Pre-run system bias, percent of calibration span.
SB_f = Post-run system bias, percent of calibration span.
SCE = System calibration error, percent of calibration span.
SCE_i = Pre-run system calibration error, percent of calibration span.
SCE_{final} = Post-run system calibration error, percent of calibration span.

12.2 Analyzer Calibration Error. For non-dilution systems, use Equation 7E–1 to calculate the analyzer calibration error for the low-, mid-, and high-level calibration gases.

$$ACE = \frac{C_{Dir} - C_v}{CS} \times 100 \qquad \text{Eq. 7E-1}$$

12.3 System Bias. For non-dilution systems, use Equation 7E–2 to calculate the system bias separately for the low-level and upscale calibration gases.

$$SB = \frac{C_S - C_{Dir}}{CS} \times 100 \qquad \text{Eq. 7E-2}$$

12.4 System Calibration Error. Use Equation 7E–3 to calculate the system calibration error for dilution systems. Equation 7E–3 applies to both the initial 3-point system calibration error test and the subsequent 2-point between run tests.

$$SCE = \frac{C_S - C_v}{CS} \times 100 \qquad \text{Eq. 7E-3}$$

12.5 Drift Assessment. Use Equation 7E–4 to separately calculate the low-level and upscale drift over each test run. For dilution systems, replace ''SB_{final}'' and ''SB_i'' with ''SCE_{final}'' and ''SCE_i'', respectively, to calculate and evaluate drift.

$$D = \left| SB_{final} - SB_i \right| \qquad \text{Eq. 7E-4}$$

12.6 Effluent Gas Concentration. For each test run, calculate C_{avg}, the arithmetic average of all valid NO_X concentration values (e.g., 1-minute averages). Then adjust the value of C_{avg} for bias, using Equation 7E–5.

$$C_{Gas} = \left(C_{Avg} - C_O \right) \frac{C_{MA}}{C_M - C_O} \qquad \text{Eq. 7E-5}$$

12.7 NO_2—NO Conversion Efficiency. If the NO_X converter efficiency test described in Section 8.2.4.1 is performed, calculate the efficiency using Equation 7E–7.

$$Eff_{NO2} = \frac{C_{Dir}}{C_V} \times 100 \qquad \text{Eq. 7E-7}$$

12.8 NO_2—NO Conversion Efficiency Correction. If desired, calculate the total NO_X concentration with a correction for converter efficiency using Equations 7E–8.

$$NO_{XCorr} = NO + \frac{NO_X - NO}{Eff_{NO2}} \times 100 \qquad \text{Eq. 7E-8}$$

12.9 Alternative NO_2 Converter Efficiency. If the alternative procedure of Section 16.2.2 is used, calculate the converter efficiency using Equation 7E–9.

$$Eff_{NO2} = \frac{\left(NO_{XFinal} - NO_{Final} \right)}{\left(NO_{XPeak} - NO_{XFinal} \right)} \times 100 \qquad \text{Eq. 7E-9}$$

12.10 Moisture Correction. Use Equation 7E–10 if your measurements need to be corrected to a dry basis.

$$C_D = \frac{C_W}{1 - B_{WS}} \qquad \text{Eq. 7E-10}$$

12.11 Calculated Spike Gas Concentration and Spike Recovery for the Example Alternative Dynamic Spiking Procedure in Section 16.1.3. Use Equation 7E–11 to determine the calculated spike gas concentration. Use Equation 7E–12 to calculate the spike recovery.

$$C_{Calc} = \frac{\left(C_{Spike} \right)\left(Q_{Spike} \right)}{Q_{Total}} \qquad \text{Eq. 7E-11}$$

$$R = \frac{C_{SS} - C_{Avg}}{C_{Calc}} \times 100 \qquad \text{Eq. 7E-12}$$

13.0 Method Performance

13.1 Calibration Error. This specification is applicable to both the analyzer calibration error and the 3-point system calibration error tests described in Section 8.2.3. At each calibration gas level (low, mid, and high) the calibration error must either be within ± 2.0 percent of the calibration span. Alternatively, the results are acceptable if $|C_{dir} - C_v|$ or $|C_s - C_v|$ (as applicable) is ≤0.5 ppmv.

13.2 System Bias. This specification is applicable to both the system bias and 2-point system calibration error tests described in Section 8.2.5 and 8.5. The pre- and post-run system bias (or system calibration error) must be within ± 5.0 percent of the calibration span for the low-level and upscale calibration gases. Alternatively, the results are acceptable if $|C_s - C_{dir}|$ is ≤ 0.5 ppmv or if $|C_s - C_v|$ is ≤ 0.5 ppmv (as applicable).

13.3 Drift. For each run, the low-level and upscale drift must be less than or equal to 3.0 percent of the calibration span. The drift is also acceptable if the pre- and post-run bias (or the pre- and post-run system calibration error) responses do not differ by more than 0.5 ppmv at each gas concentration (i.e. $|C_{s\ post\text{-}run} - C_{s\ pre\text{-}run}| \leq 0.5$ ppmv).

13.4 Interference Check. The total interference response (i.e., the sum of the interference responses of all tested gaseous components) must not be greater than 2.50 percent of the calibration span for the analyzer tested. In summing the interferences, use the larger of the absolute values obtained for the interferent tested with and without the pollutant present. The results are also acceptable if the sum of the responses does not exceed 0.5 ppmv for a calibration span of 5 to 10 ppmv, or 0.2 ppmv for a calibration span < 5 ppmv.

13.5 NO_2 to NO Conversion Efficiency Test (as applicable). The NO_2 to NO conversion efficiency, calculated according to Equation 7E–7 or Equation 7E–9, must be greater than or equal to 90 percent.

13.6 Alternative Dynamic Spike Procedure. Recoveries of both pre-test spikes and post-test spikes must be within 100 ± 10 percent. If the absolute difference between the calculated spike value and measured spike value is equal to or less than 0.20 ppmv, then the requirements of the ADSC are met.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 Alternative Procedures

16.1 Dynamic Spike Procedure. Except for applications under part 75 of this chapter, you may use a dynamic spiking procedure to validate your test data for a specific test matrix in place of the interference check and pre- and post-run system bias checks. For part 75 applications, use of this procedure is subject to the approval of the Administrator. Best results are obtained for this procedure when source emissions are steady and not varying. Fluctuating emissions may render this alternative procedure difficult to pass. To use this alternative, you must meet the following requirements.

16.1.1 Procedure Documentation. You must detail the procedure you followed in the test report, including how the spike was measured, added, verified during the run, and calculated after the test.

16.1.2 Spiking Procedure Requirements. The spikes must be prepared from EPA Traceability Protocol gases. Your procedure must be designed to spike field samples at two target levels both before and after the test. Your target spike levels should bracket the average sample NO_X concentrations. The higher target concentration must be less than the calibration span. You must collect at least 5 data points for each target concentration. The spiking procedure must be performed before the first run and repeated after the last run of the test program.

16.1.3 Example Spiking Procedure. Determine the NO concentration needed to generate concentrations that are 50 and 150 percent of the anticipated NO_X concentration in the stack at the total sampling flow rate while keeping the spike flow rate at or below 10 percent of this total. Use a mass flow meter (accurate within 2.0 percent) to generate these NO spike gas concentrations at a constant flow rate. Use Equation 7E–11 in Section 12.11 to determine the calculated spike concentration in the collected sample.

(1) Prepare the measurement system and conduct the analyzer calibration error test as described in Sections 8.2.2 and 8.2.3. Following the sampling procedures in Section 8.1, determine the stack NO_X concentration and use this concentration as the average stack concentration (C_{avg}) for the first spike level, or if desired, for both pre-test spike levels. Introduce the first level spike gas into the system in system calibration mode and begin sample collection. Wait for at least two times the system response time before measuring the spiked sample concentration. Then record at least five successive 1-minute averages of the spiked sample gas. Monitor the spike gas flow rate and maintain at the determined addition rate. Average the five 1-minute averages and determine the spike recovery using Equation 7E–12. Repeat this procedure for the other pre-test spike level. The recovery at each level must be within the limits in Section 13.6 before proceeding with the test.

(2) Conduct the number of runs required for the test. Then repeat the above procedure for the post-test spike evaluation. The last run of the test may serve as the average stack concentration for the post-test spike test calculations. The results of the post-test spikes must meet the limits in Section 13.6.

16.2 Alternative NO_2 to NO Conversion Efficiency Procedures. You may use either of the following procedures to determine converter efficiency in place of the procedure in Section 8.2.4.1.

16.2.1 The procedure for determining conversion efficiency using NO in 40 CFR 86.123–78.

16.2.2 Tedlar Bag Procedure. Perform the analyzer calibration error test to document the calibration (both NO and NO_X modes, as applicable). Fill a Tedlar bag approximately half full with either ambient air, pure oxygen, or an oxygen standard gas with at least 19.5 percent by volume oxygen content. Fill the remainder of the bag with mid-level NO in nitrogen calibration gas. (Note that the concentration of the NO standard should be sufficiently high that the diluted concentration will be easily and accurately measured on the scale used. The size of the bag should be large enough to accommodate the procedure and time required).

(1) Immediately attach the bag to the inlet of the NO_X analyzer (or external converter if used). In the case of a dilution-system, introduce the gas at a point upstream of the dilution assembly. Measure the NO_X concentration for a period of 30 minutes. If the NO_X concentration drops more than 2 percent absolute from the peak value observed, then the NO_2 converter has failed to meet the criteria of this test. Take corrective action. The highest NO_X value observed is considered to be NO_{XPeak}. The final NO_X value observed is considered to be NO_{Xfinal}.

(2) If the NO_X converter has met the criterion of this test, then switch the analyzer to the NO mode (note that this may not be required for analyzers with auto-switching). Document the average NO concentration for a period of 30 seconds to one minute. This average value is NO_{final}. Switch the analyzer back to the NO_X mode and document that the analyzer still meets the criteria of not dropping more than 2 percent from the peak value.

(3) In sequence, inject the zero and the upscale calibration gas that most closely matches the NO_X concentration observed during the converter efficiency test. Repeat this procedure in both the NO and NO_X modes. If the gases are not within 1 percent of scale of the actual values, reject the converter efficiency test and take corrective action. If the gases are within this criterion, use Equation 7E–9 to determine the converter efficiency. The converter efficiency must meet the specification in Section 13.5.

16.3 Manufacturer's Stability Test. A manufacturer's stability test is required for all analyzers that routinely measure emissions below 20 ppm and is optional but recommended for other analyzers. This test evaluates each analyzer model by subjecting it to the tests listed in Table 7E–5 following the procedures in 40 CFR 53.23, 53.55, and 53.56 to demonstrate its stability. A copy of this information in summary format must be included in each test report.

17.0 References

1. ''ERA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards'' September 1997 as amended, ERA–600/R–97/121.

18.0 Tables, Diagrams, Flowcharts, and Validation Data

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Figure 7E-1. Measurement System

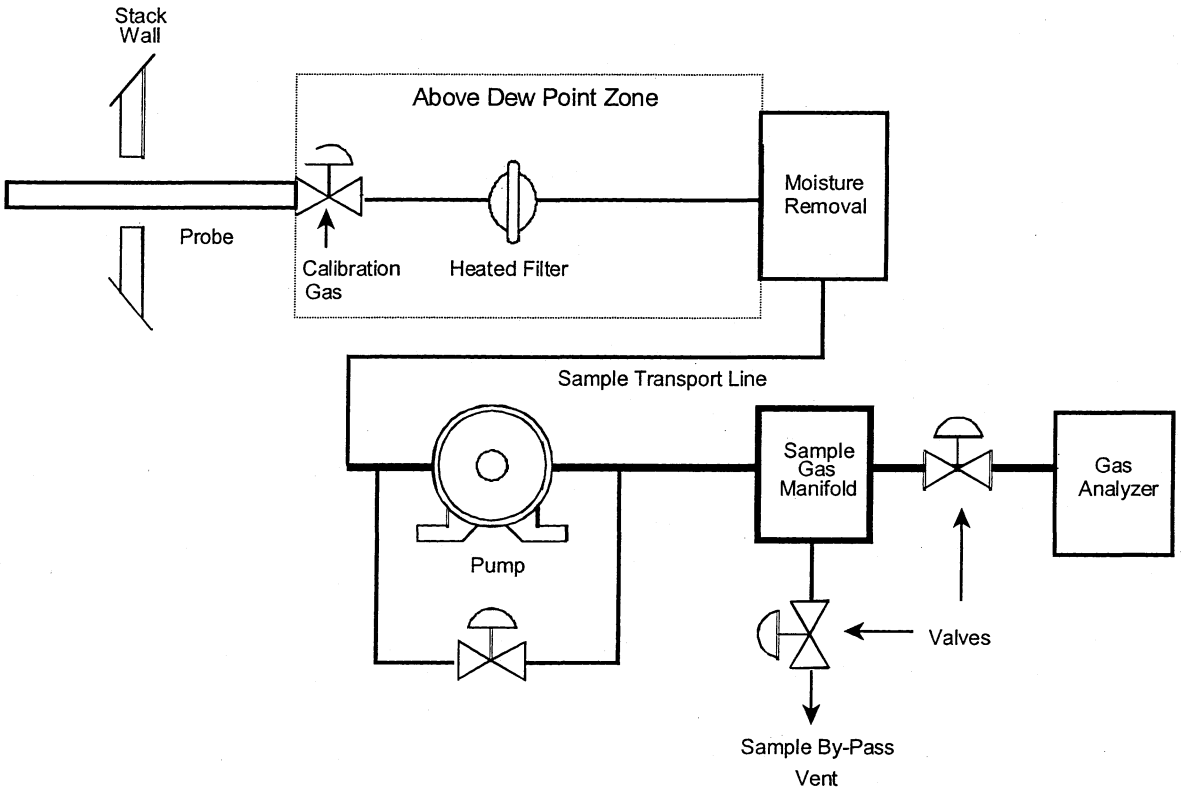

Figure 7E-2. Testing Flow Chart

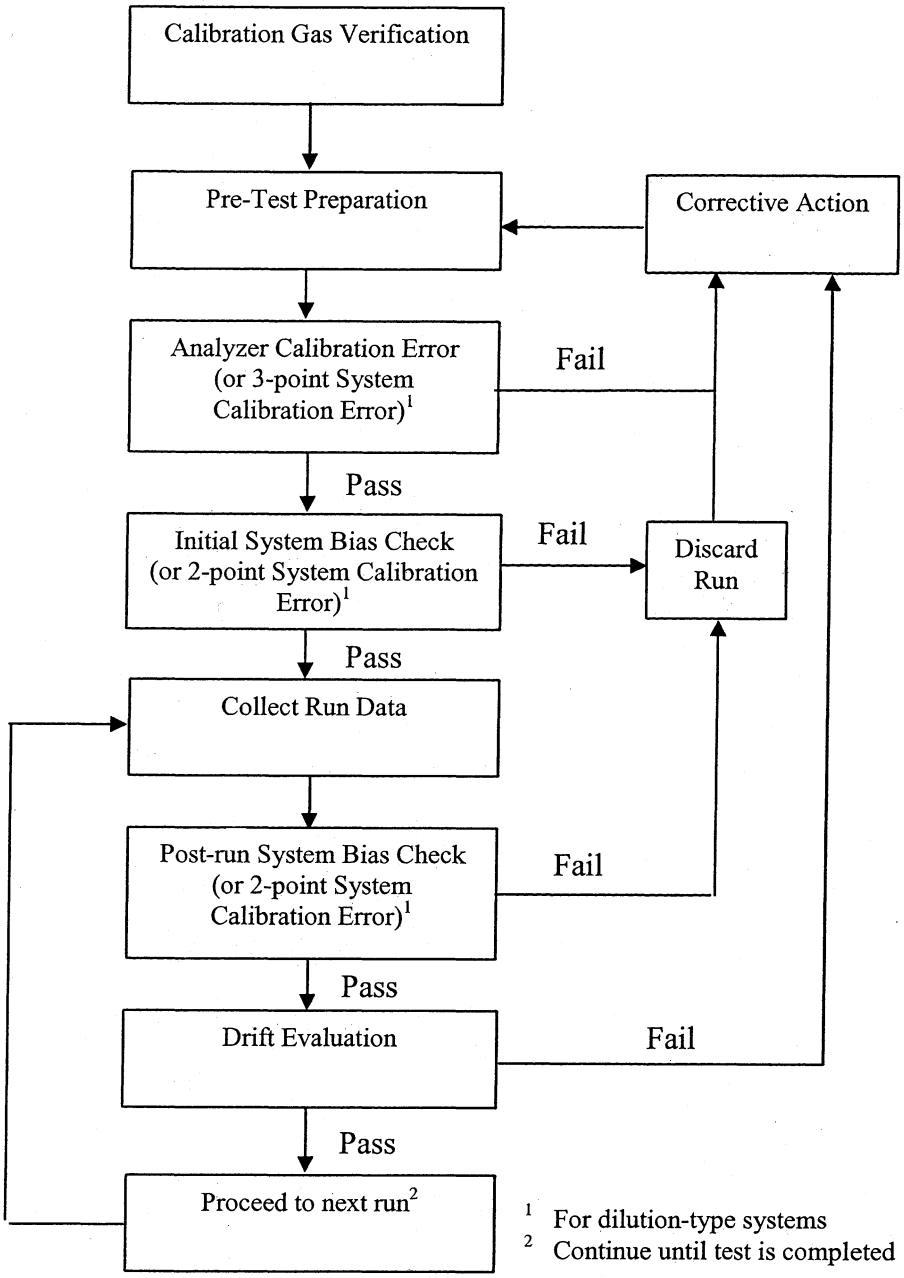

Table 7E-1 - Analyzer (or System) Calibration Error Data

Source Identification: _____ Test personnel: _____ Date: _____ Time: _____			Analyzer[1] or System[2] calibration error data for sampling runs: _____ Analyzer Model No. _____ Serial No. _____ Calibration Span (CS): _____
	Manufacturer Certified Cylinder Value (indicate units) A	Analyzer calibration response (indicate units) B	Absolute difference (indicate units) A-B	Calibration Error (percent of calibration span) $\frac{A-B}{CS} \times 100$
Low-level (or zero) calibration gas	.....	.....	.....	.....
Mid-level calibration gas	.....	.....	.....	.....
High-level calibration gas	.....	.....	.....	.....

[1] Refers to data from the analyzer calibration error test of a non-dilution system.
[2] Refers to data from a 3-point system calibration error test of a dilution system.

Table 7E-2 - System Bias (or System Calibration Error) and Drift Data

Source Identification:_____ Run Number: _____

Test personnel: _____ Calibration Span:_____

Date: _____ ____ Response Time: _____

Analyzer Model No. _____ Serial No._____

	Initial values			Final values		
Calibration Gas Level	Certified Calibration gas value (indicate units)	System Response (indicate units)	System Bias[1] or Calibration Error[2] (% of calibration span)	System response (indicate units)	System Bias[1] or Calibration Error[2] (% of calibration span)	Drift (% of calibration span)
Low-level gas.....	.....	.....	.....	.....	.....	
Upscale (high- or mid-) level gas.....	.....	.....	.....	.....	.....	

[1] Refers to the pre- and post-run system bias checks of a non-dilution system.
[2] Refers to the pre- and post-run system calibration error checks of a dilution system.

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TABLE 7E–3.—INTERFERENCE CHECK GAS CONCENTRATIONS

Potential interferent	Sample conditioning type[2]	
	Hot wet	Dried
CO_2	5 and 15%	5 and 15%
H_2O	25%	1.%
NO	15 ppmv	15 ppmv
NO_2	15 ppmv	15 ppmv
N_2O	10 ppmv	10 ppmv
CO	50 ppmv	50 ppmv
NH_3	10 ppmv	10 ppmv
CH_4	50 ppmv	50 ppmv
SO_2	20 ppmv	20 ppmv
H_2	50 ppmv	50 ppmv

TABLE 7E–3.—INTERFERENCE CHECK GAS CONCENTRATIONS—Continued

Potential interferent	Sample conditioning type[2]	
	Hot wet	Dried
HCl	10 ppmv	10 ppmv

(1) Any of the above specific gases can be eliminated or tested at a lower level if the manufacturer has provided reliable means for limiting or scrubbing that gas to a specified level.

(2) For dilution extractive systems, use the Hot Wet concentrations divided by the minimum targeted dilution ratio to be used during the test.

Table 7E–4.—Interference Response

Date of Test: _____
Analyzer Type: _____
Model No.: _____
Serial No: _____

Calibration Span: _____

Test gas type	Concentration (ppm)	Analyzer response
	Sum of Responses	
	% of Calibration Span	

TABLE 7E–5.—MANUFACTURER STABILITY TEST

[Each model must be tested quarterly or once per 50 production units]

Test description	Acceptance criteria (note 1)
Thermal Stability	Temperature range when drift does not exceed 3.0% of analyzer range over a 12-hour run when measured with NO_X present @ .80% of calibration span.
Fault Conditions	Identify conditions which, when they occur, result in performance which is not in compliance with the Manufacturer's Stability Test criteria. These are to be indicated visually or electrically to alert the operator of the problem.
Insensitivity to Supply Voltage Variations	±10.0% (or manufacturers alternative) variation from nominal voltage must produce a drift of ≤ 2.0% of calibration span for either zero or concentration ≥ 80% NO_X present.

TABLE 7E–5.—MANUFACTURER STABILITY TEST—Continued

[Each model must be tested quarterly or once per 50 production units]

Test description	Acceptance criteria (note 1)
Analyzer Calibration Error	For a low-, medium-, and high-calibration gas, the difference between the manufacturer certified value and the analyzer response in direct calibration mode, no more than 2.0% of calibration span.

Note 1: If the instrument is to be used as a Low Range analyzer, all tests must be performed at a calibration span of 20 ppm or less.

* * * * *

Method 10—Determination of Carbon Monoxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

1.0 Scope and Application

What is Method 10?

Method 10 is a procedure for measuring carbon monoxide (CO) in stationary source emissions using a continuous instrumental analyzer. Quality assurance and quality control requirements are included to assure that you, the tester, collect data of known quality. You must document your adherence to these specific requirements for equipment, supplies, sample collection and analysis, calculations, and data analysis. This method does not completely describe all equipment, supplies, and sampling and analytical procedures you will need but refers to other methods for some of the details. Therefore, to obtain reliable results, you should also have a thorough knowledge of these additional test methods which are found in appendix A to this part:

(a) Method 1—Sample and Velocity Traverses for Stationary Sources.

(b) Method 4—Determination of Moisture Content in Stack Gases.

(c) Method 7E—Determination of Nitrogen Oxides Emissions from Stationary Sources (Instrumental Analyzer Procedure).

1.1 Analytes. What does this method determine? This method measures the concentration of carbon monoxide.

Analyte	CAS No.	Sensitivity
CO	630–08–0	Typically <2% of Calibration Span.

1.2 Applicability. When is this method required? The use of Method 10 may be required by specific New Source Performance Standards, State Implementation Plans, and permits where CO concentrations in stationary source emissions must be measured, either to determine compliance with an applicable emission standard or to conduct performance testing of a continuous emission monitoring system (CEMS). Other regulations may also require the use of Method 10.

1.3 Data Quality Objectives. Refer to Section 1.3 of Method 7E.

2.0 Summary of Method

In this method, you continuously or intermittently sample the effluent gas and convey the sample to an analyzer that measures the concentration of CO. You must meet the performance requirements of this method to validate your data.

3.0 Definitions

Refer to Section 3.0 of Method 7E for the applicable definitions.

4.0 Interferences

Substances having a strong absorption of infrared energy may interfere to some extent in some analyzers. Instrumental correction may be used to compensate for the interference. You may also use silica gel and ascarite traps to eliminate the interferences. If this option is used, correct the measured gas volume for the carbon dioxide (CO_2) removed in the trap.

5.0 Safety

Refer to Section 5.0 of Method 7E.

6.0 Equipment and Supplies

What do I need for the measurement system?

6.1 Continuous Sampling. Figure 7E–1 of Method 7E is a schematic diagram of an acceptable measurement system. The components are the same as those in Sections 6.1 and 6.2 of Method 7E, except that the CO analyzer described in Section 6.2 of this method must be used instead of the analyzer described in Section 6.2 of Method 7E. You must follow the noted specifications in Section 6.1 of Method 7E except that the requirements to use stainless steel, Teflon, or non-reactive glass filters do not apply. Also, a heated sample line is not required to transport dry gases or for systems that measure the CO concentration on a dry basis.

6.2 Integrated Sampling.

6.2.1 Air-Cooled Condenser or Equivalent. To remove any excess moisture.

6.2.2 Valve. Needle valve, or equivalent, to adjust flow rate.

6.2.3 Pump. Leak-free diaphragm type, or equivalent, to transport gas.

6.2.4 Rate Meter. Rotameter, or equivalent, to measure a flow range from 0 to 1.0 liter per minute (0.035 cfm).

6.2.5 Flexible Bag. Tedlar, or equivalent, with a capacity of 60 to 90 liters (2 to 3 ft^3). Leak-test the bag in the laboratory before using by evacuating with a pump followed by a dry gas meter. When the evacuation is complete, there should be no flow through the meter.

6.3 What analyzer must I use? You must use an instrument that continuously measures CO in the gas stream and meets the specifications in Section 13.0. The dual-range analyzer provisions in Section 6.2.8.1 of Method 7E apply.

7.0 Reagents and Standards

7.1 Calibration Gas. What calibration gases do I need? Refer to Section 7.1 of Method 7E for the calibration gas requirements.

7.2 Interference Check. What additional reagents do I need for the interference check? Use the appropriate test gases listed in Table 7E–3 of Method 7E (i.e., potential interferents, as identified by the instrument manufacturer) to conduct the interference check.

8.0 Sample Collection, Preservation, Storage, and Transport

Emission Test Procedure

8.1 Sampling Site and Sampling Points. You must follow Section 8.1 of Method 7E.

8.2 Initial Measurement System Performance Tests. You must follow the procedures in Section 8.2 of Method 7E. If a dilution-type measurement system is used, the special considerations in Section 8.3 of Method 7E also apply.

8.3 Interference Check. You must follow the procedures of Section 8.2.7 of Method 7E.

8.4 Sample Collection.

8.4.1 Continuous Sampling. You must follow the procedures of Section 8.4 of Method 7E.

8.4.2 Integrated Sampling. Evacuate the flexible bag. Set up the equipment as shown in Figure 10–1 with the bag disconnected. Place the probe in the stack and purge the sampling line. Connect the bag, making sure that all connections are leak-free. Sample at a rate proportional to the stack velocity. If needed, the CO_2 content of the gas may be determined by using the Method 3 integrated sample procedures, or by weighing an ascarite CO_2 removal tube used and computing CO_2 concentration from the gas volume sampled and the weight gain of the tube. Data may be recorded on a form similar to Table 10–1.

8.5 Post-Run System Bias Check, Drift Assessment, and Alternative Dynamic Spike Procedure. You must follow the procedures in Sections 8.5 and 8.6 of Method 7E.

9.0 Quality Control

Follow the quality control procedures in Section 9.0 of Method 7E.

10.0 Calibration and Standardization

Follow the procedures for calibration and standardization in Section 10.0 of Method 7E.

11.0 Analytical Procedures

Because sample collection and analysis are performed together (see Section 8), additional discussion of the analytical procedure is not necessary.

12.0 Calculations and Data Analysis

You must follow the procedures for calculations and data analysis in Section 12.0 of Method 7E, as applicable, substituting CO for NO_X as applicable.

12.1 Concentration Correction for CO_2 Removal. Correct the CO concentration for CO_2 removal (if applicable) using Eq. 10–1.

$$C_{Avg} = C_{CO\ stack}\left(1 - F_{CO2}\right)$$

Where:

C_{Avg} = Average gas concentration for the test run, ppm.

$C_{CO\ stack}$ = Average unadjusted stack gas CO concentration indicated by the data recorder for the test run, ppmv.

F_{CO2} = Volume fraction of CO_2 in the sample, i.e., percent CO_2 from Orsat analysis divided by 100.

13.0 Method Performance

The specifications for analyzer calibration error, system bias, drift, interference check, and alternative dynamic spike procedure are the same as in Section 13.0 of Method 7E.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 Alternative Procedures

The dynamic spike procedure and the manufacturer stability test are the same as in Sections 16.1 and 16.3 of Method 7E

17.0 References

1. ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards— September 1997 as amended, EPA–600/R–97/121

18.0 Tables, Diagrams, Flowcharts, and Validation Data

BILLING CODE 6560–50–P

Figure 10-1. Integrated Gas Sampling Train.

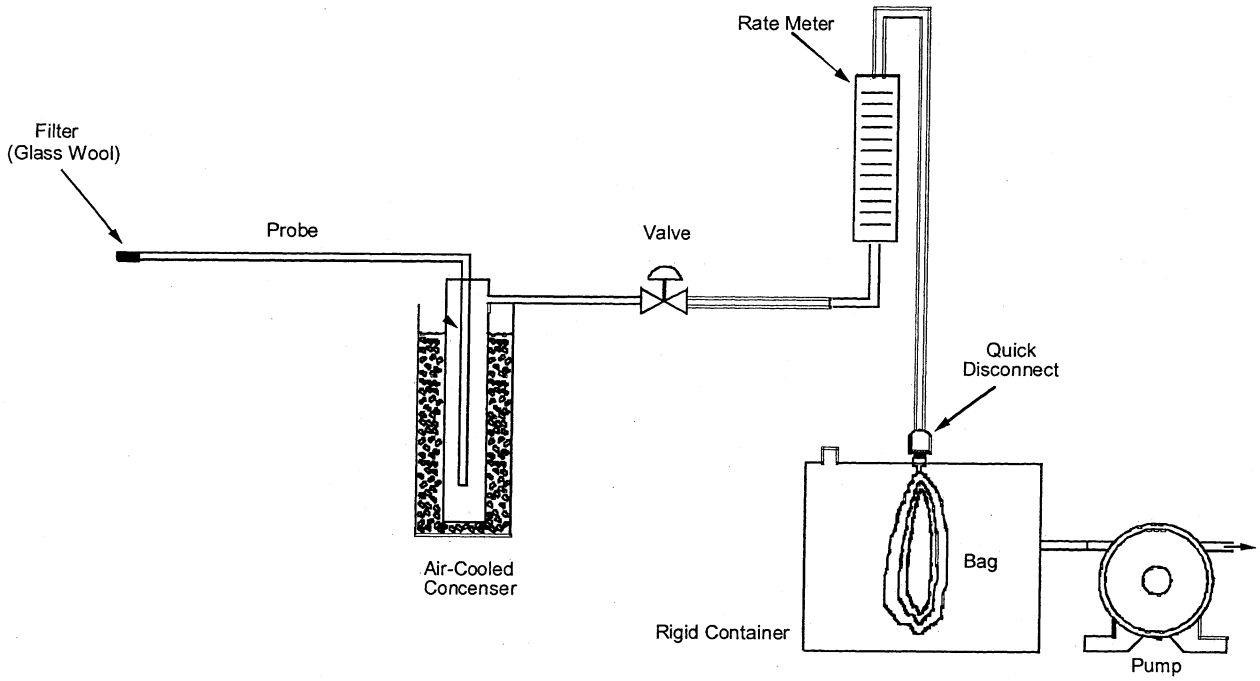

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TABLE 10–1.—FIELD DATA

[Integrated sampling]

Location:	Date:	
Test:	Operator:	
Clock Time	Rotameter Reading liters/min (cfm)	Comments

* * * * *

■ 4. Appendix A–7 is amended by revising Method 20 to read as follows:

Appendix A–7 to Part 60—Test Methods 19 Through 25E

* * * * *

Method 20—Determination of Nitrogen Oxides, Sulfur Dioxide, and Diluent Emissions From Stationary Gas Turbines

1.0 Scope and Application

What is Method 20?

Method 20 contains the details you must follow when using an instrumental analyzer to determine concentrations of nitrogen oxides, oxygen, carbon dioxide, and sulfur dioxide in the emissions from stationary gas turbines. This method follows the specific instructions for equipment and performance requirements, supplies, sample collection and analysis, calculations, and data analysis in the methods listed in Section 2.0.

1.1 Analytes. What does this method determine?

Analyte	CAS No.	Sensitivity
Nitrogen oxides (NO_X) as nitrogen dioxide:	10102–43–9	Typically <2% of Calibration Span.
Nitric oxide (NO)	10102–44–0	
Nitrogen dioxide NO_2.		
Diluent oxygen (O_2) or carbon dioxide (CO_2)		Typically <2% of Calibration Span.
Sulfur dioxide (SO_X)	7446–09–5	Typically <2% of Calibration Span.

1.2 Applicability. When is this method required? The use of Method 20 may be required by specific New Source Performance Standards, Clean Air Marketing rules, and State Implementation Plans and permits where measuring SO_2, NO_X, CO_2, and/or O_2 concentrations in stationary gas turbines emissions are required. Other regulations may also require its use.

1.3 Data Quality Objectives. How good must my collected data be? Refer to Section 1.3 of Method 7E.

2.0 Summary of Method

In this method, NO_X, O_2 (or CO_2), and SO_X are measured using the following methods found in appendix A to this part:

(a) Method 1—Sample and Velocity Traverses for Stationary Sources.

(b) Method 3A—Determination of Oxygen and Carbon Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure).

(c) Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure).

(d) Method 7E—Determination of Nitrogen Oxides Emissions From Stationary Sources (Instrumental Analyzer Procedure).

(e) Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate Matter, Sulfur Dioxide, and Nitrogen Oxide Emission Rates.

3.0 Definitions

Refer to Section 3.0 of Method 7E for the applicable definitions.

4.0 Interferences

Refer to Section 4.0 of Methods 3A, 6C, and 7E as applicable.

5.0 Safety

Refer to Section 5.0 of Method 7E.

6.0 Equipment and Supplies

The measurement system design is shown in Figure 7E–1 of Method 7E. Refer to the appropriate methods listed in Section 2.0 for equipment and supplies.

7.0 Reagents and Standards

Refer to the appropriate methods listed in Section 2.0 for reagents and standards.

8.0 Sample Collection, Preservation, Storage, and Transport

8.1 Sampling Site and Sampling Points. Follow the procedures of Section 8.1 of Method 7E. For the stratification test in Section 8.1.2, determine the diluent-corrected pollutant concentration at each traverse point.

8.2 Initial Measurement System Performance Tests. You must refer to the appropriate methods listed in Section 2.0 for the measurement system performance tests as applicable.

8.3 Interference Check. You must follow the procedures in Section 8.3 of Method 3A or 6C, or Section 8.2.7 of Method 7E (as appropriate).

8.4 Sample Collection. You must follow the procedures of Section 8.4 of the appropriate methods listed in Section 2.0.

8.5 Post-Run System Bias Check, Drift Assessment, and Alternative Dynamic Spike Procedure. You must follow the procedures of Sections 8.5 and 8.6 of the appropriate methods listed in Section 2.0.

9.0 Quality Control

Follow quality control procedures in Section 9.0 of Method 7E.

10.0 Calibration and Standardization

Follow the procedures for calibration and standardization in Section 10.0 of Method 7E.

11.0 Analytical Procedures

Because sample collection and analysis are performed together (see Section 8), additional discussion of the analytical procedure is not necessary.

12.0 Calculations and Data Analysis

You must follow the procedures for calculations and data analysis in Section 12.0 of the appropriate method listed in Section 2.0. Follow the procedures in Section 12.0 of Method 19 for calculating fuel-specific F factors, diluent-corrected pollutant concentrations, and emission rates.

13.0 Method Performance

The specifications for the applicable performance checks are the same as in Section 13.0 of Method 7E.

14.0 Pollution Prevention [Reserved]

15.0 Waste Management [Reserved]

16.0 Alternative Procedures

Refer to Section 16.0 of the appropriate method listed in Section 2.0 for alternative procedures.

17.0 References

Refer to Section 17.0 of the appropriate method listed in Section 2.0 for references.

18.0 Tables, Diagrams, Flowcharts, and Validation Data

Refer to Section 18.0 of the appropriate method listed in Section 2.0 for tables, diagrams, flowcharts, and validation data.

* * * * *

[FR Doc. 06–4196 Filed 5–12–06; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
May 15, 2006

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2007; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1540–P]

RIN 0938–AO16

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2007

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2007 (for discharges occurring on or after October 1, 2006 and on or before September 30, 2007) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before the August 1 that precedes the start of each fiscal year, the classification and weighting factors for the inpatient rehabilitation facility prospective payment system's case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

We are proposing to revise existing policies regarding the prospective payment system within the authority granted under section 1886(j) of the Act. In addition, we are proposing to revise the current regulation text at 42 CFR 412.23(b)(2)(i) and (b)(2)(ii) to reflect the changes enacted under section 5005 of the Deficit Reduction Act of 2005.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 7, 2006.

ADDRESSES: In commenting, please refer to file code CMS–1540–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1540–P, P.O. Box 8012, Baltimore, MD 21244–8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1540–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the Hubert H. Humphrey (HHH) Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the Centers for Medicare & Medicaid Services (CMS) drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Pete Diaz, (410) 786–1235, for information regarding the 75 percent rule.

Susanne Seagrave, (410) 786–0044, for information regarding the new payment policy proposals.

Zinnia Ng, (410) 786–4587, for information regarding the wage index and prospective payment rate calculation.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1540–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below.

ADC Average Daily Census
SCA Adminstrative Simplification Compliance Act of 2002, Pub. L. 107–105
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
CBSA Core-Based Statistical Area
CCR Cost-to-Charge Ratio
CFR Code of Federal Regulations
CMG Case-Mix Group
DRA Deficit Reduction Act of 2005, Pub. L. 109–171
DRG Diagnosis-Related Group
DSH Disproportionate Share Hospital
ECI Employment Cost Indexes
FI Fiscal Intermediary
FR Federal Register
FY Federal Fiscal Year
GDP Gross Domestic Product
HHH Hubert H. Humphrey Building
HIPAA Health Insurance Portability and Accountability Act, Pub. L. 104–191
HIT Health Information Technology
IFMC Iowa Foundation for Medical Care
IPPS Inpatient Prospective Payment System
IRF Inpatient Rehabilitation Facility
IRF–PAI Inpatient Rehabilitation Facility-Patient Assessment Instrument
IRF PPS Inpatient Rehabilitation Facility Prospective Payment System
IRVEN Inpatient Rehabilitation Validation and Entry
LIP Low-Income Percentage
MEDPAR Medicare Provider Analysis and Review
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173)
MSA Metropolitan Statistical Area
NAICS North American Industrial Classification System
OMB Office of Management and Budget
PAC Post Acute Care
PAI Patient Assessment Instrument
PPS Prospective Payment System
RAND RAND Corporation
RFA Regulatory Flexibility Act, Pub. L. 96–354
RIA Regulation Impact Analysis
RIC Rehabilitation Impairment Category
RPL Rehabilitation, Psychiatric, and Long-Term Care Hospital Market Basket
SCHIP State Children's Health Insurance Program
SIC Standard Industrial Code
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248

I. Background

[If you choose to comment on issues in this section, please include the caption ''Background'' at the beginning of your comments.]

A. Historical Overview of the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS) for Fiscal Years (FYs) 2002 Through 2005

Section 4421 of the Balanced Budget Act of 1997 (BBA, Pub. L. 105–33), as amended by section 125 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (BBRA, Pub. L. 106–113), and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106–554), provides for the implementation of a per discharge prospective payment system (PPS), through section 1886(j) of the Social Security Act (the Act), for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (hereinafter referred to as IRFs).

Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the August 7, 2001 final rule (66 FR 41316) as revised in the FY 2006 IRF PPS final rule (70 FR 47880), we are providing below a general description of the IRF PPS for fiscal years (FYs) 2002 through 2005.

Under the IRF PPS from FY 2002 through FY 2005, as described in the August 7, 2001 final rule, the Federal prospective payment rates were computed across 100 distinct case-mix groups (CMGs). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget neutral conversion factor). For a detailed discussion of the budget neutral conversion factor, please refer to our August 1, 2003 final rule (68 FR 45674, 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted Federal prospective payment rates. Under the IRF PPS from FYs 2002 through 2005, we then applied adjustments for geographic variations in wages (wage index), the percentage of low-income patients, and location in a rural area (if applicable) to the IRF's unadjusted Federal prospective payment rates. In addition, we made adjustments to account for short-stay transfer cases, interrupted stays, and high cost outliers.

For cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRF would have received had the IRF PPS not been implemented. This provision also

allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

We established a CMS Web site as a primary information resource for the IRF PPS. The Web site URL is *http://www.cms.hhs.gov/InpatientRehabFacPPS/* and may be accessed to download or view publications, software, data specifications, educational materials, and other information pertinent to the IRF PPS.

B. Revisions Made by the IRF PPS Final Rule for FY 2006

Section 1886(j) of the Act confers broad statutory authority to propose refinements to the IRF PPS. The refinements described in this section were finalized in the FY 2006 IRF PPS final rule (70 FR 47880). The provisions of the FY 2006 IRF PPS final rule became effective for discharges beginning on or after October 1, 2005. We published correcting amendments to the FY 2006 IRF PPS final rule in the **Federal Register** on September 30, 2005 (70 FR 57166). Any reference to the FY 2006 IRF PPS final rule in this proposed rule also includes the provisions effective in the correcting amendments.

In the FY 2006 final rule (70 FR 47880 and 70 FR 57166), we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements were based on analyses by the RAND Corporation (RAND), a non-partisan economic and social policy research group, using calendar year 2002 and FY 2003 data. These were the first significant refinements to the IRF PPS since its implementation. In conducting the analysis, RAND used claims and clinical data for services furnished after the implementation of the IRF PPS. These newer data sets were more complete, and reflected improved coding of comorbidities and patient severity by IRFs. The researchers were able to use new data sources for imputing missing values and more advanced statistical approaches to complete their analyses. The RAND reports supporting the refinements made to the IRF PPS are available on the CMS Web site at: *http://www.cms.hhs.gov/InpatientRehabFacPPS/09_Research.asp.*

The final key policy changes, effective for discharges occurring on or after October 1, 2005, are discussed in detail in the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166). The following is a brief summary of the key policy changes:

The FY 2006 IRF PPS final rule (70 FR 47880, 47917 through 47928) included the adoption of the Office of Management and Budget's (OMB's) Core-Based Statistical Area (CBSA) market area definitions in a budget neutral manner. This geographic adjustment was made using the most recent final wage data available (that is, pre-reclassification and pre-floor hospital wage index based on FY 2001 hospital wage data). In addition, we implemented a budget-neutral three-year hold harmless policy for rural IRFs in FY 2005 that became urban in FY 2006, as described in the FY 2006 IRF PPS final rule (70 FR 47880, 47923 through 47925).

The FY 2006 final rule (70 FR 47880, 47904) also implemented a payment adjustment to account for changes in coding that did not reflect real changes in case mix. In that final rule, we reduced the standard payment amount by 1.9 percent to account for such changes in coding following implementation of the IRF PPS. Our contractors conducted a series of analyses to identify real case mix change over time and the effect of this change on aggregate IRF PPS payments. The contractors identified the impact of changing case mix on the IRF PPS payment ranges. From calendar year 1999 through calendar year 2002, the real change in IRFs' case mix ranged from negative 2.4 percent to positive 1.5 percent. They attributed the remaining change in IRF payments (between 1.9 percent and 5.8 percent) to coding changes. For FY 2006, we implemented a reduction in the standard payment amount based on the lowest of these estimates. At the time, we stated that we would continue to analyze the data and would make additional coding adjustments, as needed.

In addition, in the FY 2006 final rule (70 FR 47880, 47886 through 47904), we made modifications to the CMGs, tier comorbidities, and relative weights in a budget-neutral manner. The final rule included a number of adjustments to the IRF classification system that are designed to improve the system's ability to predict IRF costs. The data indicated that moving or eliminating some comorbidity codes from the tiers, redefining the CMGs, and other minor changes to the system would improve the ability of the classification system to ensure that Medicare payments to IRFs continue to be aligned with the costs of care. These refinements resulted in 87 CMGs using Rehabilitation Impairment Categories (RICs), functional status (motor and cognitive scores), and age (in some cases, cognitive status and age may not be factors in defining CMGs). The five special CMGs remained the same as they had been before FY 2006 and continue to account for very short stays and for patients who expire in the IRF.

In addition, the FY 2006 IRF PPS final rule (70 FR 47928 through 47932) implemented a new teaching status adjustment for IRFs, similar to the one adopted for inpatient psychiatric facilities. We implemented the teaching status adjustment in a budget neutral manner.

The FY 2006 IRF PPS final rule (70 FR 47880, 47908 through 47917) also revised and rebased the market basket. We finalized the use of a new market basket reflecting the operating and capital cost structures for rehabilitation, psychiatric, and long term care (RPL) hospitals to update IRF payment rates. The RPL market basket excludes data from cancer hospitals, children's hospitals, and religious non-medical institutions. In addition, we rebased the market basket to account for 2002-based cost structures for RPL hospitals. Further, we calculated the labor-related share using the RPL market basket. The FY 2006 IRF market basket increase factor was 3.6 percent and the RPL labor-related share was 75.865 percent.

In the FY 2006 final rule (70 FR 47880, 47932 through 47933), we updated the rural adjustment (from 19.14 percent to 21.3 percent), the low-income percentage (LIP) adjustment (from an exponent of 0.484 to an exponent of 0.6229), and the outlier threshold amount (from $11,211 to $5,129, as further revised in the FY 2006 IRF PPS correction notice (70 FR 57166, 57168)). We implemented the changes to the rural and the LIP adjustments in a budget neutral manner.

The final FY 2006 standard payment conversion factor, accounting for the refinements, was $12,762 (as discussed in the FY 2006 IRF PPS correction notice (70 FR 57166, 57168)).

C. Requirements for Updating the IRF PPS Rates

On August 7, 2001, we published a final rule entitled ''Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities'' in the **Federal Register** (66 FR 41316) that established a PPS for IRFs as authorized under section 1886(j) of the Act and codified at subpart P of part 412 of the Medicare regulations. In the August 7,

2001 final rule, we set forth the per discharge Federal prospective payment rates for FY 2002, which provided payment for inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IRF PPS. The provisions of the August 7, 2001 final rule were effective for cost reporting periods beginning on or after January 1, 2002. On July 1, 2002, we published a correcting amendment to the August 7, 2001 final rule in the **Federal Register** (67 FR 44073). Any references to the August 7, 2001 final rule in this proposed rule include the provisions effective in the correcting amendment.

Section 1886(j)(5) of the Act and § 412.628 of the regulations require the Secretary to publish in the **Federal Register**, on or before the August 1 that precedes the start of each new FY, the classifications and weighting factors for the IRF CMGs and a description of the methodology and data used in computing the prospective payment rates for the upcoming FY. On August 1, 2002, we published a notice in the **Federal Register** (67 FR at 49928) to update the IRF Federal prospective payment rates from FY 2002 to FY 2003 using the methodology as described in § 412.624. As stated in the August 1, 2002 notice, we used the same classifications and weighting factors for the IRF CMGs that were set forth in the August 7, 2001 final rule to update the IRF Federal prospective payment rates from FY 2002 to FY 2003. We continued to update the prospective payment rates in accordance with the methodology set forth in the August 7, 2001 final rule for each succeeding FY up to and including FY 2005. For FY 2006, however, we published a final rule that revised several IRF PPS policies (70 FR 47880), as summarized in sections I.B and I.C of this proposed rule. The provisions of the FY 2006 IRF PPS final rule became effective for discharges occurring on or after October 1, 2005. We published correcting amendments to the FY 2006 IRF PPS final rule in the **Federal Register** (70 FR 57166). Any reference to the FY 2006 IRF PPS final rule in this proposed rule includes the provisions effective in the correcting amendments.

In this proposed rule for FY 2007, we are proposing to update the IRF Federal prospective payment rates. In addition, we will update the cost-to-charge ratios from FY 2006 to FY 2007 and the outlier threshold. We are also proposing a one-time, 2.9 percent reduction to the FY 2007 standard payment amount to account for changes in coding practices that do not reflect real changes in case mix. (See section III.A of this proposed rule for further discussion of the proposed reduction of the standard payment amount to account for coding changes.)

We are also proposing changes to the tier comorbidities and the relative weights to ensure that IRF PPS payments reflect, as closely as possible, the costs of caring for patients in IRFs. (See section II for a detailed discussion of these proposed changes.) The proposed FY 2007 Federal prospective payment rates would be effective for discharges occurring on or after October 1, 2006 and on or before September 30, 2007.

In addition, we are proposing to revise the regulation text in § 412.23(b)(2)(i) and § 412.23(b)(2)(ii) to reflect the statutory changes in section 5005 of the Deficit Reduction Act of 2005 (DRA, Pub. L. 109–171). The proposed regulation text change would prolong the overall duration of the phased transition to the full 75 percent threshold established in current regulation text in § 412.23(b)(2)(i) and § 412.23(b)(2)(ii), by extending the transition's current 60 percent phase for an additional 12 months.

D. Operational Overview of the Current IRF PPS

As described in the August 7, 2001 final rule, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument, the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF-PAI). All required data must be electronically encoded into the IRF-PAI software product. Generally, the software product includes patient grouping programming called the GROUPER software. The GROUPER software uses specific Patient Assessment Instrument (PAI) data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The GROUPER software produces a five-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last four digits represent the distinct CMG number. (Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available at the CMS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/06_Software.asp)*

Once a patient is discharged, the IRF completes the Medicare claim (UB–92 or its equivalent) using the five-digit CMG number and sends it to the appropriate Medicare fiscal intermediary (FI). Claims submitted to Medicare must comply with both the Administrative Simplification Compliance Act (ASCA, Pub. L. 107–105), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104–191). Section 3 of the ASCA amends section 1862(a) of the Act by adding paragraph (22) which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services ''for which a claim is submitted other than in an electronic form specified by the Secretary.'' Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in two types of cases and may also waive such denial ''in such unusual cases as the Secretary finds appropriate.'' See also the interim final rule on Electronic Submission of Medicare Claims (68 FR 48805, August 15, 2003). Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified as 45 CFR parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the program claim memoranda issued and published by CMS at: *http://www.cms.hhs.gov/ElectronicBillingEDITrans/* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600. Instructions for the limited number of claims submitted to Medicare on paper are located in section 3604 of Part 3 of the Medicare Intermediary Manual.)

The Medicare FI processes the claim through its software system. This software system includes pricing programming called the PRICER software. The PRICER software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the new teaching status adjustment that became effective

as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

E. Brief Summary of Proposed Revisions to the IRF PPS for FY 2007

In this proposed rule, we are proposing to make the following revisions and updates:

- Revise the IRF GROUPER software and the relative weight and average length of stay tables based on re-analysis of the data by CMS and our contractor, the RAND Corporation, as discussed in section II of this proposed rule.
- Reduce the standard payment amount by 2.9 percent to account for coding changes, as discussed in section III.A of this proposed rule.
- Update the FY 2007 IRF PPS payment rates by the proposed market basket, as discussed in section III.B of this proposed rule.
- Update the FY 2007 IRF PPS payment rates by the proposed labor related share, the wage indexes, and the second year of the hold harmless policy in a budget neutral manner, as discussed in sections III.C through G of this proposed rule.
- Update the outlier threshold for FY 2007 to $5,609, as discussed in section IV.A of this proposed rule.
- Update the urban and rural national cost-to-charge ratio ceilings for purposes of determining outlier payments under the IRF PPS and propose clarifications to the methodology described in the regulation text, as discussed in section IV.B of this proposed rule.
- Revise the regulation text at § 412.23(b)(2)(i) and § 412.23(b)(2)(ii) to reflect section 5005 of the DRA, which maintains the compliance percentage requirement transition at its current 60 percent phase for an additional 12 months, as discussed in section VI of this proposed rule.

II. Refinements to the Patient Classification System

[If you choose to comment on issues in this section, please include the caption ''Refinements to the Patient Classification System'' at the beginning of your comments.]

A. Proposed Changes to the Existing List of Tier Comorbidities

As discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47888 through 47892), we finalized several changes to the comorbidity tiers associated with the CMGs for FY 2006.

A comorbidity is a specific patient condition that is secondary to the patient's principal diagnosis or impairment. We use the patient's principal diagnosis or impairment to classify the patient into a rehabilitation impairment category (RIC), and then we use the patient's secondary diagnoses (or comorbidities) to determine whether to classify the patient into a higher-paying tier. A patient could have one or more comorbidities present during the inpatient rehabilitation stay. Our analysis for the August 7, 2001 final rule (66 FR 41316) found that the presence of certain comorbidities could have a major effect on the cost of furnishing inpatient rehabilitation care. We also found that the effect of comorbidities varied across RICs, significantly increasing the costs of patients in some RICs, while having no effect in others. Therefore, in determining whether the presence of a certain comorbidity should trigger placement in a higher-paying tier, we considered whether the comorbidity was an inherent part of the diagnosis that assigned the patient to the RIC. If it was an inherent part of the diagnosis, we excluded it from the RIC.

The changes for FY 2006 included removing several tier comorbidity codes that RAND's analysis found were no longer positively related to treatment costs, moving the comorbidity code for patients needing dialysis to tier 1, and moving certain comorbidity codes among tiers based on their marginal cost, as determined by RAND's regression analysis. In accordance with the final rule, we implemented these changes by updating the IRF PPS GROUPER software for discharges occurring on or after October 1, 2005.

In the FY 2006 IRF PPS final rule (70 FR 47880, 47892), we explained that the purpose of these changes was to place comorbidity codes in tiers based on RAND's analysis of how much the associated comorbidity would increase the costs of care in the IRF. (RAND's detailed analysis and methodology can be found in their report ''Preliminary Analyses for Refinement of the Tier Comorbidities in the Inpatient Rehabilitation Facility Prospective Payment System,'' which is available on their Web site at *http://www.rand.org/pubs/technicalreports/TR201/*).

After publishing the FY 2006 IRF PPS final rule, we continued to monitor the IRF classification system. As a result of our review and an analysis of recently updated data from RAND, we are proposing to implement some additional refinements (described below) to the comorbidity tiers for FY 2007 to ensure that IRF PPS payments continue to reflect as accurately as possible the costs of care in IRFs.

Section 1886(j)(2)(C)(i) of the Act requires the Secretary from time to time to adjust the classifications and weighting factors for the IRF case-mix classification system as appropriate to reflect changes in treatment patterns, technology, case mix, number of payment units for which payment is made under the IRF PPS, and other factors which may affect the relative use of resources.

Accordingly, as described below, we propose to revise the tier comorbidity list in the IRF GROUPER for FY 2007 to ensure that the list appropriately reflects current ICD–9–CM national coding guidelines (as discussed below) and to ensure that the comorbidity codes are in the most appropriate tiers, based on RAND's analysis of the amount the associated comorbidities add to treatment costs. We are proposing the following five types of changes to the list of tier comorbidities in the IRF PPS GROUPER for FY 2007:

- Adding four comorbidity codes, as shown in Table 1.
- Deleting five comorbidity codes, as shown in Table 2.
- Continuing to update the tier comorbidities in the IRF GROUPER, as appropriate, to reflect ICD–9–CM national coding guidelines, as discussed below.
- Moving nine comorbidity codes from tier 2 to tier 3, as shown in Table 3.
- Deleting all category codes from the IRF GROUPER, as shown in Table 4.

We note that the proposed revisions to the IRF GROUPER described in this section are subject to change for the final rule based on the results of updated analysis.

The proposed changes listed below in Tables 1 and 2 are related to the monitoring and updating of the comorbidity tiers that CMS has been doing on an annual basis since we first implemented the IRF PPS, as described in detail below. We will continue to provide ongoing monitoring of additions, deletions, and changes to the ICD–9 coding structure, in order to ensure that the list of tier comorbidities in the IRF GROUPER is as consistent as possible with current national coding guidelines (as discussed below).

Each year since 1986, the National Center for Health Statistics (NCHS) and CMS have issued new diagnosis and procedure codes for the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM). The ICD–9–CM Coordination and Maintenance Committee, sponsored jointly by NCHS and CMS, is responsible for determining these new code assignments each year. The new ICD–9 codes generally become effective on October 1 of each year, and replace previously assigned ''code equivalents.'' However, the ICD–9–CM Coordination and Maintenance Committee recently

indicated that it may begin updating the ICD–9 codes twice a year. A mid-year revision of the code assignments has not occurred yet, but we will monitor any such revisions that may occur and update the IRF coding instructions, as appropriate.

In order to ensure that the list of tier comorbidities accurately reflects changes to the ICD–9–CM codes, we propose to continue to update the list of ICD–9 codes in the IRF GROUPER software, as appropriate. For example, to the extent that the ICD–9–CM Coordination and Maintenance Committee changes an ICD–9 code for a comorbid condition on our tier comorbidity list into one or more codes that provide additional detail, we are proposing (as a general rule) to update the IRF GROUPER software to reflect the new codes. However, we recognize that there may be situations in which the addition of one or more of these new codes to the list of tier comorbidities may not be appropriate. For example, a situation could occur in which an ICD–9 code for a particular condition is divided into two more detailed codes, one of which represents a condition that generally increases the costs of care in an IRF and one of which does not. In such a case, we may propose through notice and comment procedures to delete the code that does not reflect increased costs of care in an IRF from the list of tier comorbidities in the IRF GROUPER software.

We propose to continue to indicate changes to the GROUPER software that reflect national coding guidelines by posting a complete ICD–9 table, including new, discontinued, and modified codes, on the IRF PPS Web site. We also propose to continue to report the complete list of ICD–9 codes associated with the tiers in the IRF GROUPER documentation, which is also posted on the IRF PPS Web site.

In addition, we propose that the finalized list of tier comorbidities for FY 2007 that we are proposing to post on the IRF PPS website and in the IRF GROUPER documentation (also posted on the IRF PPS website) as of October 1, 2006 would generally reflect Appendix C of the August 7, 2001 final rule (66 FR 41316, 41414 through 41427) as modified by the tier comorbidity changes adopted in the FY 2006 IRF PPS final rule (70 FR 47880) and any tier comorbidity changes as adopted in the FY 2007 IRF PPS final rule, as well as changes adopted due to ICD–9 national coding guideline updates. This version would constitute the baseline for any future updates to the tier comorbidities. Moreover, we note that, if we decide that a substantive change to the comorbid conditions on the list of tier comorbidities in the IRF GROUPER is appropriate, we will propose the change through notice and comment procedures.

Accordingly, in Table 1, we propose to add comorbidity codes 466.11, 466.19, 282.68, and 567.29 to the GROUPER for FY 2007 to be consistent with the national ICD–9–CM coding guidelines, as discussed above. In Table 1, on the basis of RAND's analysis, we also indicate the proposed tier assignment for each ICD–9 comorbidity code and any applicable RIC exclusions.

TABLE 1.—ICD–9 CODES WE PROPOSE TO ADD TO THE IRF PPS GROUPER

ICD–9–CM	ICD–9–CM label	Tier	RIC exclusion
466.11	ACU BRONCHOLITIS D/T RSV	3	15
466.19	ACU BRNCHLTS D/T OTH ORG	3	15
282.68	OTH SICKLE-CELL DISEASE W/O CRISIS	3	None
567.29	OTH SUPPURATIVE PERITONITIS	3	None

In Table 2, we list all of the comorbidity codes that we propose to delete from the IRF GROUPER for FY 2007. The clinical conditions that these codes represent were not part of the initial list of tier comorbidities in Appendix C of the August 7, 2001 final rule (66 FR 41316, 41414 through 41427), but we inadvertently added these codes to the IRF GROUPER in our annual GROUPER updating process. Thus, we are proposing to delete these codes from the tier comorbidities for FY 2007.

TABLE 2.—PROPOSED ICD–9 CODES TO BE DELETED FROM THE IRF PPS GROUPER

ICD–9–CM	ICD–9–CM label	Tier
453.40	VEN EMBOL THRMBS UNSPEC DP VSLS LWR EXTREM	3
453.41	VEN EMBOL THRMBS DP VSLS PROX LWR EXTREM	3
453.42	VEN EMBOL THRMBS DP VSLS DIST LWR EXTREM	3
799.01	ASPHYXIA	3
799.02	HYPOXEMIA	3

Finally, in Table 3, we list the ICD–9 codes that we propose to move to a different tier to reflect the amount that the associated comorbidities increase the costs of care in the IRF. In the FY 2006 IRF GROUPER, we placed all of these codes in tier 2 based on the most up-to-date list of tier comorbidities we had at the time CMS published the FY 2006 IRF PPS final rule. We have recently reanalyzed the data and found that these codes should be in tier 3, based on the amount that RAND's updated analysis shows that the associated comorbidities increase the costs of treatment in IRFs. Thus, we propose to move the ICD–9 codes listed in Table 3 from tier 2 to tier 3, so that IRF PPS payments will continue to reflect as closely as possible the costs of care.

TABLE 3.—PROPOSED ICD–9 CODES TO BE MOVED FROM TIER 2 TO TIER 3 IN THE IRF PPS GROUPER

ICD–9–CM	ICD–9–CM label	Tier	RIC exclusion
112.4	CANDIDIASIS OF LUNG	3	15
112.5	DISSEMINATED CANDIDIASIS	3	None
112.81	CANDIDAL ENDOCARDITIS	3	14
112.83	CANDIDAL MENINGITIS	3	03,05
112.84	CANDIDAL ESOPHAGITIS	3	None
785.4	GANGRENE	3	10,11
995.90	SIRS NOS	3	None
995.91	SIRS INF W/O ORG DYS	3	None
995.92	SIRS INF W ORG DYS	3	None
995.93	SIRS NON-INF W/O ORG DYS	3	None
995.94	SIRS NON-INF W ORG DYS	3	None

In our ongoing fiscal oversight of the IRF PPS, we will continue closely monitoring providers' use of the ICD–9 codes that increase IRF payments. To the extent that we find any inappropriate coding of particular ICD–9 codes that increase payments, we may reconsider the appropriateness of their inclusion on the list of tier comorbidities in the future.

Finally, in order to clarify the ICD–9 comorbidity codes we use to increase payments to IRFs, we propose to remove the category codes listed in Appendix C of the August 7, 2001 final rule (66 FR 41316, 41414 through 41427). We use the term ''category code'' to refer to a three-digit ICD–9 code for which one or more four- or five-digit ICD–9 codes exist to describe the same condition.

Appendix C of the August 7, 2001 final rule lists both ICD–9–CM codes and category codes to identify the comorbidity tiers. The category codes in that Appendix C are identified with an asterisk (*).

ICD–9–CM diagnosis codes are composed of codes with three, four, or five digits. Occasionally, three digit codes are complete ICD–9–CM codes (examples include 037 (TETANUS) and 042 (HUMAN IMMUNODEFICIENCY VIRUS (HIV) DISEASE)), and thus should be used to code comorbidities on the IRF–PAI form. However, codes with three digits are generally included in the ICD–9–CM coding system as the heading of a category of codes that are further subdivided using a fourth and/or fifth digit to provide greater detail. In most cases, it is inappropriate for providers to use a category code to indicate a comorbidity on the IRF–PAI form because the national ICD–9–CM coding guidelines require use of the more detailed codes. The national ICD–9–CM coding guidelines (published in the introduction to all releases of the ICD–9–CM codes themselves), were adopted, along with the ICD–9–CM codes themselves, as the standard medical data code set in compliance with the Health Insurance Portability and Accountability Act (HIPAA).

To avoid any confusion regarding the fact that category codes should not be used to indicate comorbidities on the IRF–PAI form, we propose to remove the category codes from the tier comorbidities in the IRF GROUPER. This is consistent with the ICD–9–CM national coding guidelines. Table 4 contains the list of category codes we are proposing to delete from the list of tier comorbidities in the IRF GROUPER.

We note that three of the codes listed in Table 4, 998.3 (POSTOP WOUND DISRUPTION), 567.2 (SUPPURAT PERITONITIS NEC), and 567.8 (PERITONITIS NEC), were listed in Appendix C of the August 7, 2001 final rule (70 FR 41316, 41414 through 41427) without asterisks because they were not category codes at the time, but we are proposing to delete them from the IRF GROUPER now because they became category codes in 2002 and 2005. In 2002, the ICD–9–CM Coordination and Maintenance Committee created ICD–9 codes 998.31 and 998.32 as more specific codes for the condition that was coded using 998.3 before 2002. Similarly, in 2005, the committee created ICD–9 codes 567.21, 567.22, 567.23, and 567.29 as more specific codes for the condition that was coded using 567.2 before 2005, and codes 567.81, 567.82, and 567.89 as more specific codes for the condition that was coded using 567.8 before 2005. Once the committee introduced these more specific codes, 998.3, 567.2, and 567.8 became category codes. For this reason, we are proposing to delete them from the IRF GROUPER along with the other category codes. ICD–9 codes 998.31, 998.32, 567.21, 567.22, 567.23, 567.29, 567.81, 567.82, and 567.89 will be included in the IRF GROUPER, but we will monitor these codes carefully to ensure that they are being used properly.

TABLE 4.—CATEGORY CODES WE PROPOSE TO DELETE FROM THE IRF GROUPER

Category code	Category code label
011.	PULMONARY TUBERCULOSIS.
011.0	TB OF LUNG, INFILTRATIVE.
011.1	TB OF LUNG, NODULAR.
011.2	TB OF LUNG W CAVITATION.
011.3	TUBERCULOSIS OF BRONCHUS.
011.4	TB FIBROSIS OF LUNG.
011.5	TB BRONCHIECTASIS.
011.6	TUBERCULOUS PNEUMONIA.
011.7	TUBERCULOUS PNEUMOTHORAX.
011.8	PULMONARY TB NEC.
011.9	PULMONARY TB NOS.
012.	OTHER RESPIRATORY TB.
012.0	TUBERCULOUS PLEURISY.
012.1	TB THORACIC LYMPH NODES.

TABLE 4.—CATEGORY CODES WE PROPOSE TO DELETE FROM THE IRF GROUPER—Continued

Category code	Category code label
012.2	ISOLATED TRACH/BRONCH TB.
012.3	TUBERCULOUS LARYNGITIS.
012.8	RESPIRATORY TB NEC.
013.	CNS TUBERCULOSIS.
013.0	TUBERCULOUS MENINGITIS.
013.1	TUBERCULOMA OF MENINGES.
013.2	TUBERCULOMA OF BRAIN.
013.3	TB ABSCESS OF BRAIN.
013.4	TUBERCULOMA SPINAL CORD.
013.5	TB ABSCESS SPINAL CORD.
013.6	TB ENCEPHALITIS/MYELITIS.
013.8	CNS TUBERCULOSIS NEC.
013.9	CNS TUBERCULOSIS NOS.
014.	INTESTINAL TB.
014.0	TUBERCULOUS PERITONITIS.
014.8	INTESTINAL TB NEC.
015.	TB OF BONE AND JOINT.
015.0	TB OF VERTEBRAL COLUMN.
015.1	TB OF HIP.
015.2	TB OF KNEE.
015.5	TB OF LIMB BONES.
015.6	TB OF MASTOID.
015.7	TB OF BONE NEC.
015.8	TB OF JOINT NEC.
015.9	TB OF BONE & JOINT NOS.
016.	GENITOURINARY TB.
016.0	TB OF KIDNEY.
016.1	TB OF BLADDER.
016.2	TB OF URETER.
016.3	TB OF URINARY ORGAN NEC.
016.4	TB OF EPIDIDYMIS.
016.5	TB MALE GENITAL ORG NEC.
016.6	TB OF OVARY AND TUBE.
016.7	TB FEMALE GENIT ORG NEC.
016.9	GENITOURINARY TB NOS.
017.	TUBERCULOSIS NEC.
017.0	TB SKIN & SUBCUTANEOUS.
017.1	ERYTHEMA NODOSUM IN TB.
017.2	TB OF PERIPH LYMPH NODE.
017.3	TB OF EYE.
017.4	TB OF EAR.
017.5	TB OF THYROID GLAND.
017.6	TB OF ADRENAL GLAND.
017.7	TB OF SPLEEN.
017.8	TB OF ESOPHAGUS.
017.9	TB OF ORGAN NEC.
018.	MILIARY TUBERCULOSIS.
018.0	ACUTE MILIARY TB.
018.8	MILIARY TB NEC.
018.9	MILIARY TUBERCULOSIS NOS.
038.1	STAPHYLOCOCC SEPTICEMIA.
038.4	GRAM-NEG SEPTICEMIA NEC.
115.	HISTOPLASMOSIS.
115.0	HISTOPLASMA CAPSULATUM.
115.1	HISTOPLASMA DUBOISII.
115.9	HISTOPLASMOSIS UNSPEC.
415.1	PULMON EMBOLISM/INFARCT.
441.0	DISSECTING ANEURYSM.
453.	OTH VENOUS THROMBOSIS.
466.1	ACUTE BRONCHIOLITIS.
482.8	BACTERIAL PNEUMONIA NEC.
567.2	SUPPURAT PERITONITIS NEC.
567.8	PERITONITIS NEC.
682.	OTHER CELLULITIS/ABSCESS.
998.3	POSTOP WOUND DISRUPTION.
998.5	POSTOPERATIVE INFECTION.

As explained in detail below, we propose to apply all of these proposed changes to the tier comorbidities and the proposed changes to the CMG relative weights (described below) in a budget neutral manner. In the next section, we discuss our methodology for calculating the appropriate proposed budget neutrality factor.

B. Proposed Changes to the CMG Relative Weights

1. Development of CMG Relative Weights

Section 1886(j)(2)(B) of the Act requires that we assign an appropriate relative weight to each CMG. Relative weights account for the variance in cost per discharge and resource utilization among the payment groups and are a primary element of a case-mix adjusted PPS. Use of the most accurate CMG relative weights possible helps ensure that beneficiaries have access to care and receive the same appropriate services as other Medicare beneficiaries in the same CMG. In addition, prospective payments based on relative weights encourage provider efficiency and, therefore, help ensure a fair distribution of Medicare payments. Accordingly, as specified in § 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1.

2. Overview of the Methodology for Calculating the CMG Relative Weights

As indicated in the original IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880, 47887 through 47888), in calculating the relative weights, we use a hospital-specific relative value method to estimate operating (routine and ancillary services) and capital costs of IRFs. For FY 2007, we have used this same methodology to recalculate the relative weights to reflect the changes in comorbidity coding discussed in the next section of this proposed rule. The process used to calculate the relative weights for this proposed rule is shown below.

Step 1. We calculate the CMG relative weights by estimating the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step.

Step 3. We use the adjusted costs from the second step to calculate ''relative adjusted weights'' in each CMG using the hospital-specific relative value method.

Step 4. We calculate the CMG relative weights by modifying the ''relative adjusted weight'' with the effects of the existence of the comorbidity tiers and normalizing the weights to 1.

3. Proposed Changes to the CMG Relative Weights and Average Lengths of Stay

Relative weights that account for the variance in cost per discharge and resource utilization among payment groups are a primary element of a case-mix adjusted PPS. The accuracy of the relative weights helps to ensure that payments reflect as closely as possible the relative costs of IRF patients and, therefore, that beneficiaries have access to care and receive appropriate services.

We are proposing to update the relative weights for FY 2007 based on a revised analysis of the data used to construct the relative weights for FY 2006. As part of CMS's ongoing monitoring of the IRF PPS, we recently reviewed the analysis for the FY 2006 final rule and discovered certain minor discrepancies. These discrepancies included ICD–9 codes in the 428.xx series that were not appropriately excluded from RIC 14, ICD–9 codes for tracheostomy that were incorrectly excluded from RIC 15, and two ICD–9 comorbidity codes—428.0 (CONGESTIVE HEART FAILURE UNSPECIFIED) and V43.3 (HEART VALVE REPLACED BY OTHER MEANS)—that were incorrectly included in the analysis. Thus, we are proposing to revise the CMG relative weights for FY 2007 because the data file used in RAND's analysis was recently revised to correct these minor discrepancies so the file would comport with the policies outlined in the FY 2006 IRF PPS final rule and this proposed rule. This led to changes in the CMG relative weights.

Based on RAND's reanalysis of the FY 2003 data using the corrected list of tier comorbidities and the same methodology we used to construct the CMG relative weights in the FY 2002 and FY 2006 IRF PPS final rules (66 FR 41316, 41351, and 70 FR 47880, 47887 through 47888), but using the correct tier comorbidities, we propose to update the CMG relative weights for FY 2007 to ensure that they continue to reflect as accurately as possible the costs of treatment for various types of patients in IRFs. Table 5 below contains the proposed new CMG relative weights and average lengths of stay for FY 2007. The proposed relative weights and average lengths of stay shown in Table 5 are subject to change for the final rule based on updated analysis and data.

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Table 5: Proposed FY 2007 IRF PPS Relative Weights and Average Lengths of Stay for Case-Mix Groups

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Proposed Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0101	Stroke M>51.05	0.7707	0.7303	0.6572	0.6347	8	11	9	9
0102	Stroke M>44.45 and M<51.05 and C>18.5	0.9493	0.8995	0.8095	0.7818	11	15	11	10
0103	Stroke M>44.45 and M<51.05 and C<18.5	1.1192	1.0605	0.9544	0.9218	14	13	12	12
0104	Stroke M>38.85 and M<44.45	1.1885	1.1260	1.0134	0.9787	13	14	13	13
0105	Stroke M>34.25 and M<38.85	1.4261	1.3512	1.2161	1.1745	16	17	16	15
0106	Stroke M>30.05 and M<34.25	1.6594	1.5722	1.4150	1.3666	18	20	18	18
0107	Stroke M>26.15 and M<30.05	1.9150	1.8145	1.6330	1.5771	21	23	21	20
0108	Stroke M<26.15 and A>84.5	2.2160	2.0997	1.8897	1.8250	28	29	25	24
0109	Stroke M>22.35 and M<26.15 and A<84.5	2.1998	2.0843	1.8758	1.8116	23	26	24	23
0110	Stroke M<22.35 and A<84.5	2.6287	2.4907	2.2416	2.1649	30	33	28	27
0201	Traumatic brain injury M>53.35 and C>23.5	0.8143	0.6806	0.6080	0.5647	10	9	9	8
0202	Traumatic brain injury M>44.25 and M<53.35 and C>23.5	1.0460	0.8743	0.7810	0.7254	12	10	11	9
0203	Traumatic brain injury M>44.25 and C<23.5	1.2503	1.0450	0.9335	0.8671	15	15	12	12
0204	Traumatic brain injury M>40.65 and M<44.25	1.3390	1.1192	0.9998	0.9287	15	16	13	13

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Proposed Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0205	Traumatic brain injury M>28.75 and M<40.65	1.6412	1.3718	1.2254	1.1382	17	18	16	15
0206	Traumatic brain injury M>22.05 and M<28.75	2.1445	1.7924	1.6011	1.4873	23	22	21	20
0207	Traumatic brain injury M<22.05	2.7664	2.3122	2.0655	1.9185	35	29	26	25
0301	Non-traumatic brain injury M>41.05	1.1394	0.9533	0.8552	0.7772	12	12	11	10
0302	Non-traumatic brain injury M>35.05 and M<41.05	1.4875	1.2446	1.1164	1.0147	14	16	14	13
0303	Non-traumatic brain injury M>26.15 and M<35.05	1.7701	1.4810	1.3285	1.2074	20	19	17	16
0304	Non-traumatic brain injury M<26.15	2.4395	2.0410	1.8309	1.6640	32	25	23	21
0401	Traumatic spinal cord injury M>48.45	0.9587	0.8456	0.7722	0.6858	12	12	11	10
0402	Traumatic spinal cord injury M>30.35 and M<48.45	1.3256	1.1691	1.0676	0.9482	18	16	14	13
0403	Traumatic spinal cord injury M>16.05 and M<30.35	2.3069	2.0347	1.8580	1.6502	22	24	24	22
0404	Traumatic spinal cord injury M<16.05 and A>63.5	4.1542	3.6639	3.3458	2.9717	51	46	41	37
0405	Traumatic spinal cord injury M<16.05 and A<63.5	3.1371	2.7668	2.5266	2.2441	33	37	33	28
0501	Non-traumatic spinal cord injury M>51.35	0.7648	0.6455	0.5687	0.5071	9	8	8	7

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Proposed Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0502	Non-traumatic spinal cord injury M>40.15 and M<51.35	1.0262	0.8661	0.7630	0.6804	13	12	11	9
0503	Non-traumatic spinal cord injury M>31.25 and M<40.15	1.3596	1.1476	1.0109	0.9014	15	15	13	12
0504	Non-traumatic spinal cord injury M>29.25 and M<31.25	1.6984	1.4335	1.2628	1.1260	21	19	16	15
0505	Non-traumatic spinal cord injury M>23.75 and M<29.25	2.0171	1.7025	1.4997	1.3373	23	22	19	18
0506	Non-traumatic spinal cord injury M<23.75	2.7402	2.3128	2.0374	1.8167	29	28	26	23
0601	Neurological M>47.75	0.8991	0.7330	0.7019	0.6522	11	10	9	9
0602	Neurological M>37.35 and M<47.75	1.1968	0.9757	0.9342	0.8682	13	13	13	12
0603	Neurological M>25.85 and M<37.35	1.5326	1.2495	1.1965	1.1118	17	17	15	15
0604	Neurological M<25.85	1.9592	1.5973	1.5295	1.4213	22	20	21	19
0701	Fracture of lower extremity M>42.15	0.9028	0.7717	0.7338	0.6617	12	11	10	9
0702	Fracture of lower extremity M>34.15 and M<42.15	1.1736	1.0033	0.9539	0.8602	13	14	13	12
0703	Fracture of lower extremity M>28.15 and M<34.15	1.4629	1.2506	1.1890	1.0722	16	17	16	14
0704	Fracture of lower extremity M<28.15	1.7969	1.5361	1.4605	1.3170	20	20	19	18

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Proposed Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
0801	Replacement of lower extremity joint M>49.55	0.6537	0.5504	0.5131	0.4607	7	7	7	6
0802	Replacement of lower extremity joint M>37.05 and M<49.55	0.8542	0.7193	0.6704	0.6020	10	10	9	8
0803	Replacement of lower extremity joint M>28.65 and M<37.05 and A>83.5	1.2707	1.0700	0.9974	0.8956	15	15	13	12
0804	Replacement of lower extremity joint M>28.65 and M<37.05 and A<83.5	1.1040	0.9296	0.8665	0.7781	13	12	12	10
0805	Replacement of lower extremity joint M>22.05 and M<28.65	1.3927	1.1727	1.0931	0.9816	17	16	14	13
0806	Replacement of lower extremity joint M<22.05	1.6723	1.4082	1.3126	1.1787	18	19	17	15
0901	Other orthopedic M>44.75	0.8425	0.7641	0.6868	0.6120	10	11	10	9
0902	Other orthopedic M>34.35 and M<44.75	1.1088	1.0057	0.9039	0.8056	13	13	12	11
0903	Other orthopedic M>24.15 and M<34.35	1.4638	1.3277	1.1934	1.0635	18	19	16	15
0904	Other orthopedic M<24.15	1.8341	1.6636	1.4952	1.3325	25	23	21	19
1001	Amputation, lower extremity M>47.65	0.9625	0.8879	0.7957	0.7361	11	11	11	10

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Proposed Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1002	Amputation, lower extremity M>36.25 and M<47.65	1.2709	1.1724	1.0507	0.9719	14	15	14	13
1003	Amputation, lower extremity M<36.25	1.7876	1.6491	1.4779	1.3671	19	22	19	18
1101	Amputation, non-lower extremity M>36.35	1.2554	1.0482	0.9225	0.8496	14	15	12	11
1102	Amputation, non-lower extremity M<36.35	1.8824	1.5717	1.3832	1.2739	19	19	18	17
1201	Osteoarthritis M>37.65	1.0177	0.8785	0.8182	0.7405	11	12	11	10
1202	Osteoarthritis M>30.75 and M<37.65	1.3168	1.1367	1.0586	0.9581	15	16	14	13
1203	Osteoarthritis M<30.75	1.6241	1.4020	1.3057	1.1817	21	19	17	16
1301	Rheumatoid, other arthritis M>36.35	1.0354	0.9636	0.8511	0.7429	12	13	11	10
1302	Rheumatoid, other arthritis M>26.15 and M<36.35	1.4321	1.3327	1.1772	1.0275	15	18	15	14
1303	Rheumatoid, other arthritis M<26.15	1.8250	1.6984	1.5002	1.3094	22	21	20	18
1401	Cardiac M>48.85	0.8160	0.7351	0.6534	0.5861	10	9	9	8
1402	Cardiac M>38.55 and M<48.85	1.1038	0.9944	0.8839	0.7928	12	13	12	11
1403	Cardiac M>31.15 and M<38.55	1.3705	1.2347	1.0975	0.9844	16	16	14	13
1404	Cardiac M<31.15	1.7370	1.5649	1.3910	1.2477	21	20	18	16
1501	Pulmonary M>49.25	0.9986	0.8870	0.7793	0.7399	11	13	10	10

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Proposed Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1502	Pulmonary M>39.05 and M<49.25	1.2661	1.1246	0.9880	0.9381	13	15	12	12
1503	Pulmonary M>29.15 and M<39.05	1.5457	1.3730	1.2062	1.1453	16	16	15	15
1504	Pulmonary M<29.15	2.0216	1.7957	1.5775	1.4979	26	21	20	18
1601	Pain syndrome M>37.15	1.0070	0.8550	0.7774	0.6957	12	11	10	10
1602	Pain syndrome M>26.75 and M<37.15	1.3826	1.1739	1.0673	0.9552	15	17	14	13
1603	Pain syndrome M<26.75	1.7025	1.4455	1.3143	1.1762	19	19	18	16
1701	Major multiple trauma without brain or spinal cord injury M>39.25	0.9818	0.9641	0.8479	0.7368	12	12	11	10
1702	Major multiple trauma without brain or spinal cord injury M>31.05 and M<39.25	1.2921	1.2688	1.1158	0.9696	14	16	15	13
1703	Major multiple trauma without brain or spinal cord injury M>25.55 and M<31.05	1.5356	1.5080	1.3262	1.1524	17	20	18	16
1704	Major multiple trauma without brain or spinal cord injury M<25.55	1.9246	1.8899	1.6620	1.4443	26	26	22	19
1801	Major multiple trauma with brain or spinal cord injury M>40.85	1.1920	0.9866	0.8243	0.7342	15	13	13	10

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Proposed Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
1802	Major multiple trauma with brain or spinal cord injury M>23.05 and M<40.85	1.9058	1.5774	1.3179	1.1738	19	21	18	16
1803	Major multiple trauma with brain or spinal cord injury M<23.05	3.4302	2.8391	2.3721	2.1127	43	33	30	27
1901	Guillian Barre M>35.95	1.2399	1.0986	1.0965	0.9350	14	13	14	12
1902	Guillian Barre M>18.05 and M<35.95	2.3194	2.0552	2.0512	1.7491	27	25	25	23
1903	Guillian Barre M<18.05	3.3464	2.9651	2.9593	2.5235	37	39	31	33
2001	Miscellaneous M>49.15	0.8734	0.7381	0.6735	0.6084	10	10	9	8
2002	Miscellaneous M>38.75 and M<49.15	1.1447	0.9674	0.8827	0.7975	12	13	12	11
2003	Miscellaneous M>27.85 and M<38.75	1.4777	1.2488	1.1395	1.0294	16	16	15	14
2004	Miscellaneous M<27.85	1.9716	1.6662	1.5204	1.3735	25	22	20	18
2101	Burns M>0	2.1842	2.1842	1.6606	1.4587	27	24	20	17
5001	Short-stay cases, length of stay is 3 days or fewer				0.2201				2
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.6351				8
5102	Expired, orthopedic, length of stay is 14 days or more				1.5985				22

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Proposed Average Length of Stay			
		Tier1	Tier2	Tier3	None	Tier1	Tier2	Tier3	None
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.7203				8
5104	Expired, not orthopedic, length of stay is 16 days or more				1.8784				24

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We propose to make these revisions to the tier comorbidities and the CMG relative weights in a budget neutral manner, consistent with the budget neutral manner in which we implemented changes to the IRF classification system for FY 2006 as described in the FY 2006 IRF PPS final rule (70 FR 47880, 47900). The purpose of these proposed changes to the IRF classification system is to ensure that the existing resources in the IRF PPS are distributed as accurately as possible among IRFs according to the relative costliness of the types of patients they treat.

To ensure that total estimated aggregate payments to IRFs do not change, we propose to apply a factor to the proposed standard payment amount to ensure that estimated aggregate payments due to the proposed changes to the tier comorbidities and the relative weights for FY 2007 are not greater or less than those estimated payments that would have been made in FY 2007 without the proposed changes. To calculate an appropriate proposed budget neutrality factor to apply to the standard payment amount, we propose to use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2007 (with no proposed changes to the tier comorbidities and the CMG relative weights).

Step 2. Apply the proposed changes to the tier comorbidities and the CMG relative weights (as discussed above) to calculate the estimated total amount of IRF PPS payments for FY 2007.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the proposed factor (1.0079) that would maintain the same total estimated aggregate payments in FY 2007 with and without the proposed changes to the tier comorbidities and the CMG relative weights.

Step 4. Apply the proposed budget neutrality factor (1.0079) to the FY 2006 IRF PPS standard payment amount after the application of the market basket update, the budget-neutral wage adjustment factor, and the proposed 2.9 percent reduction to account for coding changes that do not reflect real changes in case mix.

In section III.D and section III.E of this proposed rule, we discuss the methodology and the factor we would apply to the proposed standard payment amount for FY 2007. The proposed budget neutrality factor for the proposed revisions to the tier comorbidities and the CMG relative weights is subject to change for the final rule based on updated analysis and data.

III. Proposed FY 2007 Federal Prospective Payment Rates

[If you choose to comment on issues in this section, please include the caption ''Proposed FY 2007 Federal Prospective Payment Rates'' at the beginning of your comments.]

A. Proposed Reduction of the Standard Payment Amount To Account for Coding Changes

Section 1886(j)(2)(C)(ii) of the Act requires the Secretary to adjust the per payment unit payment rate for IRF services to eliminate the effect of coding or classification changes that do not reflect real changes in case mix, to the extent that such changes affect aggregate payments under the classification system. As described in detail in the FY 2006 IRF PPS final rule (70 FR 47880), in accordance with this section of the Act, we applied a one-time adjustment of 1.9 percent to the standard payment amount for FY 2006 to account for changes in provider coding practices that, according to research conducted by the RAND Corporation under contract with us, increased Medicare payments to IRFs between 1999 and 2002. In that final rule, we stated that the 1.9 percent reduction amount was ''the lowest possible amount of change attributable to coding change,'' as determined by RAND's analysis. Further, in that same final rule (70 FR 47880, 47906), we stated that we would continue to review the need for any further reduction in the standard payment amount in subsequent years as part of our overall monitoring and evaluation of the IRF PPS.

Since publication of the FY 2006 final rule, we have continued our fiscal oversight of the IRF PPS, and have conducted detailed analyses of IRF payment and utilization practices. We believe the results of these analyses (described in detail below) indicate that a large portion of the increase in Medicare payments under the IRF PPS can be attributed to changes in provider coding practices that do not reflect real changes in case mix. Upon review of these data, and in accordance with section 1886(j)(2)(C)(ii) of the Act, we propose to apply a one-time adjustment consisting of a 2.9 percent reduction to the proposed standard payment amount for FY 2007. This proposed adjustment would be in addition to the 1.9 percent adjustment implemented for FY 2006. Our rationale for these changes is described below. The resulting total adjustment of 4.8 percent (1.9 + 2.9 = 4.8) would still fall well within the range of estimates for reducing the standard payment amount as indicated by RAND's analysis. (RAND's analysis is detailed in the report entitled ''Preliminary Analyses of Changes in Coding and Case Mix Under the Inpatient Rehabilitation Facility Prospective Payment System,'' which

can be found on RAND's Web site at *http://www.rand.org/pubs/technical_reports/TR213/*.)

As we discussed in detail in the FY 2006 IRF PPS final rule (70 FR 47880), we had asked RAND to support us in developing potential refinements for the FY 2006 IRF PPS proposed rule (70 FR 30188). As part of this research, we asked RAND to examine changes in case mix and coding since the inception of the IRF PPS. We considered real changes in case mix to be those in which RAND found evidence that IRF patients required more resources in IRFs because they had more costly impairments, lower functional status, or more comorbidities in 2002 than in 1999. Conversely, we considered observed case mix changes to be due to changes in coding practices if RAND found that IRF patients had the same impairments, functional status, and comorbidities in 2002 as they did in 1999, but were coded differently resulting in higher payment. Based on these distinctions, we asked RAND to quantify the amount of change that was due to real case mix change and the amount that was due to coding. The purpose of this analysis was to ensure that changes in Medicare payments would accurately reflect the actual change in IRFs' patient case mix (that is, the true cost of treating patients), rather than changes in coding practices.

To examine the interaction between case mix and coding changes, RAND compared 2002 data from the first year of IRF PPS implementation with the 1999 (pre-PPS) data used to construct the IRF PPS. RAND's regression analysis of CY 2002 data showed that payments to IRFs were about 3.4 percent (or $140 million) higher than expected during 2002 due to changes in the classification of patients in IRFs that did not reflect real changes in case mix. As described below and in detail in the FY 2006 IRF PPS final rule (70 FR 47880, 47904 through 47906), RAND estimated that between 1.9 and 5.8 percent of the increase in payments to IRFs was attributable to coding.

As part of this study, RAND performed two sets of analyses on the 1999 (pre-PPS) and 2002 (post-PPS) data to derive this range of estimates. RAND based its first analysis on examination of IRF patients' acute care hospital records. Using this analysis, RAND found little evidence that the patients admitted to IRFs in 2002 had higher resource needs (that is, more impairments, lower functioning, or more comorbidities) than the patients admitted in 1999. In fact, most of the changes in case mix that RAND documented from the acute care hospital records implied that IRF patients should have been *less* costly to treat in 2002 than in 1999. For example, when it compared the results of the 2002 data with the 1999 data, RAND found a 16 percent decrease in the proportion of patients treated in IRFs following acute hospitalizations for stroke. Stroke patients tend to be relatively more costly than other types of patients for IRFs, because their care tends to be relatively more intensive. A decrease in the proportion of stroke patients relative to other types of patients, therefore, would likely contribute to a decrease in the overall expected costliness of IRF patients. (CMS is concerned about this finding because stroke patients represent a cohort of patients who have been demonstrated to benefit substantially from inpatient rehabilitation care. We will continue to monitor access to IRF care for stroke patients closely and will consider proposing appropriate refinements to the IRF PPS in the future to support access for this important population. We solicit comments on this issue.)

RAND also found a 22 percent increase in the proportion of cases treated in IRFs following a lower extremity joint replacement. Lower extremity joint replacement patients tend to be relatively less costly for IRFs than other types of patients, because their care needs tend to be relatively less intensive. For this reason, the increase in the proportion of these patients treated in IRFs would suggest a decrease in the overall expected costliness of IRF patients. Because this analysis of IRF patients' acute care hospital records suggested that IRF patients in 2002 should have been less costly to treat than IRF patients in 1999, RAND estimated that coding changes likely led to as much as a 5.8 percent increase in IRF payments between 1999 and 2002.

However, RAND recognized a limitation in relying solely on acute care hospital records, in that they do not reflect changes in a patient's condition that may occur after discharge from the hospital. For example, patients could develop impairments, functional problems, or comorbidities after leaving the acute care hospital that would make them more costly once they are in the IRF. Thus, RAND acknowledged that the 5.8 percent estimate was likely an ''upper bound,'' or a high-end estimate, of the amount of case mix change that was attributable to coding.

For this reason, RAND performed a second analysis based on specific examples of coding in the IRF setting that we know have changed over time, such as direct indications of improvements in impairment coding, changes in coding instructions for bladder and bowel functioning, and dramatic increases in coding of certain conditions that affect patients' placement into tiers (resulting in higher payments). Since this analysis focused solely on the IRFs' classification of the patients, it automatically accounted for any changes in the patients' condition at the start of or during the IRF stay. However, this approach was limited in that it generally assumed that IRFs' coding practices did not change in response to implementation of the IRF PPS, other than for the specific, previously known examples listed above. That is, this analysis did not look beyond the specific, known examples to account for other, broader changes in IRFs' coding practices that may have occurred. For this reason, RAND acknowledged that the second analysis, based on the specific, known examples listed above, was likely a ''lower bound,'' or low-end estimate, of the amount of case mix change that was attributable to coding.

For FY 2006, we proposed and implemented a 1.9 percent adjustment to the standard payment amount. At the time, we adjusted the standard payment amount by the lowest amount attributable to coding change because we wanted to provide some flexibility to account for the possibility that all or some of the observed changes may have been attributable to factors other than coding changes or could be temporary changes associated with the transition to a new payment system.

Since publication of the FY 2006 final rule, however, CMS and MedPAC have conducted several analyses that indicate that coding changes had a larger impact on payment than we initially believed. First, recent MedPAC analyses found that, since the introduction of the IRF PPS, increases in IRF payments far outstripped increases in IRFs' costs. In fact, in its March 2006 report, MedPAC reported that IRF profit margins increased from 1.5 percent in 2001, the year before the introduction of the IRF PPS, to 11.1 percent in 2002, 17.7 percent in 2003, and 16.3 in 2004. MedPAC also found that cost increases lagged far behind payment increases, with IRFs' costs increasing only 2.4 percent and 3.6 percent in 2003 and 2004, respectively. The relatively low cost increases for these years suggest that patient severity could not have been increasing substantially over this time period. Thus, the rapid increases in IRF payments over this time period are likely attributable to coding increases

that do not reflect real changes in case mix.

Based on our more recent analyses of IRF PPS payments, it is evident that changes in IRFs' coding practices associated with implementation of the IRF PPS (not related to real changes in case mix) likely had a greater effect on Medicare payments than we initially anticipated.

These findings have led us to reevaluate the amount of case mix change attributable to coding, within the 1.9 to 5.8 percent range RAND estimated. Based on our updated payment analyses (described below), we now believe that the impact of coding on Medicare payments to IRFs is significantly higher than 1.9 percent, the lowest possible figure within RAND's range of estimates, and that it would be more appropriate at this time to propose a total coding adjustment to the proposed standard payment amount closer to the upper end of RAND's range of estimates.

Further, as part of our ongoing analysis of provider coding practices, we analyzed IRF–PAI data from 2002 and 2005 to examine trends in the distribution of patients in each of the four payment tiers, and found that the proportion of patients shifted each year from the lowest to the higher-paying tiers.

To illustrate, to determine the IRF PPS payment for a particular patient, we first classify the patient into a major group, called a RIC, based on the patient's primary reason for receiving inpatient rehabilitation (for example, a stroke). Next, we assign the patient to a CMG based on the patient's ability to perform specific activities of daily living, and, for certain CMGs, based on the patient's cognitive ability and age, as well.

We also take into account special circumstances in determining the appropriate CMG, such as whether the case is a very short stay or whether the patient expires in the facility. Finally, we classify the patient into one of four tiers, based on the presence of any relevant comorbidities. One of the tiers contains patients with no relevant comorbidities. The other three tiers contain patients with increasingly costly comorbidities. For this reason, an IRF will receive higher payments for patients in one of the three more-costly tiers than for patients in the ''no comorbidity'' tier.

As shown in Table 6, the proportion of IRF patients in the lowest-paying tier, the tier for patients with ''no comorbidities,'' decreased by 6 percentage points between 2002 and 2005. Conversely, the proportion of patients in each of the three higher-paying tiers increased each year. However, MedPAC's analysis of IRFs' reported costs (described above) suggests that patient severity was not increasing substantially over this time period. Thus, we believe this lends further support to the conclusion that a substantial portion of the unexpected increase in IRF payments since the establishment of the IRF PPS is due to changes in provider coding practices.

TABLE 6.—PERCENT OF IRF PATIENTS IN EACH TIER, 2002–2005

Tier	Percent			
	2002	2003	2004	2005
"No comorbidity" tier	74.42	72.01	70.81	68.41
Tier 3	14.74	15.54	16.00	18.39
Tier 2	9.04	9.95	10.44	10.16
Tier 1	1.80	2.50	2.75	3.03

Note: Tier 1 is the highest-paying tier, followed by tier 2 and then tier 3. The ''no comorbidity'' tier does not mean that the patient does not have any comorbidities, but that patients do not have any of the designated comorbidities that would elevate them to a higher-paying tier.

Based on a review of the evidence above, we further analyzed providers' responses to the tier comorbidity changes that we finalized in the FY 2006 IRF PPS final rule (70 FR 47880). These changes became effective for discharges occurring on or after October 1, 2005, and, as described below, affect Medicare payments to IRFs.

In the FY 2006 IRF PPS final rule (70 FR 47880), we finalized a number of changes to the comorbidity codes that we use to assign patients to one of the three higher-paying tiers, including adding or deleting certain comorbidity codes, and moving certain others among the tiers based on RAND's analysis of the marginal cost of these comorbidities. After we implemented these changes to the tier comorbidity codes for FY 2006, we found that facilities responded quickly to the coding changes. For example, in updating the GROUPER software, we inadvertently added one comorbidity code (278.02, overweight) to one of the higher-payment tiers, even though RAND's analysis did not indicate that this code belonged in a higher-paying tier. We had not adopted this particular code for addition to the tier in the FY 2006 IRF PPS final rule, and its addition to the IRF GROUPER software was simply a clerical error that we are in the process of correcting. However, the presence of this comorbidity code on the IRF patient assessment instrument (IRF–PAI) triggered an increased IRF per discharge payment in FY 2006. The increase in payment ranged from $171 to $4,587 per discharge, depending on the patient's CMG classification.

Once we discovered the inadvertent presence of code 278.02 in the higher-paying tier, we analyzed IRF–PAI data for the first quarter of FY 2006, the first period during which use of this code increased payment. We also reviewed IRF–PAI data to identify the way this particular code had been used before October 2005; that is, before it triggered increased payment. From January 2002 through October 2005, code 278.02 appeared as a coded comorbidity on only 8 IRF–PAI forms out of approximately 1.8 million total IRF–PAI forms submitted. For the first quarter of FY 2006, however, the same code, 278.02, appeared as a coded comorbidity on 2,315 IRF–PAI forms out of approximately 113,000 total forms submitted in that quarter. The dramatic increase in the use of this ICD–9 code in such a short period of time leads us to believe that its increased use most likely reflects changes in the payment structure rather than in patient severity levels and suggests that providers respond more rapidly to coding changes than we initially believed.

Based on these analyses and MedPAC's findings that costs were not increasing substantially in 2003 and 2004 (suggesting that patient acuity could not have been increasing substantially), we are now convinced that an additional coding adjustment for FY 2007 is needed to adjust for more of the impact of coding changes not related to real changes in case mix on IRF PPS payments. Therefore, for FY 2007, we

propose to reduce the IRF standard payment amount by 2.9 percent, which would result in a total adjustment (when combined with the 1.9 percent adjustment for FY 2006) of 4.8 percent (1.9 + 2.9 = 4.8). In this way, we can adjust the IRF PPS to reflect more fully the impact of coding changes on payments. Because 4.8 percent is well within the range of RAND's estimates of the effects of coding changes on IRF PPS payments, we continue to believe that we are still providing flexibility to account for the possibility that some of the observed changes may be attributable to factors other than coding changes. We note that in the course of our analysis, we also considered the possibility of making a somewhat lower adjustment of 2.3 percent, which would fall at approximately the middle of RAND's range of estimates. However, in view of the industry's extremely rapid adoption of coding changes, we believe that a 2.9 percent reduction would likely account more accurately for the actual degree of these changes. We are continuing to analyze the data and, therefore, the specific amount of payment adjustment is subject to change for the final rule based on the results of the ongoing analysis. We specifically invite comments on the figure that would represent the most appropriate adjustment to account for changes in coding practices.

We propose to use the same methodology that we used in the FY 2006 IRF PPS final rule (70 FR 47880, 47908) to reduce the standard payment amount to adjust for coding changes that affect payment. To reduce the standard payment amount by an additional 2.9 percent for FY 2007, we first update the FY 2006 standard payment conversion factor by the estimated market basket update of 3.4 percent ($12,762 × 1.034 = $13,196). Next, we propose to multiply this standard payment amount by 0.971 (obtained by subtracting 0.029 from 1.000), which reduces the standard payment amount by 2.9 percent ($13,196 × 0.971 = $12,813).

In section III.D of this proposed rule, we further propose to adjust the resulting amount of $12,813 by the proposed budget neutrality factors for the wage index, the second year of the hold harmless policy, and the proposed revisions to the CMG relative weights and tier comorbidities, producing the proposed FY 2007 standard payment conversion factor. In section III.D of this proposed rule, we provide a step-by-step calculation that results in the proposed FY 2007 standard payment conversion factor. The proposed FY 2007 standard payment conversion factor is subject to change in the final rule based on updated analysis and data.

B. Proposed FY 2007 IRF Market Basket Increase Factor and Labor-Related Share

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index. Accordingly, in updating the FY 2007 payment rates set forth in this proposed rule, we apply an appropriate increase factor to the FY 2006 IRF PPS payment rates that is based on the rehabilitation, psychiatric, and long-term care hospital (RPL) market basket. In constructing the RPL market basket, we used the methodology set forth in the FY 2006 IRF PPS final rule (70 FR 47880, 47908 through 47915).

As discussed in that final rule, the RPL market basket primarily uses the Bureau of Labor Statistics' (BLS) data as price proxies, which are grouped in one of the three BLS categories: Producer Price Indexes (PPI), Consumer Price Indexes (CPI), and Employment Cost Indexes (ECI). We evaluated and selected these particular price proxies using the criteria of reliability, timeliness, availability, and relevance, and believe they continue to be the best measures of price changes for the cost categories.

Beginning April 2006 with the publication of March 2006 data, the BLS' ECI will use a different classification system, the North American Industrial Classification System (NAICS), instead of the Standard Industrial Codes (SIC), which will no longer exist. We have consistently used the ECI as the data source for our wages and salaries and other price proxies in the RPL market basket and are not making any changes to the usage at this time. However, we are soliciting comments on our continued use of the BLS ECI data in light of the BLS change in system usage to the NAICS-based ECI. The estimated FY 2007 IRF market basket increase factor and labor-related share in this proposed rule will be updated for the final rule based on the most recent data available from the BLS.

We will use the same methodology described in the FY 2006 IRF PPS final rule to compute the FY 2007 IRF market basket increase factor and labor-related share. For this proposed rule, the FY 2007 IRF market basket increase factor is 3.4 percent. This is based on Global Insight, Inc. for the first quarter of 2006 (2006q1) forecast with historical data through the fourth quarter of 2005 (2005q4). We propose to update the market basket with more recent data for the final rule to the extent it is available.

In addition, we have used the methodology described in the FY 2006 IRF PPS final rule to update the labor-related share for FY 2007. In FY 2004 and FY 2005, we updated the 1992 market basket data to 1997 based on the methodology described in the August 1, 2003 final rule (68 FR 45688 through 45689). As discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47915 through 47917), we rebased and revised the market basket for FY 2006, using the 2002-based cost structures for IRFs, IPFs, and LTCHs to determine the FY 2006 labor-related share. For FY 2007, we will use the same methodology discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47908 through 47917) to determine the FY 2007 IRF labor-related share. As shown in Table 7, the total FY 2007 RPL labor-related share is 75.720 percent in this proposed rule. We propose to update the labor-related share with more recent data for the final rule to the extent it is available.

TABLE 7.—PROPOSED FY 2007 IRF LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost category	Proposed FY 2007 IRF labor-related relative importance
Wages and salaries	52.534
Employee Benefits	14.082
Professional fees	2.890
All other labor intensive services	2.156
Subtotal	71.662
Labor-related share of capital costs	4.058
Total	75.720

Source: Global Insight, Inc. 1stQtr 2006, @USMACRO/CONTROL0306 @CISSIM/CNTL08R3.SIM.

C. Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs attributable to wages and wage-related costs by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any

adjustments or updates made under section 1886(j)(6) of the Act for a FY are made in a budget neutral manner.

In the FY 2006 IRF PPS final rule (70 FR 47880, 47917), we established an IRF wage index based on FY 2001 acute care hospital wage data to adjust the FY 2006 IRF payment rates. We also adopted the CBSA-based labor market area definitions set forth by the OMB (70 FR 47880, 47917 through 47921). We applied a one-year blended wage index for FY 2006 to mitigate the impact of the wage index change from the Metropolitan Statistical Area (MSA) to the CBSA-based labor market area definitions. In addition to the blended wage index, we also adopted a three-year budget neutral hold harmless policy beginning FY 2006 for IRFs that met the definition in § 412.602 as rural in FY 2005 and became urban in FY 2006 under the CBSA-based designation.

For FY 2007, we propose to maintain the methodology described in the FY 2006 IRF PPS final rule to determine the wage index, labor market area definitions, and hold harmless policy consistent with the rational outlined in that final rule (70 FR 47880, 47917 through 47933). However for FY 2007, the proposed wage index will be based solely on the previously adopted CBSA-based labor market area definitions and its wage index (rather than on a blended wage index) because the FY 2006 blended wage index will expire for discharges on or after October 1, 2006 (70 FR 47880, 47921 through 47926). We propose to continue to use the most recent final pre-reclassified and pre-floor hospital wage data available (FY 2002 hospital wage data) based on the CBSA labor market area definitions consistent with the rational outlined in the FY 2006 IRF PPS final rule.

Furthermore, we propose to continue to use the methodology described in that FY 2006 final rule in the event there is no hospital wage data available for urban or rural areas consistent with the rational outlined in the final rule (70 FR 47880, 47927). In addition, FY 2007 is the second year of the three-year phase out of the budget neutral hold harmless policy described in the FY 2006 IRF PPS final rule. For FY 2007, the hold harmless adjustment will be up to 6.38 percent for IRFs that meet the criteria described in the FY 2006 final rule (70 FR 47880, 47923 through 47926).

As we described in the FY 2006 final rule, certain titles to the CBSAs were changed based on OMB Bulletin No. 05–02 (November 2004). The title changes listed below are nomenclatures that do not result in substantive changes to the CBSA-based designations. The proposed wage index tables in the addendum reflect the following title changes:

- CBSA 36740: Orlando-Kissimmee, FL
- CBSA 37620: Parkersburg-Marietta-Vienna, WV-OH
- CBSA 42060: Santa Barbara-Santa Maria, CA
- CBSA 13644: Bethesda-Gaithersburg-Fredrick, MD
- CBSA 32580: McAllen-Edinburg-Mission, TX
- CBSA 26420: Houston-Sugar Land-Baytown, TX
- CBSA 35644: New York-White Plains-Wayne, NY-NJ

To calculate the wage-adjusted facility payment for the payment rates set forth in this proposed rule, we multiply the unadjusted Federal prospective payment by the proposed FY 2007 RPL labor-related share (75.720 percent) to determine the labor-related portion of the Federal prospective payments. We then multiply this labor-related portion by the applicable proposed IRF wage index shown in Table 1 for urban areas and Table 2 for rural areas in the Addendum.

In addition, because any adjustment or update to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner, we have calculated a budget neutral wage adjustment factor as established in the August 1, 2003 final rule and codified at § 412.624(e)(1), and described in the steps below. We propose to use the following steps to ensure that the FY 2007 IRF standard payment conversion factor reflects the update to the proposed wage indexes (based on the FY 2002 pre-reclassified and pre-floor hospital wage data) and the proposed labor-related share in a budget neutral manner:

Step 1. Determine the total amount of the estimated FY 2006 IRF PPS rates, using the FY 2006 standard payment conversion factor and the labor-related share and the wage indexes from FY 2006 (as published in the FY 2006 IRF PPS final rule).

Step 2. Calculate the total amount of estimated IRF PPS payments, using the FY 2006 standard payment conversion factor and the proposed FY 2007 labor-related share and proposed full CBSA urban and rural wage indexes.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2, which equals the FY 2007 budget neutral wage adjustment factor of 1.0017.

Step 4. Apply the FY 2007 budget neutral wage adjustment factor from step 3 to the FY 2006 IRF PPS standard payment conversion factor after the application of the estimated market basket update to determine the FY 2007 standard payment conversion factor.

D. Description of the Proposed Methodology Used To Implement the Changes in a Budget Neutral Manner

To ensure that total estimated aggregate payments to IRFs would not change with the proposed budget neutral changes described in this proposed rule, we are proposing to apply a factor to the standard payment amount for the proposed changes to ensure that estimated aggregate payments in FY 2007 would not be greater or less than those that would have been made in the year without the proposed changes. Using the methodology described below, we propose to apply the budget neutrality factors to the standard payment amount for the proposed changes to ensure that estimated aggregate payments in FY 2007 would be the same with or without the proposed changes. We are proposing to apply the two budget neutrality factors using the following steps:

Step 1. Determine the proposed FY 2007 IRF PPS standard payment amount using the FY 2006 standard payment conversion factor ($12,762) increased by the estimated market basket (3.4 percent) and reduced by the proposed 2.9 percent adjustment to account for coding changes that do not reflect real changes in case mix, as discussed in section III.A of this proposed rule.

Step 2. Multiply the wage index budget neutrality factor by the proposed standard payment amount computed in step 1 to account for the proposed wage index and labor-related share (1.0017), as discussed in section III.C of this proposed rule.

Step 3. Calculate the estimated total amount of IRF PPS payments for FY 2007 (with no change to the tier comorbidities and the CMG relative weights, and without the hold harmless policy for FY 2007).

Step 4. Apply the FY 2007 hold harmless policy to IRFs that meet the criteria as described in § 412.624(e)(7) to calculate the estimated total amount of IRF PPS payment for FY 2007.

Step 5. Divide the amount calculated in step 3 by the amount calculated in step 4 to determine the factor (1.0012) that keeps total estimated payments in FY 2007 the same with and without the change to the hold harmless policy.

Step 6. Apply the factor computed in step 5 to the proposed standard payment amount in step 2, and calculate estimated total IRF PPS payments for FY 2007.

Step 7. Apply the proposed new tier comorbidities and CMG relative weights

(as discussed in section II of this proposed rule) to calculate the estimated total amount of IRF PPS payments for FY 2007.

Step 8. Divide the amount calculated in step 6 by the amount calculated in step 7 to determine the proposed factor (1.0079) that maintains the same total estimated aggregated payments in FY 2007 with and without the proposed revisions to the tier comorbidities and CMG relative weights.

Each of these proposed budget neutrality factors increases the proposed standard payment amount. The proposed budget neutrality factor for the second year of the hold harmless policy would increase the proposed standard payment amount from $12,835 to $12,850. The proposed budget neutrality factor for the proposed revisions to the tier comorbidities and CMG relative weights would increase the standard payment amount from $12,850 to $12,952. As indicated previously, the proposed standard payment conversion factor would need to be increased in order to ensure that total estimated payments for FY 2007 with the proposed changes equal total estimated payments for FY 2007 without the proposed changes. This is because the continuation of the hold harmless policy and the proposed revisions to the tier comorbidities and CMG relative weights would result in a slight decrease, on average, to total estimated aggregate payments to IRFs if we were not to propose to implement the policies in a budget neutral manner. To maintain the same total estimated aggregate payments to all IRFs with and without the policies, we are proposing to redistribute payments among IRFs. Thus, some redistribution of payment would occur among facilities, while total estimated aggregate payments would not change. To determine how these proposed changes are estimated to affect payments among different types of facilities, please see Table 11 in this proposed rule.

E. Proposed Budget Neutrality Factor Methodology for Fiscal Year 2007

In the FY 2006 final rule (70 FR 47880, 47937 through 47398), we revised the IRF regulation by adding § 412.624(d)(4) to allow the Secretary the authority to apply a factor when revisions are made to the tier comorbidities and the CMGs, the rural adjustment, the LIP adjustment, the teaching status adjustment, the hold harmless adjustment, or other budget-neutral policies. To clarify, we are not proposing to revise for FY 2007 the rural adjustment of 21.3 percent, the LIP exponential factor of 0.6229, and the teaching status adjustment exponential factor of 0.9012, as described in the FY 2006 IRF PPS final rule. Since we are not proposing changes to these policies, we do not need to calculate budget neutrality factors for these policies because they are assumed in the FY 2006 standard payment conversion factor.

Although we are not calculating budget neutrality factors for the rural adjustment, the LIP adjustment, and the teaching status adjustment, we are continuing the budget neutral hold harmless policy (the second year of a three-year phase out of the rural adjustment) implemented in FY 2006 as well as proposing to revise the list of tier comorbidities and the CMG relative weights for FY 2007. Consistent with the hold harmless policy in the FY 2006 IRF PPS final rule, we are implementing the policy in a budget neutral manner for FY 2007. We are also proposing to implement the revisions to the tier comorbidities and the CMG relative weights in a budget neutral manner for FY 2007.

Consistent with § 412.624(d)(4), we apply a factor to the proposed standard payment amount in order to make the proposed changes described in this proposed rule in a budget neutral manner for FY 2007. We begin by using the methodology described in sections III.A and B of this proposed rule. We will use the FY 2006 standard payment conversion factor ($12,762) and apply the market basket (3.4 percent), which equals $13,196. Then, we propose to apply a one-time reduction to the standard payment amount of 2.9 percent as discussed in section III.A of this proposed rule, which equals $12,813. We will then apply the budget neutral wage adjustment (as described above in section III.C of this proposed rule) of 1.0017 to $12,813, which will result in a standard payment amount of $12,835.

The factors we propose to apply are 1.0079 for the tier comorbidity and CMG relative weight changes and 1.0012 for the second year of the hold harmless policy. We propose to combine these factors, by multiplying the two factors to establish one proposed budget neutrality factor for the two changes ($1.0012 \times 1.0079 = 1.0091$). We propose to apply this overall budget neutrality factor to $12,835 (the proposed standard payment amount that includes the 3.4 percent market basket, the proposed 2.9 percent reduction, and the budget neutrality factor for the wage index and labor related share), which would result in a proposed standard payment conversion factor of $12,952 for FY 2007.

The proposed FY 2007 standard payment conversion factor would be applied to each of the proposed CMG relative weights shown in Table 5, ''Proposed FY 2007 IRF PPS Relative Weights and Average Lengths of Stay for Case-Mix Groups,'' to compute the unadjusted IRF prospective payment rates for FY 2007 shown in Table 8. To clarify further, the proposed budget neutrality factors described above would only be applied for FY 2007. However, if necessary, we will apply budget neutrality factors in applicable years hereafter to the extent that further adjustments are made to the IRF PPS consistent with § 412.624(d)(4). Otherwise, the general methodology to determine the Federal prospective payment rate is described in § 412.624(c)(3)(ii).

F. Description of the Proposed IRF Standard Payment Conversion Factor and Proposed Payment Rates for FY 2007

To calculate the proposed standard payment conversion factor for FY 2007 and as illustrated in Table 8 below, we begin by applying the estimated market basket increase factor (3.4 percent) to the standard payment conversion factor for FY 2006 ($12,762), which equals $13,196. Then, we propose to apply a one-time 2.9 percent reduction to the standard payment amount to adjust for coding changes that have increased payments to IRFs since implementation of the IRF PPS, as discussed in section III.A of this proposed rule. This would result in a proposed standard payment amount of $12,813. We then apply the proposed budget neutrality factor for the wage index and labor related share of 1.0017, which would result in a proposed standard payment amount of $12,835. Then, we propose to apply a combined budget neutrality factor for the hold harmless provision and the revisions to the tier comorbidities and the CMG relative weights of 1.0091 ($1.0012 \times 1.0079 = 1.0091$), which would result in a proposed FY 2007 standard payment conversion factor of $12,952.

TABLE 8.—CALCULATIONS TO DETERMINE THE PROPOSED FY 2007 STANDARD PAYMENT CONVERSION FACTOR

Explanation for adjustment	Calculations
FY 2006 Standard Payment Conversion Factor	$12,762
Proposed FY 2007 Market Basket Increase Factor	× 1.034
Subtotal	=$13,196
Proposed One-Time 2.9% Reduction for Coding Changes	× 0.971
Subtotal	=$12,813
Proposed Budget Neutrality Factor for the Wage Index and Labor-Related Share	× 1.0017
Subtotal	=$12,835
Proposed Budget Neutrality Factor for the Hold Harmless Provision and Revisions to the Tier Comorbidities and the CMG Relative Weights	× 1.0091
Proposed FY 2007 Standard Payment Conversion Factor	=$12,952

Finally, we would apply the proposed relative weights for each CMG and tier, shown in section II.B of this proposed rule, Table 5 ''Proposed FY 2007 IRF PPS Relative Weights and Average Lengths of Stay for Case-Mix Groups,'' to the proposed FY 2007 standard payment conversion factor.

After the application of the proposed relative weights, the resulting proposed unadjusted IRF prospective payment rates for FY 2007 are shown below in Table 9, ''Proposed FY 2007 Payment Rates Based on the Proposed Revisions.''

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Table 9: Proposed FY 2007 Payment Rates Based On The Proposed Revisions

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	$9,982.24	$9,458.20	$8,512.31	$8,220.89
0102	$12,295.59	$11,650.06	$10,485.03	$10,126.00
0103	$14,496.40	$13,735.21	$12,361.65	$11,938.51
0104	$15,392.80	$14,584.47	$13,126.07	$12,676.64
0105	$18,470.98	$17,501.13	$15,751.06	$15,211.74
0106	$21,492.16	$20,363.65	$18,327.34	$17,699.81
0107	$24,803.34	$23,501.02	$21,150.88	$20,426.73
0108	$28,701.63	$27,194.67	$24,475.14	$23,637.14
0109	$28,491.29	$26,995.34	$24,295.75	$23,463.97
0110	$34,047.31	$32,259.55	$29,033.59	$28,039.53
0201	$10,546.81	$8,815.26	$7,874.56	$7,314.51
0202	$13,548.05	$11,323.93	$10,115.38	$9,395.90
0203	$16,193.89	$13,535.36	$12,090.95	$11,230.94
0204	$17,343.25	$14,495.88	$12,949.02	$12,027.87
0205	$21,256.56	$17,766.91	$15,870.86	$14,741.97
0206	$27,775.18	$23,215.29	$20,737.84	$19,262.86
0207	$35,829.77	$29,947.61	$26,751.71	$24,848.80
0301	$14,757.77	$12,347.40	$11,076.16	$10,066.55
0302	$19,266.23	$16,119.54	$14,460.00	$13,142.01
0303	$22,925.95	$19,181.39	$17,206.60	$15,638.24
0304	$31,596.02	$26,435.42	$23,713.82	$21,552.39
0401	$12,417.34	$10,951.82	$10,001.15	$8,882.74
0402	$17,168.78	$15,142.44	$13,827.94	$12,281.60
0403	$29,879.23	$26,352.92	$24,065.20	$21,373.91
0404	$53,804.81	$47,454.83	$43,335.19	$38,488.94
0405	$40,631.07	$35,835.85	$32,724.91	$29,065.19
0501	$9,906.21	$8,361.03	$7,365.41	$6,567.70

Table 9: Proposed FY 2007 Payment Rates Based On The Proposed Revisions

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0502	$13,291.21	$11,217.99	$9,882.12	$8,812.02
0503	$17,610.06	$14,863.20	$13,093.31	$11,675.32
0504	$21,997.55	$18,566.30	$16,355.40	$14,584.21
0505	$26,125.35	$22,050.26	$19,424.50	$17,320.97
0506	$35,491.07	$29,955.13	$26,388.02	$23,530.42
0601	$11,644.88	$9,493.69	$9,090.62	$8,447.68
0602	$15,500.31	$12,636.88	$12,100.28	$11,244.54
0603	$19,850.62	$16,183.65	$15,496.42	$14,400.55
0604	$25,375.69	$20,687.97	$19,809.44	$18,408.55
0701	$11,692.55	$9,995.58	$9,503.53	$8,569.95
0702	$15,200.34	$12,994.22	$12,354.65	$11,141.05
0703	$18,947.87	$16,197.90	$15,400.45	$13,887.65
0704	$23,272.93	$19,895.18	$18,915.88	$17,057.65
0801	$8,466.46	$7,129.17	$6,645.28	$5,967.25
0802	$11,063.34	$9,315.73	$8,683.41	$7,797.36
0803	$16,458.24	$13,858.51	$12,917.81	$11,599.81
0804	$14,299.27	$12,040.44	$11,223.17	$10,078.08
0805	$18,038.51	$15,189.20	$14,158.09	$12,713.55
0806	$21,660.02	$18,238.49	$17,000.54	$15,265.87
0901	$10,911.41	$9,896.88	$8,895.17	$7,927.14
0902	$14,361.44	$13,026.21	$11,707.70	$10,433.61
0903	$18,959.66	$17,196.89	$15,456.27	$13,774.32
0904	$23,755.65	$21,546.95	$19,366.09	$17,258.54
1001	$12,465.78	$11,500.21	$10,306.29	$9,533.32
1002	$16,460.05	$15,185.18	$13,608.67	$12,588.05
1003	$23,152.74	$21,359.53	$19,141.89	$17,706.29
1101	$16,260.07	$13,576.03	$11,947.83	$11,003.37
1102	$24,381.23	$20,356.66	$17,915.21	$16,499.03
1201	$13,181.12	$11,378.33	$10,596.81	$9,590.70
1202	$17,055.19	$14,722.67	$13,711.38	$12,409.44
1203	$21,035.47	$18,158.44	$16,911.30	$15,305.51
1301	$13,410.63	$12,480.29	$11,023.58	$9,621.91
1302	$18,547.91	$17,261.26	$15,246.45	$13,307.79
1303	$23,637.66	$21,997.94	$19,430.33	$16,959.61

Table 9: Proposed FY 2007 Payment Rates Based On The Proposed Revisions

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1401	$10,568.31	$9,521.27	$8,462.97	$7,590.91
1402	$14,296.16	$12,879.73	$11,448.14	$10,268.60
1403	$17,750.46	$15,991.70	$14,214.30	$12,749.69
1404	$22,497.75	$20,268.58	$18,015.84	$16,159.56
1501	$12,933.87	$11,488.68	$10,092.98	$9,583.31
1502	$16,398.27	$14,565.82	$12,796.32	$12,150.14
1503	$20,020.17	$17,783.10	$15,622.70	$14,833.80
1504	$26,183.12	$23,257.39	$20,432.04	$19,400.28
1601	$13,042.40	$11,073.44	$10,068.50	$9,010.58
1602	$17,907.05	$15,203.83	$13,823.93	$12,371.36
1603	$22,050.13	$18,721.47	$17,022.30	$15,233.62
1701	$12,716.53	$12,487.28	$10,981.74	$9,542.77
1702	$16,735.28	$16,433.63	$14,452.36	$12,558.65
1703	$19,889.61	$19,531.10	$17,176.42	$14,925.76
1704	$24,927.16	$24,477.86	$21,526.61	$18,706.06
1801	$15,438.91	$12,778.70	$10,676.46	$9,508.97
1802	$24,683.40	$20,430.36	$17,069.31	$15,202.80
1803	$44,427.43	$36,772.41	$30,722.79	$27,363.30
1901	$16,058.93	$14,229.46	$14,201.61	$12,110.25
1902	$30,041.39	$26,619.08	$26,566.88	$22,654.60
1903	$43,341.93	$38,404.49	$38,329.11	$32,684.63
2001	$11,311.63	$9,559.61	$8,722.78	$7,880.39
2002	$14,826.28	$12,529.89	$11,433.12	$10,328.83
2003	$19,138.65	$16,174.20	$14,758.54	$13,333.05
2004	$25,536.03	$21,580.75	$19,691.83	$17,789.96
2101	$28,290.02	$28,290.02	$21,508.09	$18,893.60
5001	$0.00	$0.00	$0.00	$2,850.48
5101	$0.00	$0.00	$0.00	$8,225.94
5102	$0.00	$0.00	$0.00	$20,704.03
5103	$0.00	$0.00	$0.00	$9,329.46
5104	$0.00	$0.00	$0.00	$24,329.43

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G. Example of the Methodology for Adjusting the Proposed Federal Prospective Payment Rates

In the FY 2006 final rule, we presented an example similar to the one in Table 10 below to illustrate the methodology we used to adjust the Federal prospective payments based on the refinements described in that final rule. Table 10 illustrates the proposed methodology for adjusting the Federal prospective payments (as described in sections III.D through F of this proposed rule). We have relabeled each step in Table 10 to illustrate more clearly how the case-level and facility-level adjustments are applied to the unadjusted Federal prospective payments in the IRF PPS. Thus, the content in Table 10 is modified from that of Table 11 in the FY 2006 final rule (70 FR 57166, 57169), in order to illustrate the step-by-step computations to determine the hypothetical examples. The examples below are based on two hypothetical Medicare beneficiaries, both classified into CMG 0110 (without comorbidities). The unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) can be found in Table 9 above.

One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a non-teaching hospital, has a disproportionate share hospital (DSH) percentage of 5 percent (which results in a LIP adjustment of 1.0309), a wage index of 0.8624, and an applicable rural adjustment of 21.3 percent. Facility B, a teaching hospital, has a DSH percentage of 15 percent (which results in a LIP adjustment of 1.0910), a wage index of 0.9251, and an applicable teaching status adjustment of 0.109.

To calculate each IRF's labor and non-labor portion of the Federal prospective payment, we begin by taking the unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) from Table 9 above. Then, we multiply the estimated labor-related share (75.720) described in section III.B by the unadjusted Federal prospective payment rate. To determine the non-labor portion of the Federal prospective payment rate, we subtract the labor portion of the Federal payment from the unadjusted Federal prospective payment.

To compute the wage-adjusted Federal prospective payment, we multiply the result of the labor portion of the Federal payment by the appropriate wage index found in the Addendum in Tables 1 and 2, which will result in the wage-adjusted amount. Next, we compute the wage-adjusted Federal payment by adding the wage-adjusted amount to the non-labor portion.

To adjust the Federal prospective payment by the facility-level adjustments, there are several steps. First, we take the wage-adjusted Federal prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Then, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.109, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted Federal prospective payment rate. Table 10 illustrates the components of the proposed adjusted payment calculation.

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Table 10: Example of Computing an IRF's Proposed FY 2007 Federal Prospective Payment

Steps		Rural Facility A (Spencer Co., IN)		Urban Facility B (Harrison Co., IN)
1	Unadjusted Federal Prospective Payment (from Table 9 above)		$28,039.53	$28,039.53
2	Labor Share	X	0.75720	X 0.75720
3	Labor Portion of Federal Payment	=	$21,231.53	= $21,231.53
4	CBSA Based Wage Index (shown in the Addendum, Tables 1 and 2)	X	0.8624	X 0.9251
5	Wage-Adjusted Amount	=	$18,310.07	= $19,641.29
6	Nonlabor Amount (Step 1 - Step 3)	+	$6,808.00	+ $6,808.00
7	Wage-Adjusted Federal Payment	=	$25,118.07	= $26,449.29
8	Rural Adjustment	X	1.213	X 1.000
9	Wage- and Rural-Adjusted Federal Payment	=	$30,468.22	= $26,449.29
10	LIP Adjustment	X	1.0309	X 1.0910
11	FY2007 Wage-, Rural- and LIP- Adjusted Federal Prospective Payment Rate	=	$31,409.69	= $28,856.17
12	Wage- and Rural-Adjusted Federal Payment (from Step 9 above)		$30,468.22	$26,449.29
13	Teaching Status Adjustment	X	0.000	X 0.109
14	Teaching Status Adjustment Amount	=	$0.00	= $2,882.97
15	FY2007 Wage-, Rural-, and LIP-Adjusted Federal Prospective Payment Rate (from Step 11 above)	+	$31,409.69	+ $28,856.17
16	Total FY 2007 Adjusted Federal Prospective Payment (Step 14 + Step 15)	=	$31,409.69	= $31,739.15

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Thus, the proposed adjusted payment for Facility A would be $31,409.69 and the proposed adjusted payment for Facility B would be $31,739.15.

IV. Proposed Update to Payments for High-Cost Outliers Under the IRF PPS

[If you choose to comment on issues in this section, please include the caption ''High-Cost Outliers Under the IRF PPS' at the beginning of your comments.]

A. Proposed Update to the Outlier Threshold Amount for FY 2007

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall cost-to-charge ratio by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make

an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the August 7, 2001 final rule (66 FR 41316, 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. FY 2006 was the first year for which we had sufficient post-PPS data (FY 2003) to adjust the outlier threshold amount. Therefore, in the FY 2006 IRF PPS final rule, as corrected by the September 30, 2005 correction notice (70 FR 47880 and 70 FR 57166), we updated the outlier threshold amount for FY 2006 to $5,129 based on RAND's analysis of FY 2003 data. We also stated that we would continue to analyze the estimated outlier payments for subsequent years and adjust as appropriate in order to maintain estimated outlier payments at 3 percent of total estimated payments.

For this proposed rule, we performed an updated analysis of FY 2004 claims and IRF–PAI data using the same methodology described in the FY 2006 IRF PPS final rule (70 FR 47880, 47934 through 47936). Based on this updated analysis, and consistent with the broad statutory authority conferred upon the Secretary in sections 1886(j)(4)(A)(i) and 1886(j)(4)(A)(ii) of the Act, we propose to update the outlier threshold amount to $5,609 to set estimated outlier payments equal to 3 percent of total estimated aggregate IRF payments for FY 2007.

We propose to increase the outlier threshold amount for FY 2007 because we estimate that IRF costs for FY 2007 would be 3.4 percent (the estimated market basket increase) higher than FY 2006 costs, but we estimate that IRF PPS (non-outlier) payments for FY 2007 would be about 0.5 percent higher than FY 2006 payments (3.4 percent minus the proposed 2.9 percent coding adjustment described in section III.A of this proposed rule). Since estimated IRF costs would increase by more than proposed IRF PPS payments under the proposed policies for FY 2007, more cases would qualify for outlier payments and estimated outlier payments would exceed 3 percent of total estimated payments if we did not propose to adjust the outlier threshold amount.

The appropriate outlier threshold amount for FY 2007 depends on the other proposed policies, especially the 2.9 percent coding adjustment, described in this proposed rule. Therefore, the proposed outlier threshold amount for FY 2007 is subject to change in the final rule depending on the other policies contained in the final rule and updated analysis and data.

B. Update to the IRF Cost-to-Charge Ratio Ceilings and Proposed Clarification to the Regulation Text for FY 2007

In accordance with the methodology stated in the August 1, 2003 final rule (68 FR 45692 through 45694), as clarified below, we apply a ceiling to IRFs' cost-to-charge ratios (CCRs). We propose a clarification to the current regulation text in § 412.624(e)(5) to emphasize that we calculate a single overall cost-to-charge ratio (CCR) for IRFs because IRF PPS payments are based on a prospective payment per discharge for both inpatient operating and capital-related costs. Specifically, we calculate an IRF's CCR using its total Medicare-allowable costs (that is, the sum of its allowable operating and capital inpatient routine and ancillary costs) divided by its total Medicare charges (that is, the sum of its operating and capital inpatient routine and ancillary charges). Accordingly, we are proposing to revise the current regulation text in § 412.624(e)(5) to clarify that we apply adjustments to IRFs' CCRs using the methodology described in § 412.84(i) and § 412.84(m), except that we use a single overall (combined operating and capital) cost-to-charge ratio for IRFs. We note that we are not proposing any changes to the substantive policies of how we calculate CCRs and national average CCRs, or of how we conduct reconciliation of outlier payments. Our proposal merely seeks to emphasize that the IRF PPS uses a single overall CCR instead of separate CCRs for operating and capital costs.

Using the methodology described in the August 1, 2003 final rule, as clarified above, we propose to update the national urban and rural CCRs for IRFs. Under the proposed revision (clarification) to § 412.624(e)(5), we would apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean, which we propose to set at 1.57 (based on the current estimate) for FY 2007.
- Other IRFs for whom accurate data with which to calculate an overall CCR are not available.

Specifically, for FY 2007, we estimate a proposed national CCR of 0.613 for rural IRFs and 0.488 for urban IRFs. For new facilities, we use these national ratios until the data become available for us to compute the facility's actual CCR using the first tentative settled or final settled cost report data, which we then use for the subsequent cost reporting period. We note that the proposed national average rural and urban CCRs and our estimate of 3 standard deviations above the corresponding national geometric mean in this section are subject to change in the final rule based on updated analysis and data.

V. Other Issues

[If you choose to comment on issues in this section, please include the caption ''Other Issues'' at the beginning of your comments.]

Both Medicare's payment structures and the actual delivery of post acute care have evolved significantly over the past decade. Before the BBA, IRFs and other post-acute settings such as skilled nursing facilities (SNFs) were paid on the basis of cost. Since that time, we have implemented various legislative mandates that established prospective payment systems (PPSs) in these settings. The PPS methodologies used in these settings rely on patient-level clinical information to provide accurate pricing, support the provision of high quality services, and create incentives to deliver care more efficiently.

Medicare is exploring refinements to the existing provider-oriented ''silos'' to create a more seamless system for payment and delivery of post-acute care (PAC) under Medicare. This new model will be characterized by more consistent payments for the same type of care across different sites of service, quality-driven pay-for-performance incentives, and collection of uniform clinical assessment information to support quality and discharge planning functions.

Section 5008 of the DRA provides a pathway to achieve the goals of the new model by providing for a demonstration on uniform assessment and data collection across different sites of service. We are in the early stages of developing a standard, comprehensive assessment instrument to be completed at hospital discharge and ultimately integrated with PAC assessments. The demonstration will enable us to test the usefulness of this instrument, and analyze cost and outcomes across different PAC sites. The lessons learned from this demonstration will inform efforts to improve the post-acute payment systems. The instrument is intended to cover the population admitted to all PAC settings (SNFs, IRFs, and long-term care hospitals) as well as residential-based PAC (home health agencies, outpatient programs).

We have evaluated existing assessment instruments used by managed care and other insurers. These instruments will form the basis of our efforts to create a hospital discharge assessment tool that may be used in the following ways: To facilitate post-hospital placement decision making; to enhance the safety and quality of care during patient transfers through transmission of core information to a receiving provider; and to provide baseline information for longitudinal follow-up of health and function.

At this time, we do not offer specific proposals related to the preceding discussion. However, we believe that it is useful to encourage discussion of a broad range of ideas in order to assess the relative advantages and disadvantages of the various policies affecting PAC sites. Accordingly, in this proposed rule, we invite comments on these and other approaches.

In the April 25, 2006 Inpatient Prospective Payment Systems proposed rule (71 FR 23996), we discussed in detail the Health Care Information Transparency Initiative and our efforts to promote effective use of health information technology (HIT) as a means to help improve health care quality and improve efficiency. Specifically, with regard to the transparency initiative, we discussed several potential options for making pricing and quality information available to the public (71 FR 24120 through 24121). We solicited comments on ways the Department can encourage transparency in health care quality and pricing whether through its leadership on voluntary initiatives or through regulatory requirements. We also sense sought comments on the Department's statutory authority to impose such requirements. In addition, we discussed the potential for HIT to facilitate improvements in the quality and efficiency of health care services (71 FR 24100 through 24101). We solicited comments on our statutory authority to encourage the adoption and use of HIT. The 2007 Budget states that ''the Administration supports the adoption of health information technology (IT) as a normal cost of doing business to ensure patients receive high quality care.'' We also sought comments on the appropriate role of HIT in potential value-based purchasing program, beyond the intrinsic incentives of a PPS to provide efficient care, encourage the avoidance of unnecessary costs, and increase quality of care. In addition, we sought comments on promotion of the use of effective HIT through Medicare conditions of participation.

We intend to consider both the health care information transparency initiative and the use of health information technology as we refine and update all Medicare payment systems. Therefore, we seek comments on these initiatives as applied to IRF PPS in this proposed rule, and we may address these initiatives in the final IRF rule. We note that we are in the process of seeking input on these initiatives in various proposed Medicare payment rules being issued this year.

VI. Proposed Revisions to the Classification Criteria Percentage for IRFs

[If you choose to comment on issues in this section, please include in the caption ''Revisions to the Classification Criteria Percentage for IRFs'' at the beginning of your comments.]

The regulations implementing the IRF PPS provisions are presently in 42 CFR part 412, subpart P. In order to be paid under the IRF PPS, a hospital or unit of a hospital, must meet the requirements for classification as an IRF contained in subpart B of part 412, and must meet the specific conditions for payment under the IRF PPS at § 412.604 in order to be excluded from the inpatient hospital prospective payment system specified in § 412.1(a)(1).

As discussed in previous **Federal Register** publications (68 FR 26786 (May 16, 2003), 68 FR 53266 (September 9, 2003), 69 FR 25752 (May 7, 2004), and 70 FR 36640 (June 24, 2005)), § 412 23(b)(2) specifies one criterion, commonly known as the ''75 percent rule,'' which Medicare uses for classifying a hospital or unit of a hospital as an IRF. This criterion sets a minimum percentage of a facility's total inpatient population that must meet one of 13 medical conditions listed in the regulation in order for the facility to be classified as an IRF. This minimum percentage is known as the ''compliance threshold.'' In the May 7, 2004 final rule (69 FR 25752), we revised § 412.23(b)(2) to provide that the compliance threshold would gradually transition to the full 75 percent level over several cost reporting periods, as follows:

- For cost reporting periods beginning on or after July 1, 2004, and before July 1, 2005, a compliance threshold of 50 percent.
- For cost reporting periods beginning on or after July 1, 2005, and before July 1, 2006, a compliance threshold of 60 percent.
- For cost reporting periods beginning on or after July 1, 2006 and before July 1, 2007, a compliance threshold of 65 percent.
- For cost reporting periods beginning on or after July 1, 2007, a compliance threshold of 75 percent.

Section 5005 of the DRA recently revised the compliance thresholds that must be met for certain cost reporting periods. Therefore, we will make conforming revision to the latter phases of the compliance threshold transition currently specified in § 412.23(b)(2), as follows:

- For cost reporting periods beginning on or after July 1, 2005 and before July 1, 2007, the compliance threshold will be 60 percent.
- For cost reporting periods beginning on or after July 1, 2007, and before July 1, 2008, the compliance threshold will be 65 percent.
- For cost reporting periods beginning on or after July 1, 2008, the compliance threshold will be 75 percent.

Currently, in accordance with § 412.23(b)(2)(i), a case with a principal diagnosis that does not match one of the 13 medical conditions listed in § 412.23(b)(2)(iii) nonetheless can be considered as meeting one of those medical conditions if all of the following criteria are met:

(1) The patient is admitted for inpatient rehabilitation for a condition that is not one of the conditions listed in § 412.23(b)(2)(iii);

(2) The patient also has a comorbidity that falls within one of the conditions listed in § 412.23(b)(2)(iii); and

(3) The comorbidity has caused significant functional ability decline in the individual to such an extent that, even in the absence of the admitting condition, the individual would still require intensive rehabilitation treatment that is unique to IRFs paid under subpart P and cannot be appropriately performed in another setting.

Thus, under § 412.23(b)(2)(i), as long as the compliance percentage is still transitioning to the full 75 percent level, patients with a comorbidity that meets the conditions described above are counted toward meeting the facility's compliance percentage. However, under § 412.23(b)(2)(ii), once the compliance percentage has completed the transition to the full 75 percent level, such patients will no longer be counted toward meeting the facility's compliance percentage. Under current regulations, the compliance percentage's transition to the full 75 percent level would be complete as of an IRF's first cost reporting period that begins on or after July 1, 2007. Under the revised transition timeframes that we are now proposing in order to implement the DRA provision, a facility will not have to meet the full 75 percent compliance threshold until its first cost reporting period beginning on or after July 1,

2008. Consequently, we are also proposing that a comorbidity that meets the criteria as specified in § 412.23(b)(2)(i) may continue to be used to determine the compliance threshold for cost reporting periods that begin before July 1, 2008, but not for those beginning on or after July 1, 2008.

VII. Provisions of the Proposed Rule

[If you choose to comment on issues in this section, please include the caption ''Provisions of the Proposed Regulations'' at the beginning of your comments.]

We are proposing to make revisions to the regulation text in order to implement the proposed policy changes for IRFs for FY 2007 and subsequent fiscal years. Specifically, we are proposing to make conforming changes in 42 CFR part 412. These proposed revisions and others are discussed in detail below.

A. Section 412.23 Excluded Hospitals: Classifications.

As discussed in section VI of this proposed rule, we would revise the regulation text in paragraphs (b)(2)(i) and (b)(2)(ii) to reflect the applicable percentages specified in this section as amended by the DRA. To summarize, for cost reporting periods—

(1) Beginning on or after July 1, 2005 and before July 1, 2007, the hospital has served an inpatient population of whom at least 60 percent;

(2) Beginning on or after July 1, 2007 and before July 1, 2008, the hospital has served an inpatient population of whom at least 65 percent; and

(3) Beginning on or after July 1, 2008, the hospital has served an inpatient population of whom at least 75 percent require intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section.

Since we are revising the transition timeframes in order to implement the DRA provision, a facility will not have to meet the full 75 percent compliance threshold until its first cost reporting period beginning on or after July 1, 2008. Consequently, a comorbidity that meets the criteria as specified in § 412.23(b)(2)(i) may continue to be used to determine the compliance threshold for cost reporting periods that begin before July 1, 2008. However, for cost reporting periods beginning on or after July 1, 2008, a comorbidity specified in § 412.23(b)(2)(i) will not be use to determine the compliance at the 75 percent threshold.

B. Section 412.624 Methodology for Calculating the Federal Prospective Payment Rates.

In this section, we are proposing to revise the current regulation text in paragraph (e)(5) to clarify that the cost-to-charge ratio for IRFs is a single overall (combined operating and capital) cost-to-charge ratio. We emphasize that we use the methodology described in § 412.84(i) and § 412.84(m) except that the IRF PPS uses a single overall (combined operating and capital) cost-to-charge ratio and national averages are used instead of statewide averages.

C. Additional Proposed Changes

- Revise the IRF GROUPER software and the relative weight and average lengths of stay tables based on the re-analysis RAND has done with the corrected tier list, as discussed in section II of this proposed rule.
- Reduce the standard payment amount by an additional 2.9 percent to account more fully for coding changes, as discussed in detail in section III.A of this proposed rule.
- Update payment rates for rehabilitation facilities using the RPL market basket, RPL labor-related share, and CBSA urban and rural wage indexes, as discussed in section III.B through section III.C of this proposed rule.
- Update the outlier threshold for FY 2007 to $5,609, as discussed in section IV.A of this proposed rule.
- Update the upper threshold (ceiling) and the national average urban and rural cost-to-charge ratios for determining high-cost outlier payments, as discussed in detail in section IV.B of this proposed rule.

VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IX. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

X. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption ''Regulatory Impact Analysis'' at the beginning of your comments.]

A. Overall Impact

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA, September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the impact to the Medicare program, and the annual effects to the overall economy, would be more than $100 million. We estimate that the total impact of these proposed changes for estimated FY 2007 payments compared to estimated FY 2006 payments would be an increase of approximately $40 million (this reflects a $230 million increase from the update to the payment rates and a $10 million increase due to updating the outlier threshold amount to increase estimated outlier payments from 2.9 percent in FY 2006 to 3.0 percent in FY 2007, offset by a $200 million estimated decrease from the proposed reduction to the standard payment amount to account for changes in coding that do not reflect real changes in case mix).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most IRFs and most other providers and suppliers are considered small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. (For details, see the Small Business Administration's final rule that set forth size standards for health care

industries, at 65 FR 69432, November 17, 2000.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs. Therefore, we assume that all IRFs (an approximate total of 1,200 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. Because the net effect of this proposed rule on almost all facilities would only be about 1 percent or less of revenues, and would be positive, we have concluded that this proposed rule would not have a significant effect on a substantial number of small entities. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this proposed rule would not have an adverse impact on rural hospitals based on the data of the 181 rural units and 20 rural hospitals in our database of 1,202 IRFs for which data were available.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This proposed rule would not mandate any requirements for State, local, or tribal governments, nor would it affect private sector costs.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this proposed rule would not have a substantial effect on State and local governments.

B. Anticipated Effects of the Proposed Rule

We discuss below the impacts of this proposed rule on the budget and on IRFs.

1. Basis and Methodology of Estimates

This proposed rule sets forth updates of the IRF PPS rates contained in the FY 2006 final rule and proposes a 2.9 percent decrease to the standard payment amount to account for the increase in estimated aggregate payments due to changes in coding. In addition, we propose updates to the comorbidity tiers and the CMG relative weights, and to the outlier threshold amount.

Based on the above, we estimate the FY 2007 impact would be a net increase of $40 million in payments to IRF providers (this reflects a $230 million estimated increase from the update to the payment rates and a $10 million estimated increase due to updating the outlier threshold amount to increase estimated outlier payments from 2.9 percent in FY 2006 to 3.0 percent in FY 2007, offset by a $200 million estimated decrease from the proposed reduction to the standard payment amount to account for the increase in estimated aggregate payments due to changes in coding). The impact analysis in Table 11 of this proposed rule represents the projected effects of the proposed policy changes in the IRF PPS for FY 2007 compared with estimated IRF PPS payments in FY 2006 without the proposed policy changes. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these proposed changes, and we do not make adjustments for future changes in such variables as number of discharges or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples are newly-legislated general Medicare program funding changes by the Congress, or changes specifically related to IRFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, the MMA, the DRA, or new statutory provisions. Although these changes may not be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the proposed rates for FY 2007, we made a number of standard annual revisions and clarifications mentioned elsewhere in this proposed rule (for example, the update to the wage and market basket indexes used to adjust the Federal rates). These revisions would increase payments to IRFs by approximately $230 million.

The aggregate change in payments associated with this proposed rule is estimated to be an increase in payments to IRFs of $40 million for FY 2007. The market basket increase of $230 million and the $10 million increase due to updating the outlier threshold amount to increase estimated outlier payments from 2.9 percent in FY 2006 to 3.0 percent in FY 2007, combined with the estimated decrease of $200 million due to the proposed reduction to the standard payment amount to account for coding changes (not related to real changes in case mix), results in a net change in estimated payments from FY 2006 to FY 2007 of $40 million.

The impacts are shown in Table 11. The following proposed changes are discussed separately below:

- The effects of applying the budget-neutral labor-related share and wage index adjustment, as required under section 1886(j)(6) of the Act.
- The effects of the expiration of the one-year budget-neutral transition policy for adopting the new CBSA-based geographic area definitions announced by OMB in June 2003.
- The effects of the proposed update to the outlier threshold amount to increase total estimated outlier payments from 2.9 to 3 percent of total estimated payments for FY 2007, consistent with section 1886(j)(4) of the Act.
- The effects of the annual market basket update (using the RPL market basket) to IRF PPS payment rates, as required by sections 1886(j)(3)(A)(i) and 1886(j)(3)(C) of the Act.
- The effects of the proposed decrease to the standard payment amount to account for the increase in estimated aggregate payments due to changes in coding, as required under section 1886(j)(2)(C)(ii) of the Act.
- The effects of the second year of the 3-year budget-neutral hold-harmless policy for IRFs that were rural under § 412.602 during FY 2005, but are urban under § 412.602 during FY 2006 and FY 2007 and lose the rural adjustment, resulting in a loss of estimated IRF PPS payments if not for the hold harmless policy.

- The effect of the proposed budget-neutral revisions to the comorbidity tiers and the CMG relative weights, under the authority of section 1886(j)(2)(C)(i) of the Act.
- The total change in estimated payments based on the proposed FY 2007 policies relative to estimated FY 2006 payments without the proposed policies for FY 2007.

2. Description of Table 11

The table below categorizes IRFs by geographic location, including urban or rural location and location with respect to CMS' nine regions of the country. In addition, the table divides IRFs into those that are separate rehabilitation hospitals (otherwise called freestanding hospitals in this section), those that are rehabilitation units of a hospital (otherwise called hospital units in this section), rural or urban facilities by ownership (otherwise called for-profit, non-profit, and government), and by teaching status. The top row of the table shows the overall impact on the 1,202 IRFs included in the analysis.

The next 12 rows of Table 11 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership: all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 1,001 IRFs located in urban areas included in our analysis. Among these, there are 807 IRF units of hospitals located in urban areas and 194 freestanding IRF hospitals located in urban areas. There are 201 IRFs located in rural areas included in our analysis. Among these, there are 181 IRF units of hospitals located in rural areas and 20 freestanding IRF hospitals located in rural areas. There are 311 for-profit IRFs. Among these, there are 260 IRFs in urban areas and 51 IRFs in rural areas. There are 743 non-profit IRFs. Among these, there are 630 urban IRFs and 113 rural IRFs. There are 148 government-owned IRFs. Among these, there are 111 urban IRFs and 37 rural IRFs.

The remaining three parts of Table 11 show IRFs grouped by their geographic location within a region, and the last part groups IRFs by teaching status. First, IRFs located in urban areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. Second, IRFs located in rural areas are categorized with respect to their location within a particular one of the nine CMS geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. Finally, IRFs are grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent.

The estimated impact of each proposed change to the facility categories listed above is shown in the columns of Table 11. The description of each column is as follows:

Column (1) shows the facility classification categories described above.

Column (2) shows the number of IRFs in each category.

Column (3) shows the number of cases in each category.

Column (4) shows the estimated effect of adjusting the outlier threshold amount so that estimated outlier payments increases from 2.9 percent in FY 2006 to 3 percent of total estimated payments for FY 2007.

Column (5) shows the estimated effect of the market basket update to the IRF PPS payment rates.

Column (6) shows the estimated effect of the update to the IRF labor-related share, wage index, and hold harmless policy.

Column (7) shows the estimated effects of the proposed budget-neutral revisions to the comorbidity tiers and the CMG relative weights.

Column (8) shows the estimated effects of the proposed decrease in the standard payment amount to account for the increase in aggregate payments due to changes in coding that do not reflect real changes in case mix, as discussed in section III.A of this proposed rule. Section 1886(j)(2)(C)(ii) of the Act requires us to adjust the per discharge PPS payment rate to eliminate the effect of coding or classification changes that do not reflect real changes in case mix if we determine that such changes result in a change in aggregate payments under the classification system.

Column (9) compares our estimates of the payments per discharge, incorporating all proposed changes reflected in this proposed rule for FY 2007, to our estimates of payments per discharge in FY 2006 (without these proposed changes). The average estimated increase for all IRFs is approximately 0.6 percent. This estimated increase includes the effects of the 3.4 percent market basket update. It also includes the 0.1 percent overall estimated increase to IRF payments from the proposed update to the outlier threshold amount, and the estimated impact of the proposed one-time 2.9 percent reduction to the standard payment amount to account for changes in coding that increased payments to IRFs. Because we propose to make the remainder of the changes outlined in this proposed rule in a budget-neutral manner, they would not affect total estimated IRF payments in the aggregate. However, as described in more detail in each section, they would affect the estimated distribution of payments among providers.

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Table 11: Projected Impact on the IRF PPS for FY 2007

Facility Classification (1)	No. of IRFs (2)	No. of cases (3)	Proposed Outlier (4)	Prop. Market Basket (5)	Prop. FY07 Wage Index, Labor-share, and Hold Harmless (6)	Prop. Comorbid. Tier and relative weight Revisions (7)	Prop. 2.9% reduct (8)	Est. Total % Change (9)
Total	1,202	487,281	0.1%	3.4%	0.0%	0.0%	-2.9%	0.6%
Urban unit	807	272,017	0.2%	3.4%	-0.1%	0.0%	-2.9%	0.5%
Rural unit	181	38,880	0.1%	3.4%	-0.1%	0.1%	-2.9%	0.6%
Urban hospital	194	168,880	0.1%	3.4%	0.2%	0.0%	-2.9%	0.7%
Rural hospital	20	7,504	0.1%	3.4%	0.2%	0.0%	-2.9%	0.7%
Urban For-Profit	260	149,260	0.1%	3.4%	0.1%	0.1%	-2.9%	0.7%
Rural For-Profit	51	11,885	0.1%	3.4%	-0.5%	0.1%	-2.9%	0.0%
Urban Non-Profit	630	258,037	0.1%	3.4%	0.0%	-0.1%	-2.9%	0.5%
Rural Non-Profit	113	26,950	0.1%	3.4%	0.2%	0.1%	-2.9%	0.8%
Urban Government	111	33,600	0.2%	3.4%	0.1%	-0.1%	-2.9%	0.6%
Rural Government	37	7,549	0.2%	3.4%	0.1%	0.2%	-2.9%	0.8%
Urban	1,001	440,897	0.1%	3.4%	0.0%	0.0%	-2.9%	0.6%
Rural	201	46,384	0.1%	3.4%	0.0%	0.1%	-2.9%	0.6%
Urban by region								
New England	36	21,739	0.1%	3.4%	-0.2%	0.0%	-2.9%	0.4%
Middle Atlantic	159	80,502	0.1%	3.4%	0.6%	0.1%	-2.9%	1.2%
South Atlantic	127	78,495	0.1%	3.4%	-0.4%	0.1%	-2.9%	0.3%
East North Central	192	70,435	0.1%	3.4%	-0.3%	-0.3%	-2.9%	-0.1%
East South Central	50	29,203	0.1%	3.4%	0.2%	0.0%	-2.9%	0.7%
West North Central	70	23,874	0.2%	3.4%	-0.6%	-0.1%	-2.9%	-0.2%
West South Central	183	81,394	0.1%	3.4%	0.0%	0.1%	-2.9%	0.6%
Mountain	74	27,231	0.1%	3.4%	0.0%	0.1%	-2.9%	0.7%
Pacific	110	28,024	0.2%	3.4%	0.9%	-0.2%	-2.9%	1.3%
Rural by region								
New England	4	1,010	0.2%	3.4%	2.1%	-0.1%	-2.9%	2.7%
Middle Atlantic	19	6,074	0.1%	3.4%	0.4%	0.2%	-2.9%	1.2%
South Atlantic	25	6,692	0.1%	3.4%	-0.8%	0.2%	-2.9%	-0.1%
East North Central	29	6,255	0.1%	3.4%	0.4%	0.0%	-2.9%	0.9%
East South Central	22	5,629	0.1%	3.4%	0.3%	0.1%	-2.9%	0.9%

Facility Classification (1)	No. of IRFs (2)	No. of cases (3)	Proposed Outlier (4)	Prop. Market Basket (5)	Prop. FY07 Wage Index, Labor-share, and Hold Harmless (6)	Prop. Comorbid. Tier and relative weight Revisions (7)	Prop. 2.9% reduct (8)	Est. Total % Change (9)
West North Central	34	6,471	0.2%	3.4%	0.0%	0.0%	-2.9%	0.6%
West South Central	55	12,650	0.2%	3.4%	-0.3%	0.1%	-2.9%	0.3%
Mountain	9	1,041	0.3%	3.4%	-1.9%	0.1%	-2.9%	-1.2%
Pacific	4	562	0.2%	3.4%	2.8%	0.0%	-2.9%	3.5%
Teaching Status								
Non-teaching	1,090	433,028	0.1%	3.4%	0.0%	0.1%	-2.9%	0.6%
Resident to ADC less than 10%	61	35,227	0.1%	3.4%	0.3%	-0.3%	-2.9%	0.5%
Resident to ADC 10%-19%	32	15,011	0.1%	3.4%	-0.3%	-0.4%	-2.9%	-0.1%
Resident to ADC greater than 19%	19	4,015	0.1%	3.4%	-0.1%	-0.1%	-2.9%	0.3%

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3. Impact of the Proposed Update to the Outlier Threshold Amount (Column 4, Table 11)

In the FY 2006 IRF PPS final rule (70 FR 30188), we used FY 2003 patient-level claims data (the best, most complete data available at that time) to set the outlier threshold amount for FY 2006 so that estimated outlier payments would equal 3 percent of total estimated payments for FY 2006. For this proposed rule, we have updated our analysis using FY 2004 data. Between FYs 2003 and 2004, we observed that IRFs' cost-to-charge ratios continued to fall, a trend that has occurred each year since we first implemented the IRF PPS. We are still investigating the reasons for this. However, this decrease in cost-to-charge ratios affected our estimate of outlier payments as a percentage of total estimated payments for FY 2006, which declined from 3 percent using the FY 2003 data to 2.9 percent using the updated FY 2004 data. Thus, we are proposing to adjust the outlier threshold amount for FY 2007 to $5,609 in order to set total estimated outlier payments equal to 3 percent of total estimated payments in FY 2007 (see section IV.A of this proposed rule for a detailed discussion of the factors that influence how we arrive at the proposed outlier threshold amount). The estimated change in total payments between FY 2006 and FY 2007, therefore, includes a 0.1 percent overall estimated increase in payments because the outlier portion of total payments is estimated to increase from 2.9 percent to 3 percent.

The impact of this proposed update (as shown in column 4 of Table 11) is to increase estimated overall payments to IRFs by 0.1 percent. We estimate the largest increase in payments to be a 0.3 percent increase in payments to rural IRFs in the Mountain region. We do not estimate that any group of IRFs would experience a decrease in payments from this proposed update.

4. Impact of the Market Basket Update to the IRF PPS Payment Rates (Column 5, Table 11)

In column 5 of Table 11, we present the estimated effects of the market basket update to the IRF PPS payment rates. In the aggregate, and across all hospital groups, the update would result in a 3.4 percent increase in overall payments to IRFs.

5. Impact of the Full CBSA Wage Index, Labor-Related Share, and the Hold Harmless Policy for FY 2007 (Column 6, Table 11)

In column 6 of Table 11, we present the effects of the budget neutral wage index, labor-related share, and the hold harmless policy. In FY 2006, we provided a 1-year blended wage index and a 3-year phase out of the rural adjustment for IRFs that changed designation due to the change from MSAs to CBSAs (referenced as the hold harmless policy). We applied the blended wage index to all IRFs and the hold harmless policy to those IRFs that qualify, as described in § 412.624(e)(7), in order to mitigate the impact of the change from the MSA-based labor area definitions to the CBSA-based labor area definitions for IRFs.

As discussed in this proposed rule, the blended wage index expires in FY 2007 and will not be applied for discharges on or after October 1, 2006. Since we are in the second year of the hold harmless policy, we are not proposing a change to this policy and will continue to apply it as described in the FY 2006 final rule in a budget neutral manner.

As discussed in this proposed rule, we are proposing to update the wage index based on the CBSA-based labor market area definitions in a budget neutral manner. We will also apply the second year of the hold harmless policy in a budget neutral manner. Thus, in the aggregate, the estimated impact of the wage index and the labor-related share is zero percent.

In the aggregate for all urban and all rural IRFs, we do not estimate that these changes would affect overall estimated payments to IRFs. However, we estimate these changes to have small distributional effects. We estimate the largest increase in payments to be a 2.8 percent increase for rural IRFs in the Pacific region and the largest decrease in payments to be a 1.9 percent decrease among rural IRFs in the Mountain region.

6. Impact of the Proposed Changes to the Comorbidity Tiers and the CMG Relative Weights (Column 7, Table 11)

In column 7 of Table 11, we present the effects of the proposed changes to the comorbidity tiers and the CMG relative weights. Since we are proposing to implement these changes in a budget neutral manner, we estimate that they would have no overall effect on payments to IRFs. Similarly, we estimate no overall effect of these proposed changes on payments to urban IRFs. However, we estimate a 0.1 percent increase in payments to rural IRFs. We estimate the largest increase in payments to be a 0.2 percent increase among rural government-owned IRFs and rural IRFs located in the Middle Atlantic and South Atlantic regions. We estimate the largest decrease to be a 0.4 percent decrease among teaching IRFs with intern and resident to average daily census ratios in the 10 percent to 19 percent category.

7. Impact of the Proposed 2.9 Percent Decrease to the Standard Payment Amount to Account for Coding Changes (Column 8, Table 11)

In column 8 of Table 11, we present the effects of the proposed decrease in the standard payment amount to account for the increase in estimated aggregate payments due to changes in coding that do not reflect real changes in case mix.

In the aggregate, and across all hospital groups, we estimate that the proposed policy would result in a 2.9 percent decrease in overall payments to IRFs. Thus, we estimate that the proposed 2.9 percent reduction in the standard payment amount would result in a cost savings to the Medicare program of approximately $200 million.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 12 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the proposed changes presented in this proposed rule based on the data for 1,202 IRFs in our database. All estimated expenditures are classified as transfers to Medicare providers (that is, IRFs).

TABLE 12.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2006 IRF PPS RATE YEAR TO THE 2007 IRF PPS RATE YEAR

[In Millions]

Category	Transfers
Annualized Monetized Transfers.	$40 million.
From Whom To Whom.	Federal Government to IRF Medicare Providers.

D. Alternatives Considered

Because we have determined that this proposed rule would have a significant economic impact on IRFs, we will discuss the alternative changes to the IRF PPS that we considered.

We considered a proposed reduction to the standard payment amount by an amount of up to 3.9 percent (5.8 percent minus the 1.9 percent adjustment to the standard payment amount for FY 2006), because one of RAND's methodologies for determining the amount of real change in case mix and the amount of coding change that occurred between 1999 and 2002 suggested that coding change could possibly have been responsible for up to 5.8 percent of the observed increase in IRFs' case mix. This suggests that we could potentially have proposed a reduction greater than 2.9 percent and as high as 3.9 percent. We also considered the possibility of making a somewhat lower adjustment of 2.3 percent, which would fall at approximately the middle of RAND's range of estimates. However, for the reasons discussed in section III.A of this proposed rule, we have instead decided to propose a 2.9 percent reduction to the standard payment amount. Further, in light of recent changes to the IRF PPS that affect IRF utilization trends, including the revised phase-in schedule of the IRF 75 percent rule compliance percentage, we believe it is appropriate to take an incremental approach to adjusting for coding changes. In this way, we maintain the flexibility to assess the impact of these changes and propose additional changes, if appropriate, in the future.

We considered not proposing to update the comorbidity tiers and the CMG relative weights for FY 2007. However, as described in section II of this proposed rule, re-analysis of the data indicates that some minor technical revisions are appropriate to align the distribution of payments as closely as possible with the costs of IRF care.

We also considered not proposing an update to the outlier threshold amount for FY 2007. However, analysis of updated FY 2004 data indicates that estimated outlier payments would not equal 3 percent of estimated total payment for FY 2007 unless we were to update the outlier threshold amount.

E. Conclusion (Column 9, Table 11)

Overall, estimated payments per discharge for IRFs in FY 2007 are projected to increase by 0.6 percent, compared with those in FY 2006, as reflected in column 9 of Table 11. We estimate that IRFs in urban and rural areas would both experience a 0.6 percent increase in estimated payments per discharge compared with FY 2006. We estimate that rehabilitation units in urban areas would experience a 0.5 percent increase in estimated payments per discharge, while freestanding rehabilitation hospitals in urban areas would experience a 0.7 percent increase in estimated payments per discharge. We estimate that rehabilitation units in rural areas would experience a 0.6 percent increase in estimated payments per discharge, while freestanding rehabilitation hospitals in rural areas would experience a 0.7 percent increase in estimated payments per discharge.

Overall, we estimate that the largest payment increase would be 3.5 percent among rural IRFs in the Pacific region. We estimate that the largest overall decrease in estimated payments would be a 1.2 percent decrease for rural IRFs in the Mountain region.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

2. Section 412.23 is amended by—

A. Revising paragraph (b)(2)(i) introductory text.

B. Revising paragraph (b)(2)(ii).

The revisions read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(b) * * *

(2) * * *

(i) For cost reporting periods beginning on or after July 1, 2004 and before July 1, 2005, the hospital has served an inpatient population of whom at least 50 percent, and for cost reporting periods beginning on or after July 1, 2005 and before July 1, 2007, the hospital has served an inpatient population of whom at least 60 percent, and for cost reporting periods beginning on or after July 1, 2007 and before July 1, 2008, the hospital has served an inpatient population of whom at least 65 percent required intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section. A patient with a comorbidity, as defined at § 412.602, may be included in the inpatient population that counts toward the required applicable percentage if—

* * * * *

(ii) For cost reporting periods beginning on or after July 1, 2008, the hospital has served an inpatient population of whom at least 75 percent required intensive rehabilitative services for treatment of one or more of the conditions specified in paragraph (b)(2)(iii) of this section. A patient with a comorbidity as described in paragraph (b)(2)(i) of this section is not included in the inpatient population that counts toward the required 75 percent.

* * * * *

3. In § 412.624, paragraph (e)(5) is revised to read as follows:

§ 412.624 Methodology for calculating the Federal prospective payment rates.

* * * * *

(e) * * *

(5) *Adjustment for high-cost outliers.* CMS provides for an additional payment to an inpatient rehabilitation facility if its estimated costs for a patient exceed a fixed dollar amount (adjusted for area wage levels and factors to account for treating low-income patients, for rural location, and for teaching programs) as specified by CMS. The additional payment equals 80 percent of the difference between the estimated cost of the patient and the sum of the adjusted Federal prospective payment computed under this section and the adjusted fixed dollar amount. Effective for discharges occurring on or after October 1, 2003, additional payments made under this section will be subject to the adjustments at § 412.84(i), except that CMS calculates a single overall combined operating and capital cost-to-charge ratio (instead of a separate operating cost-to-charge ratio and a separate capital cost-to-charge ratio) and national averages will be used instead of statewide averages. Effective for discharges occurring on or after October 1, 2003, additional payments made under this section will also be subject to adjustments at § 412.84(m), except that CMS calculates a single overall combined operating and capital cost-to-charge ratio (instead of a separate operating cost-to-charge ratio and a separate capital cost-to-charge ratio).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplemental Medical Insurance Program.)

Dated: March 30, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 8, 2006.

Michael O. Leavitt,

Secretary.

The following addendum will not appear in the Code of Federal Regulations.

Addendum

This addendum contains the tables referred to throughout the preamble of this proposed rule. The tables presented below are as follows:

Table 1.—Proposed Inpatient Rehabilitation Facility Urban Area Wage Index for Discharges Occurring from October 1, 2006 through September 30, 2007

Table 2.—Proposed Inpatient Rehabilitation Facility Rural Area Wage Index for Discharges Occurring from October 1, 2006 through September 30, 2007

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007

CBSA code	Urban area (constituent counties)	Full wage index
10180	Abilene, TX	0.7896
	Callahan County, TX.	
	Jones County, TX.	
	Taylor County, TX.	
10380	Aguadilla-Isabela-San Sebastián, PR	0.4738
	Aguada Municipio, PR.	
	Aguadilla Municipio, PR.	
	Añasco Municipio, PR.	
	Isabela Municipio, PR.	
	Lares Municipio, PR.	
	Moca Municipio, PR.	
	Rincón Municipio, PR.	
	San Sebastián Municipio, PR.	
10420	Akron, OH	0.8982
	Portage County, OH.	
	Summit County, OH.	
10500	Albany, GA	0.8628
	Baker County, GA.	
	Dougherty County, GA.	
	Lee County, GA.	
	Terrell County, GA.	
	Worth County, GA.	
10580	Albany-Schenectady-Troy, NY	0.8589
	Albany County, NY.	
	Rensselaer County, NY.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Saratoga County, NY.	
	Schenectady County, NY.	
	Schoharie County, NY.	
10740	Albuquerque, NM	0.9684
	Bernalillo County, NM.	
	Sandoval County, NM.	
	Torrance County, NM.	
	Valencia County, NM.	
10780	Alexandria, LA	0.8033
	Grant Parish, LA.	
	Rapides Parish, LA.	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9818
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	
11020	Altoona, PA	0.8944
	Blair County, PA.	
11100	Amarillo, TX	0.9156
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	0.9536
	Story County, IA.	
11260	Anchorage, AK	1.1895
	Anchorage Municipality, AK.	
	Matanuska-Susitna Borough, AK.	
11300	Anderson, IN	0.8586
	Madison County, IN.	
11340	Anderson, SC	0.8997
	Anderson County, SC.	
11460	Ann Arbor, MI	1.0859
	Washtenaw County, MI.	
11500	Anniston-Oxford, AL	0.7682
	Calhoun County, AL.	
11540	Appleton, WI	0.9288
	Calumet County, WI.	
	Outagamie County, WI.	
11700	Asheville, NC	0.9285
	Buncombe County, NC.	
	Haywood County, NC.	
	Henderson County, NC.	
	Madison County, NC.	
12020	Athens-Clarke County, GA	0.9855
	Clarke County, GA.	
	Madison County, GA.	
	Oconee County, GA.	
	Oglethorpe County, GA.	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9793
	Barrow County, GA.	
	Bartow County, GA.	
	Butts County, GA.	
	Carroll County, GA.	
	Cherokee County, GA.	
	Clayton County, GA.	
	Cobb County, GA.	
	Coweta County, GA.	
	Dawson County, GA.	
	DeKalb County, GA.	
	Douglas County, GA.	
	Fayette County, GA.	
	Forsyth County, GA.	
	Fulton County, GA.	
	Gwinnett County, GA.	
	Haralson County, GA.	
	Heard County, GA.	
	Henry County, GA.	
	Jasper County, GA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Lamar County, GA.	
	Meriwether County, GA.	
	Newton County, GA.	
	Paulding County, GA.	
	Pickens County, GA.	
	Pike County, GA.	
	Rockdale County, GA.	
	Spalding County, GA.	
	Walton County, GA.	
12100	Atlantic City, NJ	1.1615
	Atlantic County, NJ.	
12220	Auburn-Opelika, AL	0.8100
	Lee County, AL.	
12260	Augusta-Richmond County, GA-SC	0.9748
	Burke County, GA.	
	Columbia County, GA.	
	McDuffie County, GA.	
	Richmond County, GA.	
	Aiken County, SC.	
	Edgefield County, SC.	
12420	Austin-Round Rock, TX	0.9437
	Bastrop County, TX.	
	Caldwell County, TX.	
	Hays County, TX.	
	Travis County, TX.	
	Williamson County, TX.	
12540	Bakersfield, CA	1.0470
	Kern County, CA.	
12580	Baltimore-Towson, MD	0.9897
	Anne Arundel County, MD.	
	Baltimore County, MD.	
	Carroll County, MD.	
	Harford County, MD.	
	Howard County, MD.	
	Queen Anne's County, MD.	
	Baltimore City, MD.	
12620	Bangor, ME	0.9993
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2600
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8593
	Ascension Parish, LA.	
	East Baton Rouge Parish, LA.	
	East Feliciana Parish, LA.	
	Iberville Parish, LA.	
	Livingston Parish, LA.	
	Pointe Coupee Parish, LA.	
	St. Helena Parish, LA.	
	West Baton Rouge Parish, LA.	
	West Feliciana Parish, LA.	
12980	Battle Creek, MI	0.9508
	Calhoun County, MI.	
13020	Bay City, MI	0.9343
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8412
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1731
	Whatcom County, WA.	
13460	Bend, OR	1.0786
	Deschutes County, OR.	
13644	Bethesda-Gaithersburg-Frederick, MD	1.1483
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8834
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8562

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8959
	Bibb County, AL.	
	Blount County, AL.	
	Chilton County, AL.	
	Jefferson County, AL.	
	St. Clair County, AL.	
	Shelby County, AL.	
	Walker County, AL.	
13900	Bismarck, ND	0.7574
	Burleigh County, ND.	
	Morton County, ND.	
13980	Blacksburg-Christiansburg-Radford, VA	0.7954
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8447
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.9075
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.9052
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.1558
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	0.9734
	Boulder County, CO.	
14540	Bowling Green, KY	0.8211
	Edmonson County, KY.	
	Warren County, KY.	
14740	Bremerton-Silverdale, WA	1.0675
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.2592
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	0.9804
	Cameron County, TX.	
15260	Brunswick, GA	0.9311
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9511
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8905
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	0.9410
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.1172
	Middlesex County, MA.	
15804	Camden, NJ	1.0517
	Burlington County, NJ.	
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.8935
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9356
	Lee County, FL.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
16180	Carson City, NV Carson City, NV.	1.0234
16220	Casper, WY Natrona County, WY.	0.9026
16300	Cedar Rapids, IA Benton County, IA. Jones County, IA. Linn County, IA.	0.8825
16580	Champaign-Urbana, IL Champaign County, IL. Ford County, IL. Piatt County, IL.	0.9594
16620	Charleston, WV Boone County, WV. Clay County, WV. Kanawha County, WV. Lincoln County, WV. Putnam County, WV.	0.8445
16700	Charleston-North Charleston, SC Berkeley County, SC. Charleston County, SC. Dorchester County, SC.	0.9245
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC. Cabarrus County, NC. Gaston County, NC. Mecklenburg County, NC. Union County, NC. York County, SC.	0.9750
16820	Charlottesville, VA Albemarle County, VA. Fluvanna County, VA. Greene County, VA. Nelson County, VA. Charlottesville City, VA.	1.0187
16860	Chattanooga, TN-GA Catoosa County, GA. Dade County, GA. Walker County, GA. Hamilton County, TN. Marion County, TN. Sequatchie County, TN.	0.9088
16940	Cheyenne, WY Laramie County, WY.	0.8775
16974	Chicago-Naperville-Joliet, IL Cook County, IL. DeKalb County, IL. DuPage County, IL. Grundy County, IL. Kane County, IL. Kendall County, IL. McHenry County, IL. Will County, IL.	1.0790
17020	Chico, CA Butte County, CA.	1.0511
17140	Cincinnati-Middletown, OH-KY-IN Dearborn County, IN. Franklin County, IN. Ohio County, IN. Boone County, KY. Bracken County, KY. Campbell County, KY. Gallatin County, KY. Grant County, KY. Kenton County, KY. Pendleton County, KY. Brown County, OH. Butler County, OH. Clermont County, OH.	0.9615

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Hamilton County, OH.	
	Warren County, OH.	
17300	Clarksville, TN-KY	0.8284
	Christian County, KY.	
	Trigg County, KY.	
	Montgomery County, TN.	
	Stewart County, TN.	
17420	Cleveland, TN	0.8139
	Bradley County, TN.	
	Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.9213
	Cuyahoga County, OH.	
	Geauga County, OH.	
	Lake County, OH.	
	Lorain County, OH.	
	Medina County, OH.	
17660	Coeur d'Alene, ID	0.9647
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.8900
	Brazos County, TX.	
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9468
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, MO	0.8345
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.9057
	Calhoun County, SC.	
	Fairfield County, SC.	
	Kershaw County, SC.	
	Lexington County, SC.	
	Richland County, SC.	
	Saluda County, SC.	
17980	Columbus, GA-AL	0.8560
	Russell County, AL.	
	Chattahoochee County, GA.	
	Harris County, GA.	
	Marion County, GA.	
	Muscogee County, GA.	
18020	Columbus, IN	0.9588
	Bartholomew County, IN.	
18140	Columbus, OH	0.9860
	Delaware County, OH.	
	Fairfield County, OH.	
	Franklin County, OH.	
	Licking County, OH.	
	Madison County, OH.	
	Morrow County, OH.	
	Pickaway County, OH.	
	Union County, OH.	
18580	Corpus Christi, TX	0.8550
	Aransas County, TX.	
	Nueces County, TX.	
	San Patricio County, TX.	
18700	Corvallis, OR	1.0729
	Benton County, OR.	
19060	Cumberland, MD-WV	0.9317
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-Plano-Irving, TX	1.0228
	Collin County, TX.	
	Dallas County, TX.	
	Delta County, TX.	
	Denton County, TX.	
	Ellis County, TX.	
	Hunt County, TX.	
	Kaufman County, TX.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Rockwall County, TX.	
19140	Dalton, GA	0.9079
	Murray County, GA.	
	Whitfield County, GA.	
19180	Danville, IL	0.9028
	Vermilion County, IL.	
19260	Danville, VA	0.8489
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA-IL	0.8724
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9064
	Greene County, OH.	
	Miami County, OH.	
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.8469
	Lawrence County, AL.	
	Morgan County, AL.	
19500	Decatur, IL	0.8067
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9299
	Volusia County, FL.	
19740	Denver-Aurora, CO	1.0723
	Adams County, CO.	
	Arapahoe County, CO.	
	Broomfield County, CO.	
	Clear Creek County, CO.	
	Denver County, CO.	
	Douglas County, CO.	
	Elbert County, CO.	
	Gilpin County, CO.	
	Jefferson County, CO.	
	Park County, CO.	
19780	Des Moines, IA	0.9669
	Dallas County, IA.	
	Guthrie County, IA.	
	Madison County, IA.	
	Polk County, IA.	
	Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	1.0424
	Wayne County, MI.	
20020	Dothan, AL	0.7721
	Geneva County, AL.	
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	0.9776
	Kent County, DE.	
20220	Dubuque, IA	0.9024
	Dubuque County, IA.	
20260	Duluth, MN-WI	1.0213
	Carlton County, MN.	
	St. Louis County, MN.	
	Douglas County, WI.	
20500	Durham, NC	1.0244
	Chatham County, NC.	
	Durham County, NC.	
	Orange County, NC.	
	Person County, NC.	
20740	Eau Claire, WI	0.9201
	Chippewa County, WI.	
	Eau Claire County, WI.	
20764	Edison, NJ	1.1249
	Middlesex County, NJ.	
	Monmouth County, NJ.	
	Ocean County, NJ.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Somerset County, NJ.	
20940	El Centro, CA	0.8906
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8802
	Hardin County, KY.	
	Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9627
	Elkhart County, IN.	
21300	Elmira, NY	0.8250
	Chemung County, NY.	
21340	El Paso, TX	0.8977
	El Paso County, TX.	
21500	Erie, PA	0.8737
	Erie County, PA.	
21604	Essex County, MA	1.0538
	Essex County, MA.	
21660	Eugene-Springfield, OR	1.0818
	Lane County, OR.	
21780	Evansville, IN-KY	0.8713
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.1408
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.4153
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND-MN	0.8486
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.8509
	San Juan County, NM.	
22180	Fayetteville, NC	0.9416
	Cumberland County, NC.	
	Hoke County, NC.	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8661
	Benton County, AR.	
	Madison County, AR.	
	Washington County, AR.	
	McDonald County, MO.	
22380	Flagstaff, AZ	1.2092
	Coconino County, AZ.	
22420	Flint, MI	1.0655
	Genesee County, MI.	
	22500 Florence, SC	0.8947
	Darlington County, SC.	
	Florence County, SC.	
22520	Florence-Muscle Shoals, AL	0.8272
	Colbert County, AL.	
	Lauderdale County, AL.	
22540	Fond du Lac, WI	0.9640
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	1.0122
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield	1.0432
	Beach, FL.	
	Broward County, FL.	
22900	Fort Smith, AR-OK	0.8230
	Crawford County, AR.	
	Franklin County, AR.	
	Sebastian County, AR.	
	Le Flore County, OK.	
	Sequoyah County, OK.	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8872
	Okaloosa County, FL.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
23060	Fort Wayne, IN Allen County, IN. Wells County, IN. Whitley County, IN.	0.9793
23104	Fort Worth-Arlington, TX Johnson County, TX. Parker County, TX. Tarrant County, TX. Wise County, TX.	0.9486
23420	Fresno, CA Fresno County, CA.	1.0538
23460	Gadsden, AL Etowah County, AL.	0.7938
23540	Gainesville, FL Alachua County, FL. Gilchrist County, FL.	0.9388
23580	Gainesville, GA Hall County, GA.	0.8874
23844	Gary, IN Jasper County, IN. Lake County, IN. Newton County, IN. Porter County, IN.	0.9395
24020	Glens Falls, NY Warren County, NY. Washington County, NY.	0.8559
24140	Goldsboro, NC Wayne County, NC.	0.8775
24220	Grand Forks, ND-MN Polk County, MN. Grand Forks County, ND.	0.7901
24300	Grand Junction, CO Mesa County, CO.	0.9550
24340	Grand Rapids-Wyoming, MI Barry County, MI. Ionia County, MI. Kent County, MI. Newaygo County, MI.	0.9390
24500	Great Falls, MT Cascade County, MT.	0.9052
24540	Greeley, CO Weld County, CO.	0.9570
24580	Green Bay, WI Brown County, WI. Kewaunee County, WI. Oconto County, WI.	0.9483
24660	Greensboro-High Point, NC Guilford County, NC. Randolph County, NC. Rockingham County, NC.	0.9104
24780	Greenville, NC Greene County, NC. Pitt County, NC.	0.9425
24860	Greenville, SC Greenville County, SC. Laurens County, SC. Pickens County, SC.	1.0027
25020	Guayama, PR Arroyo Municipio, PR. Guayama Municipio, PR. Patillas Municipio, PR.	0.3181
25060	Gulfport-Biloxi, MS Hancock County, MS. Harrison County, MS. Stone County, MS.	0.8929
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD. Berkeley County, WV. Morgan County, WV.	0.9489

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
25260	Hanford-Corcoran, CA	1.0036
	Kings County, CA.	
25420	Harrisburg-Carlisle, PA	0.9313
	Cumberland County, PA.	
	Dauphin County, PA.	
	Perry County, PA.	
25500	Harrisonburg, VA	0.9088
	Rockingham County, VA.	
	Harrisonburg City, VA.	
25540	Hartford-West Hartford-East Hartford, CT	1.1073
	Hartford County, CT.	
	Litchfield County, CT.	
	Middlesex County, CT.	
	Tolland County, CT.	
25620	Hattiesburg, MS	0.7601
	Forrest County, MS.	
	Lamar County, MS.	
	Perry County, MS.	
25860	Hickory-Lenoir-Morganton, NC	0.8921
	Alexander County, NC.	
	Burke County, NC.	
	Caldwell County, NC.	
	Catawba County, NC.	
25980	Hinesville-Fort Stewart, GA	[1] 0.7662
	Liberty County, GA.	
	Long County, GA.	
26100	Holland-Grand Haven, MI	0.9055
	Ottawa County, MI.	
26180	Honolulu, HI	1.1214
	Honolulu County, HI.	
26300	Hot Springs, AR	0.9005
	Garland County, AR.	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7894
	Lafourche Parish, LA.	
	Terrebonne Parish, LA.	
26420	Houston-Sugar Land-Baytown, TX	0.9996
	Austin County, TX.	
	Brazoria County, TX.	
	Chambers County, TX.	
	Fort Bend County, TX.	
	Galveston County, TX.	
	Harris County, TX.	
	Liberty County, TX.	
	Montgomery County, TX.	
	San Jacinto County, TX.	
	Waller County, TX.	
26580	Huntington-Ashland, WV-KY-OH	0.9477
	Boyd County, KY.	
	Greenup County, KY.	
	Lawrence County, OH.	
	Cabell County, WV.	
	Wayne County, WV.	
26620	Huntsville, AL	0.9146
	Limestone County, AL.	
	Madison County, AL.	
26820	Idaho Falls, ID	0.9420
	Bonneville County, ID.	
	Jefferson County, ID.	
26900	Indianapolis, IN	0.9920
	Boone County, IN.	
	Brown County, IN.	
	Hamilton County, IN.	
	Hancock County, IN.	
	Hendricks County, IN.	
	Johnson County, IN.	
	Marion County, IN.	
	Morgan County, IN.	
	Putnam County, IN.	
	Shelby County, IN.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
26980	Iowa City, IA	0.9747
	Johnson County, IA.	
	Washington County, IA.	
27060	Ithaca, NY	0.9793
	Tompkins County, NY.	
27100	Jackson, MI	0.9304
	Jackson County, MI.	
27140	Jackson, MS	0.8311
	Copiah County, MS.	
	Hinds County, MS.	
	Madison County, MS.	
	Rankin County, MS.	
	Simpson County, MS.	
27180	Jackson, TN	0.8964
	Chester County, TN.	
	Madison County, TN.	
27260	Jacksonville, FL	0.9290
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	
	Nassau County, FL.	
	St. Johns County, FL.	
27340	Jacksonville, NC	0.8236
	Onslow County, NC.	
27500	Janesville, WI	0.9538
	Rock County, WI.	
27620	Jefferson City, MO	0.8387
	Callaway County, MO.	
	Cole County, MO.	
	Moniteau County, MO.	
	Osage County, MO.	
27740	Johnson City, TN	0.7937
	Carter County, TN.	
	Unicoi County, TN.	
	Washington County, TN.	
27780	Johnstown, PA	0.8354
	Cambria County, PA.	
27860	Jonesboro, AR	0.7911
	Craighead County, AR.	
	Poinsett County, AR.	
27900	Joplin, MO	0.8582
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	1.0381
	Kalamazoo County, MI.	
	Van Buren County, MI.	
28100	Kankakee-Bradley, IL	1.0721
	Kankakee County, IL.	
28140	Kansas City, MO-KS	0.9476
	Franklin County, KS.	
	Johnson County, KS.	
	Leavenworth County, KS.	
	Linn County, KS.	
	Miami County, KS.	
	Wyandotte County, KS.	
	Bates County, MO.	
	Caldwell County, MO.	
	Cass County, MO.	
	Clay County, MO.	
	Clinton County, MO.	
	Jackson County, MO.	
	Lafayette County, MO.	
	Platte County, MO.	
	Ray County, MO.	
28420	Kennewick-Richland-Pasco, WA	1.0619
	Benton County, WA.	
	Franklin County, WA.	
28660	Killeen-Temple-Fort Hood, TX	0.8526
	Bell County, TX.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Coryell County, TX.	
	Lampasas County, TX.	
28700	Kingsport-Bristol-Bristol, TN-VA	0.8054
	Hawkins County, TN.	
	Sullivan County, TN.	
	Bristol City, VA.	
	Scott County, VA.	
	Washington County, VA.	
28740	Kingston, NY	0.9255
	Ulster County, NY.	
	28940 Knoxville, TN	0.8441
	Anderson County, TN.	
	Blount County, TN.	
	Knox County, TN.	
	Loudon County, TN.	
	Union County, TN.	
29020	Kokomo, IN	0.9508
	Howard County, IN.	
	Tipton County, IN.	
29100	La Crosse, WI-MN	0.9564
	Houston County, MN.	
	La Crosse County, WI.	
29140	Lafayette, IN	0.8736
	Benton County, IN.	
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8428
	Lafayette Parish, LA.	
	St. Martin Parish, LA.	
29340	Lake Charles, LA	0.7833
	Calcasieu Parish, LA.	
	Cameron Parish, LA.	
29404	Lake County-Kenosha County, IL-WI	1.0429
	Lake County, IL.	
	Kenosha County, WI.	
29460	Lakeland, FL	0.8912
	Polk County, FL.	
29540	Lancaster, PA	0.9694
	Lancaster County, PA.	
29620	Lansing-East Lansing, MI	0.9794
	Clinton County, MI.	
	Eaton County, MI.	
	Ingham County, MI.	
29700	Laredo, TX	0.8068
	Webb County, TX.	
	29740 Las Cruces, NM	0.8467
	Dona Ana County, NM.	
29820	Las Vegas-Paradise, NV	1.1437
	Clark County, NV.	
29940	Lawrence, KS	0.8537
	Douglas County, KS.	
30020	Lawton, OK	0.7872
	Comanche County, OK.	
30140	Lebanon, PA	0.8459
	Lebanon County, PA.	
30300	Lewiston, ID-WA	0.9886
	Nez Perce County, ID.	
	Asotin County, WA.	
30340	Lewiston-Auburn, ME	0.9331
	Androscoggin County, ME.	
30460	Lexington-Fayette, KY	0.9075
	Bourbon County, KY.	
	Clark County, KY.	
	Fayette County, KY.	
	Jessamine County, KY.	
	Scott County, KY.	
	Woodford County, KY.	
30620	Lima, OH	0.9225
	Allen County, OH.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
30700	Lincoln, NE	1.0214
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock, AR	0.8747
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT-ID	0.9164
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8730
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	0.9579
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Glendale, CA	1.1783
	Los Angeles County, CA.	
31140	Louisville, KY-IN	0.9251
	Clark County, IN.	
	Floyd County, IN.	
	Harrison County, IN.	
	Washington County, IN.	
	Bullitt County, KY.	
	Henry County, KY.	
	Jefferson County, KY.	
	Meade County, KY.	
	Nelson County, KY.	
	Oldham County, KY.	
	Shelby County, KY.	
	Spencer County, KY.	
	Trimble County, KY.	
31180	Lubbock, TX	0.8783
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.8691
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.9443
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera, CA	0.8713
	Madera County, CA.	
31540	Madison, WI	1.0659
	Columbia County, WI.	
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0354
	Hillsborough County, NH.	
	Merrimack County, NH.	
31900	Mansfield, OH	0.9891
	Richland County, OH.	
32420	Mayagüez, PR	0.4020
	Hormigueros Municipio, PR.	
	Mayagü≤ez Municipio, PR.	
32580	McAllen-Edinburg-Mission, TX	0.8934
	Hidalgo County, TX.	
32780	Medford, OR	1.0225
	Jackson County, OR.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
32820	Memphis, TN-MS-AR	0.9397
	Crittenden County, AR.	
	DeSoto County, MS.	
	Marshall County, MS.	
	Tate County, MS.	
	Tunica County, MS.	
	Fayette County, TN.	
	Shelby County, TN.	
	Tipton County, TN.	
32900	Merced, CA	1.1109
	Merced County, CA.	
33124	Miami-Miami Beach-Kendall, FL	0.9750
	Miami-Dade County, FL.	
33140	Michigan City-La Porte, IN	0.9399
	LaPorte County, IN.	
33260	Midland, TX	0.9514
	Midland County, TX.	
33340	Milwaukee-Waukesha-West Allis, WI	1.0146
	Milwaukee County, WI.	
	Ozaukee County, WI.	
	Washington County, WI.	
	Waukesha County, WI.	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1075
	Anoka County, MN.	
	Carver County, MN.	
	Chisago County, MN.	
	Dakota County, MN.	
	Hennepin County, MN.	
	Isanti County, MN.	
	Ramsey County, MN.	
	Scott County, MN.	
	Sherburne County, MN.	
	Washington County, MN.	
	Wright County, MN.	
	Pierce County, WI.	
	St. Croix County, WI.	
33540	Missoula, MT	0.9473
	Missoula County, MT.	
33660	Mobile, AL	0.7891
	Mobile County, AL.	
33700	Modesto, CA	1.1885
	Stanislaus County, CA.	
33740	Monroe, LA	0.8031
	Ouachita Parish, LA.	
	Union Parish, LA.	
33780	Monroe, MI	0.9468
	Monroe County, MI.	
33860	Montgomery, AL	0.8618
	Autauga County, AL.	
	Elmore County, AL.	
	Lowndes County, AL.	
	Montgomery County, AL.	
34060	Morgantown, WV	0.8420
	Monongalia County, WV.	
	Preston County, WV.	
34100	Morristown, TN	0.7961
	Grainger County, TN.	
	Hamblen County, TN.	
	Jefferson County, TN.	
34580	Mount Vernon-Anacortes, WA	1.0454
	Skagit County, WA.	
34620	Muncie, IN	0.8930
	Delaware County, IN.	
34740	Muskegon-Norton Shores, MI	0.9664
	Muskegon County, MI.	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8934
	Horry County, SC.	
34900	Napa, CA	1.2643
	Napa County, CA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
34940	Naples-Marco Island, FL	1.0139
	Collier County, FL.	
34980	Nashville-Davidson—Murfreesboro, TN	0.9790
	Cannon County, TN.	
	Cheatham County, TN.	
	Davidson County, TN.	
	Dickson County, TN.	
	Hickman County, TN.	
	Macon County, TN.	
	Robertson County, TN.	
	Rutherford County, TN.	
	Smith County, TN.	
	Sumner County, TN.	
	Trousdale County, TN.	
	Williamson County, TN.	
	Wilson County, TN.	
35004	Nassau-Suffolk, NY	1.2719
	Nassau County, NY.	
	Suffolk County, NY.	
35084	Newark-Union, NJ-PA	1.1883
	Essex County, NJ.	
	Hunterdon County, NJ.	
	Morris County, NJ.	
	Sussex County, NJ.	
	Union County, NJ.	
	Pike County, PA.	
35300	New Haven-Milford, CT	1.1887
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.8995
	Jefferson Parish, LA.	
	Orleans Parish, LA.	
	Plaquemines Parish, LA.	
	St. Bernard Parish, LA.	
	St. Charles Parish, LA.	
	St. John the Baptist Parish, LA.	
	St. Tammany Parish, LA.	
35644	New York-White Plains-Wayne, NY-NJ	1.3188
	Bergen County, NJ.	
	Hudson County, NJ.	
	Passaic County, NJ.	
	Bronx County, NY.	
	Kings County, NY.	
	New York County, NY.	
	Putnam County, NY.	
	Queens County, NY.	
	Richmond County, NY.	
	Rockland County, NY.	
	Westchester County, NY.	
35660	Niles-Benton Harbor, MI	0.8879
	Berrien County, MI.	
35980	Norwich-New London, CT	1.1345
	New London County, CT.	
36084	Oakland-Fremont-Hayward, CA	1.5346
	Alameda County, CA.	
	Contra Costa County, CA.	
36100	Ocala, FL	0.8925
	Marion County, FL.	
36140	Ocean City, NJ	1.1011
	Cape May County, NJ.	
36220	Odessa, TX	0.9884
	Ector County, TX.	
36260	Ogden-Clearfield, UT	0.9029
	Davis County, UT.	
	Morgan County, UT.	
	Weber County, UT.	
36420	Oklahoma City, OK	0.9031
	Canadian County, OK.	
	Cleveland County, OK.	
	Grady County, OK.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Lincoln County, OK.	
	Logan County, OK.	
	McClain County, OK.	
	Oklahoma County, OK.	
36500	Olympia, WA	1.0927
	Thurston County, WA.	
36540	Omaha-Council Bluffs, NE-IA	0.9560
	Harrison County, IA.	
	Mills County, IA.	
	Pottawattamie County, IA.	
	Cass County, NE.	
	Douglas County, NE.	
	Sarpy County, NE.	
	Saunders County, NE.	
	Washington County, NE.	
36740	Orlando-Kissimmee, FL	0.9464
	Lake County, FL.	
	Orange County, FL.	
	Osceola County, FL.	
	Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9183
	Winnebago County, WI.	
36980	Owensboro, KY	0.8780
	Daviess County, KY.	
	Hancock County, KY.	
	McLean County, KY.	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1622
	Ventura County, CA.	
37340	Palm Bay-Melbourne-Titusville, FL	0.9839
	Brevard County, FL.	
37460	Panama City-Lynn Haven, FL	0.8005
	Bay County, FL.	
37620	Parkersburg-Marietta-Vienna, WV-OH	0.8270
	Washington County, OH.	
	Pleasants County, WV.	
	Wirt County, WV.	
	Wood County, WV.	
37700	Pascagoula, MS	0.8156
	George County, MS.	
	Jackson County, MS.	
37860	Pensacola-Ferry Pass-Brent, FL	0.8096
	Escambia County, FL.	
	Santa Rosa County, FL.	
37900	Peoria, IL	0.8870
	Marshall County, IL.	
	Peoria County, IL.	
	Stark County, IL.	
	Tazewell County, IL.	
	Woodford County, IL.	
37964	Philadelphia, PA	1.1038
	Bucks County, PA.	
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	
	Philadelphia County, PA.	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0127
	Maricopa County, AZ.	
	Pinal County, AZ.	
38220	Pine Bluff, AR	0.8680
	Cleveland County, AR.	
	Jefferson County, AR.	
	Lincoln County, AR.	
38300	Pittsburgh, PA	0.8845
	Allegheny County, PA.	
	Armstrong County, PA.	
	Beaver County, PA.	
	Butler County, PA.	
	Fayette County, PA.	
	Washington County, PA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Westmoreland County, PA.	
38340	Pittsfield, MA	1.0181
	Berkshire County, MA.	
38540	Pocatello, ID	0.9351
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.4939
	Juana Díaz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	
38860	Portland-South Portland-Biddeford, ME	1.0382
	Cumberland County, ME.	
	Sagadahoc County, ME.	
	York County, ME.	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1266
	Clackamas County, OR.	
	Columbia County, OR.	
	Multnomah County, OR.	
	Washington County, OR.	
	Yamhill County, OR.	
	Clark County, WA.	
	Skamania County, WA.	
38940	Port St. Lucie-Fort Pierce, FL	1.0123
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0891
	Dutchess County, NY.	
	Orange County, NY.	
39140	Prescott, AZ	0.9869
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI-MA	1.0966
	Bristol County, MA.	
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9500
	Juab County, UT.	
	Utah County, UT.	
39380	Pueblo, CO	0.8623
	Pueblo County, CO.	
39460	Punta Gorda, FL	0.9255
	Charlotte County, FL.	
39540	Racine, WI	0.8997
	Racine County, WI.	
39580	Raleigh-Cary, NC	0.9691
	Franklin County, NC.	
	Johnston County, NC.	
	Wake County, NC.	
39660	Rapid City, SD	0.8987
	Meade County, SD.	
	Pennington County, SD.	
39740	Reading, PA	0.9686
	Berks County, PA.	
39820	Redding, CA	1.2203
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.0982
	Storey County, NV.	
	Washoe County, NV.	
40060	Richmond, VA	0.9328
	Amelia County, VA.	
	Caroline County, VA.	
	Charles City County, VA.	
	Chesterfield County, VA.	
	Cumberland County, VA.	
	Dinwiddie County, VA.	
	Goochland County, VA.	
	Hanover County, VA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Henrico County, VA.	
	King and Queen County, VA.	
	King William County, VA.	
	Louisa County, VA.	
	New Kent County, VA.	
	Powhatan County, VA.	
	Prince George County, VA.	
	Sussex County, VA.	
	Colonial Heights City, VA.	
	Hopewell City, VA.	
	Petersburg City, VA.	
	Richmond City, VA.	
40140	Riverside-San Bernardino-Ontario, CA	1.1027
	Riverside County, CA.	
	San Bernardino County, CA.	
40220	Roanoke, VA	0.8374
	Botetourt County, VA.	
	Craig County, VA.	
	Franklin County, VA.	
	Roanoke County, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
40340	Rochester, MN	1.1131
	Dodge County, MN.	
	Olmsted County, MN.	
	Wabasha County, MN.	
40380	Rochester, NY	0.9121
	Livingston County, NY.	
	Monroe County, NY.	
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9984
	Boone County, IL.	
	Winnebago County, IL.	
40484	Rockingham County-Strafford County, NH	1.0374
	Rockingham County, NH.	
	Strafford County, NH.	
40580	Rocky Mount, NC	0.8915
	Edgecombe County, NC.	
	Nash County, NC.	
40660	Rome, GA	0.9414
	Floyd County, GA.	
40900	Sacramento—Arden-Arcade—Roseville, CA	1.2969
	El Dorado County, CA.	
	Placer County, CA.	
	Sacramento County, CA.	
	Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.9088
	Saginaw County, MI.	
41060	St. Cloud, MN	0.9965
	Benton County, MN.	
	Stearns County, MN.	
41100	St. George, UT	0.9392
	Washington County, UT.	
41140	St. Joseph, MO-KS	0.9519
	Doniphan County, KS.	
	Andrew County, MO.	
	Buchanan County, MO.	
	DeKalb County, MO.	
41180	St. Louis, MO-IL	0.8954
	Bond County, IL.	
	Calhoun County, IL.	
	Clinton County, IL.	
	Jersey County, IL.	
	Macoupin County, IL.	
	Madison County, IL.	
	Monroe County, IL.	
	St. Clair County, IL.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Crawford County, MO.	
	Franklin County, MO.	
	Jefferson County, MO.	
	Lincoln County, MO.	
	St. Charles County, MO.	
	St. Louis County, MO.	
	Warren County, MO.	
	Washington County, MO.	
	St. Louis City, MO.	
41420	Salem, OR	1.0442
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.4128
	Monterey County, CA.	
41540	Salisbury, MD	0.9064
	Somerset County, MD.	
	Wicomico County, MD.	
41620	Salt Lake City, UT	0.9421
	Salt Lake County, UT.	
	Summit County, UT.	
	Tooele County, UT.	
41660	San Angelo, TX	0.8271
	Irion County, TX.	
	Tom Green County, TX.	
41700	San Antonio, TX	0.8980
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	
	Guadalupe County, TX.	
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1413
	San Diego County, CA.	
41780	Sandusky, OH	0.9019
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.4994
	Marin County, CA.	
	San Francisco County, CA.	
	San Mateo County, CA.	
41900	San Germán-Cabo Rojo, PR	0.4650
	Cabo Rojo Municipio, PR.	
	Lajas Municipio, PR.	
	Sabana Grande Municipio, PR.	
	San Germán Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5099
	San Benito County, CA.	
	Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4621
	Aguas Buenas Municipio, PR.	
	Aibonito Municipio, PR.	
	Arecibo Municipio, PR.	
	Barceloneta Municipio, PR.	
	Barranquitas Municipio, PR.	
	Bayamón Municipio, PR.	
	Caguas Municipio, PR.	
	Camuy Municipio, PR.	
	Canóvanas Municipio, PR.	
	Carolina Municipio, PR.	
	Cataño Municipio, PR.	
	Cayey Municipio, PR.	
	Ciales Municipio, PR.	
	Cidra Municipio, PR.	
	Comerío Municipio, PR.	
	Corozal Municipio, PR.	
	Dorado Municipio, PR.	
	Florida Municipio, PR.	
	Guaynabo Municipio, PR.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Gurabo Municipio, PR. Hatillo Municipio, PR. Humacao Municipio, PR. Juncos Municipio, PR. Las Piedras Municipio, PR. Loíza Municipio, PR. Manatí Municipio, PR. Maunabo Municipio, PR. Morovis Municipio, PR. Naguabo Municipio, PR. Naranjito Municipio, PR. Orocovis Municipio, PR. Quebradillas Municipio, PR. Río Grande Municipio, PR. San Juan Municipio, PR. San Lorenzo Municipio, PR. Toa Alta Municipio, PR. Toa Baja Municipio, PR. Trujillo Alto Municipio, PR. Vega Alta Municipio, PR. Vega Baja Municipio, PR. Yabucoa Municipio, PR.	
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA.	1.1349
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA.	1.1559
42060	Santa Barbara-Santa Maria, CA Santa Barbara County, CA.	1.1694
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA.	1.5166
42140	Santa Fe, NM Santa Fe County, NM.	1.0920
42220	Santa Rosa-Petaluma, CA Sonoma County, CA.	1.3493
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL. Sarasota County, FL.	0.9639
42340	Savannah, GA Bryan County, GA. Chatham County, GA. Effingham County, GA.	0.9461
42540	Scranton—Wilkes-Barre, PA Lackawanna County, PA. Luzerne County, PA. Wyoming County, PA.	0.8540
42644	Seattle-Bellevue-Everett, WA King County, WA. Snohomish County, WA.	1.1577
43100	Sheboygan, WI Sheboygan County, WI.	0.8911
43300	Sherman-Denison, TX Grayson County, TX.	0.9507
43340	Shreveport-Bossier City, LA Bossier Parish, LA. Caddo Parish, LA. De Soto Parish, LA.	0.8760
43580	Sioux City, IA-NE-SD Woodbury County, IA. Dakota County, NE. Dixon County, NE. Union County, SD.	0.9381
43620	Sioux Falls, SD Lincoln County, SD. McCook County, SD. Minnehaha County, SD. Turner County, SD.	0.9635
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN. Cass County, MI.	0.9788

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
43900	Spartanburg, SC	0.9172
	Spartanburg County, SC.	
44060	Spokane, WA	1.0905
	Spokane County, WA.	
44100	Springfield, IL	0.8792
	Menard County, IL.	
	Sangamon County, IL.	
44140	Springfield, MA	1.0248
	Franklin County, MA.	
	Hampden County, MA.	
	Hampshire County, MA.	
44180	Springfield, MO	0.8237
	Christian County, MO.	
	Dallas County, MO.	
	Greene County, MO.	
	Polk County, MO.	
	Webster County, MO.	
44220	Springfield, OH	0.8396
	Clark County, OH.	
44300	State College, PA	0.8356
	Centre County, PA.	
44700	Stockton, CA	1.1307
	San Joaquin County, CA.	
44940	Sumter, SC	0.8377
	Sumter County, SC.	
45060	Syracuse, NY	0.9574
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	
45104	Tacoma, WA	1.0742
	Pierce County, WA.	
45220	Tallahassee, FL	0.8688
	Gadsden County, FL.	
	Jefferson County, FL.	
	Leon County, FL.	
	Wakulla County, FL.	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9233
	Hernando County, FL.	
	Hillsborough County, FL.	
	Pasco County, FL.	
	Pinellas County, FL.	
45460	Terre Haute, IN	0.8304
	Clay County, IN.	
	Sullivan County, IN.	
	Vermillion County, IN.	
	Vigo County, IN.	
45500	Texarkana, TX-Texarkana, AR	0.8283
	Miller County, AR.	
	Bowie County, TX.	
45780	Toledo, OH	0.9574
	Fulton County, OH.	
	Lucas County, OH.	
	Ottawa County, OH.	
	Wood County, OH.	
45820	Topeka, KS	0.8920
	Jackson County, KS.	
	Jefferson County, KS.	
	Osage County, KS.	
	Shawnee County, KS.	
	Wabaunsee County, KS.	
45940	Trenton-Ewing, NJ	1.0834
	Mercer County, NJ.	
46060	Tucson, AZ	0.9007
	Pima County, AZ.	
46140	Tulsa, OK	0.8543
	Creek County, OK.	
	Okmulgee County, OK.	
	Osage County, OK.	
	Pawnee County, OK.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Rogers County, OK.	
	Tulsa County, OK.	
	Wagoner County, OK.	
46220	Tuscaloosa, AL	0.8645
	Greene County, AL.	
	Hale County, AL.	
	Tuscaloosa County, AL.	
46340	Tyler, TX	0.9168
	Smith County, TX.	
46540	Utica-Rome, NY	0.8358
	Herkimer County, NY.	
	Oneida County, NY.	
46660	Valdosta, GA	0.8866
	Brooks County, GA.	
	Echols County, GA.	
	Lanier County, GA.	
	Lowndes County, GA.	
46700	Vallejo-Fairfield, CA	1.4936
	Solano County, CA.	
46940	Vero Beach, FL	0.9434
	Indian River County, FL.	
47020	Victoria, TX	0.8160
	Calhoun County, TX.	
	Goliad County, TX.	
	Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	0.9827
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8799
	Currituck County, NC.	
	Gloucester County, VA.	
	Isle of Wight County, VA.	
	James City County, VA.	
	Mathews County, VA.	
	Surry County, VA.	
	York County, VA.	
	Chesapeake City, VA.	
	Hampton City, VA.	
	Newport News City, VA.	
	Norfolk City, VA.	
	Poquoson City, VA.	
	Portsmouth City, VA.	
	Suffolk City, VA.	
	Virginia Beach City, VA.	
	Williamsburg City, VA.	
47300	Visalia-Porterville, CA	1.0123
	Tulare County, CA.	
47380	Waco, TX	0.8518
	McLennan County, TX.	
47580	Warner Robins, GA	0.8645
	Houston County, GA.	
47644	Warren-Farmington Hills-Troy, MI	0.9871
	Lapeer County, MI.	
	Livingston County, MI.	
	Macomb County, MI.	
	Oakland County, MI.	
	St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.0926
	District of Columbia, DC.	
	Calvert County, MD.	
	Charles County, MD.	
	Prince George's County, MD.	
	Arlington County, VA.	
	Clarke County, VA.	
	Fairfax County, VA.	
	Fauquier County, VA.	
	Loudoun County, VA.	
	Prince William County, VA.	
	Spotsylvania County, VA.	
	Stafford County, VA.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Warren County, VA.	
	Alexandria City, VA.	
	Fairfax City, VA.	
	Falls Church City, VA.	
	Fredericksburg City, VA.	
	Manassas City, VA.	
	Manassas Park City, VA.	
	Jefferson County, WV.	
47940	Waterloo-Cedar Falls, IA	0.8557
	Black Hawk County, IA.	
	Bremer County, IA.	
	Grundy County, IA.	
48140	Wausau, WI	0.9590
	Marathon County, WI.	
48260	Weirton-Steubenville, WV-OH	0.7819
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
48300	Wenatchee, WA	1.0070
	Chelan County, WA.	
	Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	1.0067
	Palm Beach County, FL.	
48540	Wheeling, WV-OH	0.7161
	Belmont County, OH.	
	Marshall County, WV.	
	Ohio County, WV.	
48620	Wichita, KS	0.9153
	Butler County, KS.	
	Harvey County, KS.	
	Sedgwick County, KS.	
	Sumner County, KS.	
48660	Wichita Falls, TX	0.8285
	Archer County, TX.	
	Clay County, TX.	
	Wichita County, TX.	
48700	Williamsport, PA	0.8364
	Lycoming County, PA.	
48864	Wilmington, DE-MD-NJ	1.0471
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9582
	Brunswick County, NC.	
	New Hanover County, NC.	
	Pender County, NC.	
49020	Winchester, VA-WV	1.0214
	Frederick County, VA.	
	Winchester City, VA.	
	Hampshire County, WV.	
49180	Winston-Salem, NC	0.8944
	Davie County, NC.	
	Forsyth County, NC.	
	Stokes County, NC.	
	Yadkin County, NC.	
49340	Worcester, MA	1.1028
	Worcester County, MA.	
49420	Yakima, WA	1.0155
	Yakima County, WA.	
49500	Yauco, PR	0.4408
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	
	Peñuelas Municipio, PR.	
	Yauco Municipio, PR.	
49620	York-Hanover, PA	0.9347
	York County, PA.	
49660	Youngstown-Warren-Boardman, OH-PA	0.8603
	Mahoning County, OH.	
	Trumbull County, OH.	

TABLE 1.—PROPOSED INPATIENT REHABILITATION FACILITY URBAN AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007—Continued

CBSA code	Urban area (constituent counties)	Full wage index
	Mercer County, PA.	
49700	Yuba City, CA	1.0921
	Sutter County, CA.	
	Yuba County, CA.	
49740	Yuma, AZ	0.9126
	Yuma County, AZ.	

[1] At this time, there are no hospitals located in this CBSA-based urban area on which to base a wage index. Therefore, the wage index value is based on the methodology described in the August 15, 2005 final rule (70 FR 47880). The wage index value for this area is the average wage index for all urban areas within the state.

TABLE 2.—PROPOSED INPATIENT REHABILITATION FACILITY RURAL AREA WAGE INDEX FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2006 THROUGH SEPTEMBER 30, 2007

CBSA code	Nonurban area	Full wage Index
01	Alabama	0.7446
02	Alaska	1.1977
03	Arizona	0.8768
04	Arkansas	0.7466
05	California	1.1054
06	Colorado	0.9380
07	Connecticut	1.1730
08	Delaware	0.9579
10	Florida	0.8568
11	Georgia	0.7662
12	Hawaii	1.0551
13	Idaho	0.8037
14	Illinois	0.8271
15	Indiana	0.8624
16	Iowa	0.8509
17	Kansas	0.8035
18	Kentucky	0.7766
19	Louisiana	0.7411
20	Maine	0.8843
21	Maryland	0.9353
22	Massachusetts [2]	1.0216
23	Michigan	0.8895
24	Minnesota	0.9132
25	Mississippi	0.7674
26	Missouri	0.7900
27	Montana	0.8762
28	Nebraska	0.8657
29	Nevada	0.9065
30	New Hampshire	1.0817
31	New Jersey [1]	.....
32	New Mexico	0.8635
33	New York	0.8154
34	North Carolina	0.8540
35	North Dakota	0.7261
36	Ohio	0.8826
37	Oklahoma	0.7581
38	Oregon	0.9826
39	Pennsylvania	0.8291
40	Puerto Rico [2]	0.4047
41	Rhode Island [1]	.....
42	South Carolina	0.8638
43	South Dakota	0.8560
44	Tennessee	0.7895
45	Texas	0.8003
46	Utah	0.8118
47	Vermont	0.9830
48	Virgin Islands	0.7615
49	Virginia	0.8013
50	Washington	1.0510
51	West Virginia	0.7717
52	Wisconsin	0.9509
53	Wyoming	0.9257
65	Guam	0.9611

[1] All counties within the State are classified as urban.

[2] Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2007. As discussed in the FY 2006 IRF PPS Final Rule (70 FR 47880), we use the previous year's wage index value.

[FR Doc. 06–4409 Filed 5–8–06; 4:00 pm]

BILLING CODE 4120–01–P

Federal Register

Monday,
May 15, 2006

Part IV

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 555, 567, 568, and 571
Vehicles Built in Two or More Stages; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 555, 567, 568, and 571

Docket No. NHTSA–2006–24664

RIN 2127–AJ91

Vehicles Built in Two or More Stages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of the February 14, 2005 final rule under 49 U.S.C. Chapter 301 and its implementing regulations pertaining to vehicles built in two or more stages and, to a lesser degree, to altered vehicles. This document clarifies the recognition in that rule that under NHTSA's regulations, multistage vehicles may be treated as a separate type of vehicle, including, as appropriate, vehicles built on chassis-cab incomplete vehicles. This document also amends a provision of the temporary exemption procedures to allow, as appropriate, for exemption of multistage vehicles from standards based on dynamic testing. This document denies the remainder of the petition for reconsideration, which involved certification of multistage vehicles and responsibility for recalls of multistage vehicles.

DATES: The amendments made in this final rule are effective on September 1, 2006. This final rule amends the final rule published on February 14, 2005 (70 FR 7414), which is also effective on September 1, 2006.

Petitions: Petitions for reconsideration must be received by June 26, 2006 and should refer to this docket and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The agency will not entertain petitions for reconsideration on 49 CFR Parts 567 Certification, 568 Vehicles Manufactured in Two or More Stages—All Incomplete, Intermediate and Final Stage Manufacturers of Vehicles Manufactured in Two or More Stages, or 573 Defect and Noncompliance Responsibility and Reports. Issues under these regulations have been addressed in rulemaking, including negotiated rulemaking, and in this document. Any further consideration of these provisions would be repetitive.

FOR FURTHER INFORMATION CONTACT:

For nonlegal issues: Harry Thompson, Office of Vehicle Safety Compliance, NHTSA (telephone 202–366–5289).

For legal issues: For issues related to multistage vehicles as a type of vehicle and temporary exemptions, George Feygin, Office of the Chief Counsel, NHTSA (telephone 202–366–2992); For other legal issues, Katherine Gehringer, Office of the Chief Counsel, NHTSA (telephone 202–366–5263).

You can reach the above at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Background

A. Description of Issues Unique to Multistage and Altered Vehicles

The petition at issue requests NHTSA to reconsider certain amendments adopted as part of a final rule published on February 14, 2005 (at 70 FR 7414) to address certification issues related to vehicles built in two or more stages, and to a lesser degree, to altered vehicles. Concepts and terminology relating to the certification of these vehicles are described below.

1. Multistage Vehicles

In the typical situation, a vehicle built in two or more stages is one in which an incomplete vehicle, such as a chassis-cab or cut-away chassis built by one manufacturer, is completed by another manufacturer who adds work-performing or cargo-carrying components to the vehicle. For example, the incomplete vehicle may have a cab, but nothing built on the frame behind the cab. As completed, it may be a dry freight van (box truck), dump truck, tow truck, or plumber's truck. Like all

vehicles that are manufactured for sale in the United States, a multistage vehicle must be certified as complying with all applicable Federal motor vehicle safety standards (FMVSS) before the vehicle is introduced into interstate commerce.[1] Certification is provided in the form of a label permanently affixed to the vehicle in a prescribed location, which, among other things, identifies the vehicle's manufacturer and date of manufacture, and states that the vehicle conforms to all applicable FMVSS in effect on that date.

2. Multistage Vehicle Manufacturers

Manufacturers involved in the production of multistage vehicles can include, in addition to the incomplete vehicle manufacturer, one or more intermediate manufacturers, who perform manufacturing operations on the incomplete vehicle after it has left the incomplete vehicle manufacturer's hands, and a final-stage manufacturer who completes the vehicle so that it is capable of performing its intended function.

3. Pass-Through Certification

In some circumstances, a manufacturer at an earlier stage in the chain of production for a multistage vehicle can certify that the vehicle will comply with one or more FMVSS when completed, provided specified conditions are met. This allows what is commonly referred to as ''pass-through certification.'' As long as a subsequent manufacturer meets the conditions of the prior certification, that manufacturer may rely on this certification and pass it through when certifying the completed vehicle.

4. Assumption of Certification and Recall Responsibility

Although the final-stage manufacturer normally certifies the completed vehicle's compliance with all applicable FMVSS, this responsibility can be assumed by any other manufacturer in the production chain. To take on this responsibility, the other manufacturer must ensure that it is identified as the vehicle manufacturer on the certification label that is permanently affixed to the vehicle. The identified manufacturer also has legal responsibility to provide NHTSA and vehicle owners with notification of any defect related to motor vehicle safety or noncompliance with an FMVSS that is found to exist in the vehicle, and to remedy any such defect or noncompliance without charge to the vehicle's owner.

[1] 15 U.S.C. 30115.

5. Incomplete Vehicle Document

The agency's regulations governing vehicles manufactured in two or more stages at 49 CFR part 568 require incomplete vehicle manufacturers to provide with each incomplete vehicle an incomplete vehicle document (IVD). This document details, with varying degrees of specificity, the types of future manufacturing contemplated by the incomplete vehicle manufacturer and must provide, for each applicable safety standard, one of three statements that a subsequent manufacturer can rely on when certifying compliance of the vehicle, as finally manufactured, to some or all of all applicable FMVSS.

First, the IVD may state, with respect to a particular safety standard, that the vehicle, when completed, will conform to the standard if no alterations are made in identified components of the incomplete vehicle. This representation, which is referred to as a ''Type 1 statement,'' is most often made with respect to chassis-cabs, since a significant portion of the occupant compartment in incomplete vehicles of that type is already complete.

Second, the IVD may provide a statement of specific conditions of final manufacture under which the completed vehicle will conform to a particular standard or set of standards. This statement, which is referred to as a ''Type 2 statement,'' is applicable in those instances in which the incomplete vehicle manufacturer has provided all or a portion of the equipment needed to comply with the standard, but subsequent manufacturing might be expected to change the vehicle such that it may not comply with the standard once finally manufactured. For example, the incomplete vehicle could be equipped with a brake system that would, in many instances, enable the vehicle to comply with the applicable brake standard once the vehicle was complete, but that would not enable it to comply if the completed vehicle's weight or center of gravity height were significantly altered from those specified in the IVD.

Third, the IVD may identify those standards for which no representation of conformity is made because conformity with the standard is not substantially affected by the design of the incomplete vehicle. This is referred to as a ''Type 3 statement.'' A statement of this kind could be made, for example, by a manufacturer of a stripped chassis who may be unable to make any representations about conformity to any crashworthiness standards if the incomplete vehicle does not contain an occupant compartment. When it issued the original set of regulations regarding certification of vehicles built in two or more stages, the agency indicated that it believed final-stage manufacturers would be able to rely on the representations made in the IVDs when certifying the completed vehicle's compliance with all applicable FMVSS.

6. Altered Vehicles

An altered vehicle is one that is completed and certified in accordance with the agency's regulations and then altered, other than by the addition, substitution, or removal of readily attachable components, such as mirrors or tire and rim assemblies, or by minor finishing operations such as painting, before the first retail sale of the vehicle, in such a manner as may affect the vehicle's compliance with one or more FMVSS or the validity of the vehicle's stated weight ratings or vehicle type classification. The person who performs such operations on a completed vehicle is referred to as a vehicle ''alterer.'' An alterer must certify that the vehicle remains in compliance with all applicable FMVSS affected by the alteration.

B. The Underlying Rulemaking

Issues involving vehicles built in two or more stages have long been matters of contention within the affected industry and before the agency and the courts. Historically, NHTSA's regulations for certification of multistage vehicles contained provisions for certification statements by chassis-cab manufacturers.[2] In 1990, the United States Court of Appeals for the Sixth Circuit ruled in *National Truck and Equipment Ass'n* v. *NHTSA*, 919 F.2d 1148 (6th Cir. 1990), that the requirements of a particular FMVSS were impracticable for final-stage manufacturers using vehicles other than chassis-cabs for which the incomplete vehicle manufacturer was not required to provide ''pass-through'' certification. Thereafter, the agency published a notice of proposed rulemaking (NPRM) that proposed extending certification requirements for chassis-cab manufacturers to manufacturers of all incomplete vehicles.[3] This would have permitted pass-through certification for all types of multistage vehicles.

The proposal was highly controversial. On December 12, 1995, the agency held a public meeting to solicit information from affected manufacturers and members of the public on the certification of vehicles built in two or more stages and

[2] 49 CFR 567.5 (1977 and 1978).

[3] 56 FR 61392 (December 3, 1991).

suggestions for the revision of agency regulations governing those activities. On May 20, 1999, NHTSA published a notice of intent to convene a negotiated rulemaking committee on the subject.[4] In late 1999 and early 2000, NHTSA held public meetings. A chartered committee that included representatives from incomplete vehicle manufacturers, component manufacturers, final-stage manufacturers and alterers, vehicle end-users, and NHTSA held several meetings between March 2000 and February 2002 at which issues involving the certification and recall of vehicles built in two or more stages were discussed. The committee failed to reach a consensus on several key issues involving certification and recall responsibilities.

On June 28, 2004, the agency published a supplemental notice of proposed rulemaking (SNPRM) addressing five different parts of the agency's regulations related to vehicles built in two or more stages and, to a lesser degree, to altered vehicles.[5]

In the SNPRM, the agency addressed the issue of whether it possesses the legal authority to exclude multi-stage vehicles as a group from a standard.[6] The agency tentatively concluded that it could do so in regulations establishing FMVSS.

The proposed amendments included adding a new subpart to 49 CFR part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards that would allow final-stage manufacturers and alterers to obtain temporary exemptions from those portions of safety standards for which the agency verifies compliance through dynamic crash testing. The agency also proposed to streamline the temporary exemption process by allowing an association or other party representing the interests of multiple manufacturers to bundle petitions for a single vehicle design, precluding the need for individual manufacturers to explain the potential safety impacts of the requested exemption and their good faith attempts to comply with the standard that is the subject of the exemption request. The agency also proposed amendments that would commit it to processing these temporary exemption requests in an expedited fashion.

The agency also proposed in the SNPRM to amend 49 CFR part 567, Certification, to extend to all incomplete vehicles, not just to chassis-cabs, requirements for the incomplete vehicle manufacturer to provide pass-through certification and to furnish information labels or incomplete vehicle documents (IVDs) with the vehicle. The agency also proposed to amend 49 CFR part 568, Vehicles Manufactured in Two or More Stages, to reflect that an incomplete vehicle manufacturer may incorporate by reference body builder or other design and engineering guidance into the IVD. The agency also proposed to amend 49 CFR 571.8, Effective Date, by providing intermediate and final-stage manufacturers and alterers with an additional year or more of lead time to achieve conformity with certain amendments to the FMVSS. NHTSA also published, without the agency's endorsement, amendments to 49 CFR part 573, Defect and Noncompliance Responsibility and Reports prepared by some parties in the negotiated rulemaking process. These would permit the agency to assign recall responsibility to the party it believes is in the best position to conduct a notification and remedy campaign in circumstances where accountability for the underlying defect or noncompliance is in dispute among the various manufacturers in the production chain. The agency solicited public comment on the amendments proposed in the SNPRM.

After considering comments on the SNPRM, NHTSA published a final rule, as previously noted, on February 14, 2005.[7] The final rule contained considerable relief for final stage manufacturers. First, as a legal matter, the agency concluded that it possesses the legal authority to exclude multistage vehicles as a group from a standard.[8] This means that NHTSA could promulgate FMVSS that applied to some types of vehicles such as trucks but that would not apply to multistage vehicles. NHTSA concluded that it is appropriate to consider incomplete vehicles, other than chassis-cabs, as a vehicle type subject to consideration in the establishment of a regulation.[9]

Second, the agency amended its regulations to establish a process under which intermediate and final-stage manufacturers and alterers can obtain temporary exemptions from dynamic performance requirements of certain standards, and accorded those entities an additional year of lead time to achieve compliance with new safety requirements, unless the agency determines that either a longer or a shorter period is appropriate. As stated in the final rule, under the new provisions, qualified manufacturers may be granted temporary exemptions from FMVSS requirements that are based on dynamic crash testing.

The final rule revised 49 CFR Parts 567 Certification and 568 Vehicles Manufactured in Two or More Stages—All Incomplete, Intermediate and Final Stage Manufacturers of Vehicles Manufactured in Two or More Stages. The final rule adopted much of the SNPRM as it pertained to the certification of vehicles manufactured in two or more stages. Unlike the earlier regulation, the certification provision for manufacturers of multistage vehicles is no longer largely limited to chassis-cabs. Under the February 2005 rule, the final-stage manufacturer certifies that the vehicle meets applicable FMVSS, but can rely on the prior manufacturers' IVD. The incomplete vehicle manufacturer and intermediate manufacturers have certification responsibilities for the vehicle as further manufactured or completed by a final-stage manufacturer to the extent that the vehicle is completed in accordance with the IVD. The incomplete vehicle manufacturer and intermediate manufacturers also have certification responsibilities for equipment subject to equipment standards that they supply and for other items and associated standards in the contract between them and the next stage manufacturer(s). The fact that some components were provided by an incomplete vehicle manufacturer, absent more, does not shift responsibility for certification to those manufacturers with respect to completed vehicle performance standards. The agency did not adopt in the final rule the recommendation of certain commenters that it require incomplete vehicle manufacturers to provide subsequent stage manufacturers with ''reasonable compliance envelopes'' in the IVD.

The final rule did not amend the agency's rules under which the final-stage manufacturer has the ultimate responsibility for conducting a notification and remedy (recall) campaign when a safety-related defect or noncompliance with a safety standard is found to exist in a vehicle built in two or more stages. The agency noted that under the existing rule, recalls are not delayed on account of disputes between manufacturers. We observed that leaving ultimate recall responsibility with the final-stage manufacturer avoids delays in removing unsafe vehicles from the road. The agency further decided not to assume a role of determining whether the incomplete vehicle manufacturer or final stage manufacturer should conduct the recall where that issue is in dispute.

[4] 64 FR 27499.

[5] 69 FR 36038.

[6] 69 FR at.

[7] 70 FR 7414.

[8] 70 FR at 7420 *et seq.*

[9] 70 FR at 7421.

In the comments there was considerable opposition to the proposal for the agency to assign recall responsibility. The agency also rejected, as moot, a companion proposal to make the decision assigning recall responsibility nonreviewable.

II. NTEA's Petition for Reconsideration and the Agency's Response

On March 31, 2005, the National Truck Equipment Association (NTEA) petitioned NHTSA for reconsideration of the final rule. In the petition, NTEA noted that it participated as a committee member in the negotiated rulemaking that preceded the issuance of the final rule. NTEA observed that in the negotiated rulemaking, it argued that dynamic test standards (which it identified as including FMVSS Nos. 105 Hydraulic and Electric Brake Systems, 121 Air Brake Systems, 201 Occupant Protection in Interior Impact, 203 Impact Protection for the Driver from the Steering Control System, 204 Steering Control Rearward Displacement, 206 Door Locks and Door Retention Components, 208 Occupant Crash Protection, 210 Seat Belt Assembly Anchorages, 212 Windshield Mounting, 214 Side Impact Protection, 219 Windshield Zone Intrusion, 223 Rear Impact Guards, 301 Fuel System Integrity, 303 Fuel System Integrity of Compressed Natural Gas Vehicles, and 305 Electric-Powered Vehicles; Electrolyte Spillage and Electrical Shock Protection) are impractical for intermediate manufacturers, final-stage manufacturers, and alterers who complete multistage vehicles because the tests that are incorporated into those standards cannot be rationally performed by small businesses that build custom-manufactured vehicles in production runs as small as one unit. NTEA contended that because small businesses that complete multistage vehicles cannot afford to conduct the tests that are the core of the dynamic test standards, those standards remain impractical as applied to intermediate and final-stage manufacturers and alterers. Citing the agency's recognition in the preamble of the final rule that multistage vehicles can be treated as a distinct vehicle type for the purpose of establishing applicability of the FMVSS, NTEA contended that the agency was no longer subject to any legal constraints in exempting such vehicles from compliance with the dynamic test standards.

Aside from these general observations, the NTEA petition focused on specific issues concerning the adoption of standards to which multistage vehicles are subject, temporary exemptions, and certification and recall responsibilities of multistage vehicle manufacturers. The positions expressed by NTEA with respect to each of those issues, and the agency's response, are set forth below.

A. Multistage Vehicles Built on Chassis-Cabs are Treated the Same as Those Built on Other Types of Incomplete Vehicles

NTEA raised several arguments relating to the treatment of multistage vehicles built on chassis-cabs under NHTSA's regulations, including the new temporary exemption provisions that were added to 49 CFR part 555 Temporary Exemptions from Motor Vehicle Safety and Bumper Standards as subpart B Vehicles Built in Two or More Stages and Altered Vehicles. NTEA first argues that the procedures in subpart B should be available to all manufacturers of vehicles built in two or more stages, and should not exclude manufacturers of vehicles built on chassis-cabs.

The relevant regulatory text reads as follows:

''§ 555.11 Application. This subpart applies to alterers and manufacturers of motor vehicles built in two or more stages to which one or more standards are applicable. * * * Nothing in this subpart prohibits an alterer, an intermediate manufacturer, a manufacturer of incomplete vehicles other than chassis-cabs, or a final-stage manufacturer from applying for a temporary exemption under subpart A of this part.''

''§ 555.12 Petition for exemption. An alterer, intermediate or final-stage manufacturer, or industry trade association representing a group of alterers, intermediate and/or final-stage manufacturers may seek, as to any vehicle configuration built in two or more stages, a temporary exemption or a renewal of a temporary exemption from any performance requirement for which a Federal motor vehicle safety standard specifies the use of a dynamic crash test procedure to determine compliance * * *''

NTEA also took issue with the statement in the final rule that NHTSA had reconsidered its previous position with respect to the agency's authority to either exclude vehicles manufactured in two or more stages from certain FMVSS or to subject them to different standards. There we stated that it is appropriate to consider multistage vehicles built on incomplete vehicles ''other than those incorporating chassis-cabs,'' as a vehicle type subject to consideration in the establishment of regulations.[10] We explained that the agency could take multistage vehicles (other than those built on chassis-cabs) as a group and exclude them from FMVSS that are impracticable as they apply to these vehicles, or could subject these vehicles to different requirements. In the final rule, we expressed anticipation that final-stage manufacturers using chassis-cabs to produce multistage vehicles would be in position to take advantage of ''pass-through certification,'' and therefore concluded that these vehicles did not merit special consideration.

We now note that the regulatory text in sections 555.11 and 555.12, as quoted above, does not expressly preclude manufacturers of vehicles built on chassis-cabs from petitioning under the new procedures in subpart B. However, the last sentence of § 555.11 may be read to imply that a manufacturer of a chassis cab cannot petition for a temporary exemption under the pre-existing temporary exemption procedures in subpart A.

NTEA position: In its petition, NTEA argued that NHTSA should not distinguish between multistage vehicles built on chassis-cabs and other types of vehicles built in two or more stages. NTEA was especially concerned that the new temporary exemption procedures would not apply to multistage vehicles built on chassis-cabs. NTEA argued that the certification obstacles could be as significant for vehicles built on chassis-cabs as they are for other types of vehicles manufactured in two or more stages. NTEA noted that in the preamble to the final rule, NHTSA recognized that certain multistage vehicles—those other than chassis-cabs—are a vehicle type subject to consideration in the establishment of agency regulations (*i.e.*, that, in the future, the agency could subject multistage vehicles to different standards). NTEA agreed with NHTSA's resolution as far as it goes, but raised issues concerning certain language in the preamble that distinguished multistage vehicles built on chassis-cabs from those built on incomplete vehicles other than chassis-cabs. The specific language that is the subject of NTEA's concern is found in the agency's discussion of its authority to exclude multistage vehicles from the FMVSS. There the agency stated:

> We are also concerned that we had overlooked the existence of relevant physical attributes of multistage vehicles. Many of the multistage vehicles in question have distinct physical features related to their end use. More important, all of them incorporate incomplete vehicles other than chassis-cabs. Especially in the context of the difficulties of serving niche markets, the physical limitations of the incomplete vehicles other than chassis-cabs can adversely affect the ability of multistage manufacturer[s] to design safety performance into their completed vehicles.

(70 FR 7421).

[10] *See* 70 FR 7421.

According to NTEA, the distinction drawn in this paragraph between multistage vehicles built on chassis-cabs, and those built on other types of incomplete vehicles is an artificial one. NTEA observed that many types of completed vehicles can be built on more than one type of chassis. NTEA contended that vehicles built on chassis-cabs face certification obstacles that could be as significant as those for vehicles built on non-chassis cabs.

Agency Response

a. Distinction between vehicles built on chassis-cabs and those built on other types of incomplete vehicles.

In discussing our authority relating to multistage vehicles in the February 2005 final rule,[11] the agency drew a distinction between vehicles built on chassis-cabs and other vehicles manufactured in two or more stages with respect to consideration of future standards or revisions to existing FMVSS and exemptions from those standards. We stated that we would consider multistage vehicles other than those built on chassis-cabs in setting new standards and in revising existing ones. On further consideration, we want to make clear that the distinction between different types of multistage vehicles is not one of legal authority. That is, for the purposes of our authority to prescribe regulations affecting vehicles manufactured in two or more stages, there is no legal distinction between vehicles built on chassis-cabs and other vehicles manufactured in two or more stages. In those instances where it is deemed appropriate because of practicability concerns, and where it is consistent with our safety objectives, the agency can consider any multistage vehicle, including those built on a chassis-cab, as a vehicle type in establishing or amending our regulations. Accordingly, we grant NTEA's petition to the extent it sought this clarification and we are amending one section added under the final rule (49 CFR 555.12) to ensure that it is consistent with this clarification.

Notwithstanding this clarification of our authority, we continue to believe, in general, that there will be less need for the agency to establish different standards for multistage vehicles built on chassis-cabs, because their manufacturers should be able to take advantage of pass-through certification and are less likely to face the practicability concerns more readily associated with other types of multistage vehicles. This practical distinction is discussed elsewhere in this document.[12]

b. Scope of the new temporary exemption provisions:

After carefully considering NTEA's petition, we wish to clarify the scope of the new temporary exemption provisions in subpart B of 49 CFR part 555. First, our discussion of our authority in the final rule, and the distinction we noted between multistage vehicles built on chassis-cabs and multistage vehicles built on other types of incomplete vehicles, related primarily to consideration of future FMVSS or revisions to existing standards. In those instances, the treatment of multistage vehicles would be based on the facts. The discussion was not intended to apply to subpart B, which, as the regulatory text correctly indicates, applies not only to manufacturers of all types of multistage vehicles, but also to alterers of completed vehicles. Therefore, the new procedures in subpart B do not preclude manufacturers of multistage vehicles built on chassis-cabs from petitioning for a temporary exemption from one or more standards.

With respect to the last sentence of section 555.11, we conclude that the sentence is unnecessary and confusing. The agency is making a technical correction to section 555.11 to remove that sentence. We observe that the scope of subpart A is unaffected by the availability of the new procedures in subpart B.

Second, we note that both the subpart A and B temporary exemption procedures are available only to manufacturers who assume legal responsibility for the vehicle and intend to certify the vehicle in accordance with 49 CFR part 567. In most instances, these parties are final-stage manufacturers. However, under 49 CFR 568.7, the incomplete vehicle manufacturer or an intermediate manufacturer can assume legal responsibility for the vehicle as finally manufactured. Therefore, these entities may petition the agency under either subpart A or B if they intend to affix a certification label required by 49 CFR 567.5(f) or (g), and if they meet other criteria specified in section 555.11. As a practical matter, most incomplete vehicle manufacturers and intermediate manufacturers would not qualify for financial hardship relief because of the size of their operations. It is clear that the new procedures in the final rule were not available to incomplete vehicle manufacturers and intermediate manufacturers who do not certify the vehicle as finally manufactured under 49 CFR 567.5(f) or (g), and instead furnish IVDs and amendments to IVDs to final-stage manufacturers in accordance with 49 CFR 568.4 or 568.5. Nevertheless, we believe it is important to clarify the issue. Accordingly, the agency is making a technical correction to the text of section 555.12.

For the reasons discussed above, it is clear that the new temporary exemption procedures encompass manufacturers of all types of multistage vehicles, including vehicles built on chassis-cabs, but are also limited to manufacturers who assume legal responsibility for the vehicle and intend to certify the vehicle in accordance with 49 CFR part 567.

B. The New Temporary Exemption in Part 555 Is Sufficient

NTEA position: Though it acknowledged that the temporary exemption provisions adopted by the agency in the final rule may help a particular final-stage manufacturer to temporarily address a certification problem, NTEA contended that those provisions do not remedy the continuing inability of many final-stage manufacturers to certify compliance with dynamic test standards. NTEA took issue with language in sections 555.12 and 555.13, as added under the final rule, which expressly limits the newly established temporary exemptions for which alterers and manufacturers of motor vehicles built in two or more stages may apply under subpart B of part 555. Those sections characterize the temporary exemptions as being available from ''dynamic crash test'' requirements found in the FMVSS. NTEA observed that the agency has previously recognized that dynamic tests that do not involve crashes may also be beyond the financial capability of final-stage manufacturers. Accordingly, NTEA contended that the temporary exemption provisions should apply to all dynamic test standards, and not just those standards for which dynamic crash test requirements are prescribed.

Agency Response

In the final rule, the agency limited subpart B to FMVSS requirements that incorporate dynamic crash tests. As discussed above, NTEA argued that subpart B should apply to all standards that are based on dynamic testing and not just dynamic crash testing.

After carefully considering NTEA's petition, we have decided to expand the scope of subpart B so that manufacturers of multistage vehicles can petition the

[11] NHTSA also followed this approach in its August 2005 NPRM on roof crush resistance. *See* Docket No. NHTSA–2005–22143–5, August 23, 2005.

[12] *See* section II.C.5.

agency for a temporary exemption from requirements that incorporate various dynamic tests generally, and not exclusively dynamic crash tests. Therefore, we grant this aspect of NTEA's petition, and amend the final rule accordingly.

First, we observe that small volume manufacturers are currently able to petition the agency for temporary exemptions from all Federal motor vehicle safety and bumper standards under subpart A. Therefore our reconsideration of the scope of subpart B relates to the availability of the more streamlined procedures in that subpart rather than to the possibility of a manufacturer obtaining an exemption, in appropriate circumstances, at all.

Second, we note that under section 555.13(a) and (b) of subpart B, in order to petition for an exemption, the petitioner must show why the test requirements of a particular standard would cause substantial economic hardship. This showing must include detailed financial information and a complete description of the petitioner's good faith efforts to comply with the standards.

Specifically, the petitioner must explain the inadequacy of IVD documents furnished by one or more incomplete vehicle manufacturers or by prior intermediate manufacturers pursuant to part 568. The petitioner must also show why generic or cooperative testing is impracticable. In addition, the petitioner must explain its difficulty in procuring goods and services necessary to conduct dynamic tests. We also note that in addition to showing hardship, each petitioner is required to explain under section 555.13(c) why the requested temporary exemption would not unreasonably degrade safety.

In limited circumstances, the difficulty or impracticability of testing a multitude of unique vehicle configurations, or otherwise obtaining an appropriate basis for certification, with the associated financial hardships, may extend beyond the requirements for which the agency verifies compliance solely through crash testing. We note that a dynamic test is one that requires application of forces or energy to the vehicle and the FMVSS include a variety of dynamic tests in addition to those involving crash tests. As the negotiated rulemaking committee pointed out, and as we noted in the SNPRM,[13] in some circumstances, there may be considerable costs associated with dynamic tests other than dynamic crash tests, and there may be significant damage to vehicles from such tests.

While we have decided not to restrict the exemption provisions in subpart B to requirements incorporating dynamic crash tests, but instead to extend those provisions to requirements incorporating any kind of dynamic test, we note that the ability of multistage vehicle manufacturers to make the requisite showing of hardship will be related to the testing costs (or the cost of other means of obtaining an appropriate basis for certification) associated with each specific standard and requirement for which an exemption is sought, as well as the availability of alternatives (such as using a different incomplete vehicle) and potential safety consequences. Therefore, in view of the range of possible circumstances, we do not believe it is necessary for us to attempt, in this document, to specify the dynamic tests that may have high costs, as opposed to those for which the costs should be relatively low.

While we have expected the number of instances in which an exemption will be needed from requirements incorporating dynamic crash tests to be small, we expect the number to be even smaller for requirements incorporating other types of dynamic tests. This expectation reflects the nature of the tests at issue, the alternatives available to final-stage manufacturers, the information contained in incomplete vehicle documents, and the other relief that multistage manufacturers were provided in the February 2005 final rule.

In consideration of these issues, the agency is amending the scope of subpart B to include requirements that are based on dynamic testing generally, rather than those based on dynamic crash tests alone. We have revised the text of section 555.12 accordingly.

1. Clarification of What Information Petitioners Must Provide To Show Good Faith Efforts To Comply With Applicable Regulations

As indicated in the previous section, petitioners under subpart B are required to provide ''a complete description of each manufacturer's good faith efforts to comply with the standards.'' See section 555.13(b).[14] The ability of the manufacturers of vehicles built in two or more stages to take advantage of ''pass-through'' certification may be dependent on selection of an incomplete vehicle that is appropriate for the intended application. That is, the availability of a sufficient ''pass-through'' to permit certification of compliance depends not only on information provided by incomplete vehicle manufacturers, but also on the intermediate and final-stage manufacturers using the appropriate incomplete vehicle for the intended application.

One aspect of the final-stage manufacturer's good faith efforts to comply with an FMVSS is determining whether an incomplete vehicle is available that will enable it to utilize ''pass-through certification.'' We note that it is unlikely that the agency would find it in the public interest to grant petitions filed by a final-stage manufacturer that made no good-faith effort to determine whether an appropriate incomplete vehicle, which would allow effective pass-through certification, was available. The granting of a petition would exempt the vehicle from one or more safety standards and, as a general matter, we believe this would not be justified if there were an alternative that would comply with safety standards.

While the issue of appropriate selection of the incomplete vehicle is relevant to compliance with dynamic crash test standards, we believe the issue is likely to be more significant as we extend the scope of subpart B to include requirements including dynamic tests more generally. For example, in order to take advantage of pass-through certification for a braking standard, the final stage manufacturer needs to assess whether an incomplete vehicle is available that will enable it to stay within the envelopes for weight and center of gravity for the intended application. This may involve assessing incomplete vehicles of varying size, gross vehicle weight rating or ''GVWR,[15] and number of axles that are available from different manufacturers.

While we believe that the current requirement that petitioners provide a complete description of each manufacturer's good faith efforts to comply with the standards may be read to encompass this in relevant situations, we believe it is appropriate to make it clear in the regulatory text. This is particularly important since the issue is likely to become more significant with the expanded scope of subpart B.

Accordingly, we are including in section 555.13 a provision requiring the petitioners to furnish the agency with information regarding the availability of

[13] *See* 69 FR 36042.

[14] 49 U.S.C. 30113(b)(3)(B)(i) authorizes NHTSA to exempt only those manufacturers that have tried to comply with the standard in good faith.

[15] GVWR means the value specified by the manufacturer as the loaded weight of a single vehicle. 49 CFR 571.3.

alternative incomplete vehicles (including ones of different size, GVWR and number of axles), from the same and other incomplete vehicle manufacturers, that could allow the petitioner to rely on IVDs when certifying the completed vehicle, instead of petitioning under subpart B. This information will also help the agency make its decisions in the timeframe specified in subpart B.

C. The Current Multistage Vehicle Certification Scheme Is Workable

NTEA position: NTEA asserted that even though NHTSA recognized in the SNPRM that incomplete vehicle manufacturers must provide vehicle upfitters (as final-stage manufacturers are sometimes referred to in the trade) with reasonable conformity envelopes (referencing 69 FR 36044), the agency did not adopt as part of the final rule a reasonableness standard for conformity statements in an IVD. NTEA further observed that the agency relied on a market-based argument in concluding that ''incomplete vehicle manufacturers have business reasons to provide workable IVDs'' and that ''[t]here is no market for incomplete vehicles that cannot be manufactured into completed vehicles that will meet the applicable FMVSS'' (citing final rule at 70 FR 7425). NTEA contends that the market forces theory articulated by the agency is simply wrong. According to NTEA, incomplete vehicle manufacturers at present provide no meaningful compliance envelope, even on chassis-cabs, for numerous dynamic test standards.

NTEA also contends that NHTSA's market-forces argument is premised on the erroneous assumption that the final-stage manufacturer is in a position to choose the brand chassis on which it will complete a vehicle. NTEA observed that in the vast majority of cases, the customer goes to a truck dealer, not a final-stage manufacturer, to purchase a multistage vehicle. The dealer then engages the final-stage manufacturer to install the body and related equipment per the customer's specifications. Given this scenario, NTEA asserts that the final-stage manufacturer is not in a position to inform the dealer that he would prefer to work on a different chassis. As a consequence, NTEA concludes that the market does not exert any pressure on the incomplete vehicle manufacturer to provide reasonable compliance envelopes.

NTEA also surmised that the incomplete vehicle manufacturer will err on the side of not taking on liability, and does so by making its envelope as narrow as possible or nonexistent. Reasoning that meaningful pass-through certification would require the incomplete vehicle manufacturer to expend resources on testing to determine the proper parameters of such certification, NTEA concludes that the elimination of meaningful pass-through certification therefore saves the incomplete vehicle manufacturer time and money.

NTEA also took issue with the agency's observation in the preamble of the final rule that because of its subjectivity, the reasonableness standard recommended by NTEA for conformity statements in the IVD is not susceptible to effective enforcement (referencing 70 FR 7425). NTEA asserted that this is inconsistent with the fact that the agency uses a good faith standard for determining the application of civil penalties. NTEA faults the agency for failing to explain why it cannot fashion a reasonableness standard for IVDs, but can in a closely-related context.

Agency response: For the reasons set forth below, we deny this aspect of NTEA's petition.

1. Overview of the Certification of Multistage Vehicles

The certification process is governed by 49 CFR part 567.[16] 49 CFR 567.5 [17] sets forth the certification requirements for manufacturers of vehicles manufactured in two or more stages. With limited exceptions,[18] each manufacturer of an incomplete vehicle and each intermediate manufacturer [19] assumes legal responsibility for all certification-related duties under the Vehicle Safety Act [20] with respect to:

(i) Components and systems it installs or supplies for installation on the incomplete vehicle, unless changed by a subsequent manufacturer;

(ii) The vehicle as further manufactured or completed by an intermediate or final-stage manufacturer, to the extent that the vehicle is completed in accordance with the IVD [incomplete vehicle document]; and

(iii) The accuracy of the information contained in the IVD.[21]

Final-stage manufacturers have complementary duties. Pursuant to 49 CFR 567.5(d), final-stage manufacturers assume

> legal responsibility for all certification-related duties and liabilities under the Vehicle Safety Act, except to the extent that the incomplete vehicle manufacturer or an intermediate manufacturer has provided equipment subject to a safety standard or expressly assumed responsibility for standards related to systems and components it supplied and except to the extent that the final-stage manufacturer completed the vehicle in accordance with the prior manufacturers' IVD or any addendum furnished pursuant to 49 CFR part 568, as to the Federal motor vehicle safety standards fully addressed therein.[22]

Final-stage manufacturers also have the duty to affix a certification label to each vehicle in a manner that does not obscure labels affixed by previous stage manufacturers and that, among other things, contains certification statements.[23]

The final-stage manufacturer may make one of the following alternative certification statements: (1) The vehicle conforms to all applicable federal motor vehicle safety standards (FMVSS); (2) the vehicle was completed in accordance with the prior manufacturers' IVD where applicable and conforms to all applicable FMVSS; or (3) the vehicle was completed in accordance with the prior manufacturers' IVD where applicable except for certain listed exceptions by FMVSS and the vehicle conforms to all applicable FMVSS.[24]

As reflected above, a number of certification provisions refer to incomplete vehicle documents or IVDs. The incomplete vehicle manufacturer furnishes an IVD for incomplete vehicles pursuant to 49 CFR 568.4. In the IVD, among other things, for each applicable FMVSS, the incomplete vehicle manufacturer makes one of three affirmative statements: (1) A Type 1 statement that the vehicle when completed will conform to the standard if no alterations are made in identified components; (2) a Type 2 statement that sets forth the specific conditions of final manufacture under which the incomplete vehicle manufacturer specifies that the completed vehicle will conform to the standard (*e.g.,* the vehicle when completed will meet the brake standard if it does not exceed gross axle weight ratings, the center of gravity at a specific vehicle weight rating is not above a certain height and no alterations are made to any brake system component on the incomplete vehicle.); or (3) a Type 3 statement that

[16] *See also* 49 U.S.C. 30115.

[17] In this part of the preamble, except as otherwise stated, the references to the regulations are to the regulations published on February 14, 2005 that will take effect September 1, 2006. *See* 70 FR 7414, 7428 (Feb. 14, 2005).

[18] *See* 70 FR at 7432–33, 49 CFR 567.5 (b) and (c).

[19] In the remainder of the preamble, NHTSA will not discuss intermediate manufacturers separately.

[20] The Vehicle Safety Act is officially 49 U.S.C. Chapter 301.

[21] 49 CFR 567.5(b)(1).

[22] 49 CFR 567.5(d)(1).

[23] 49 CFR 567.5(d)(2).

[24] 49 CFR 567.5(d)(2)(v)(A).

conformity to the standard cannot be determined based on the incomplete vehicle as supplied, and the incomplete vehicle manufacturer makes no representation as to conformity with the standard (*e.g.,* when components and systems must be added by the final-stage manufacturer and compliance cannot be decided at the time the incomplete vehicle leaves the incomplete vehicle manufacturer).

When the IVD makes a Type 1 or Type 2 statement, there is ''pass-through'' certification unless obviated by a subsequent manufacturer. The final-stage manufacturer relies on the IVD to certify the vehicle to a particular standard.

2. Practical Aspects of the Multistage Vehicle Process

An incomplete vehicle, as long defined by NHTSA,[25] is not a vehicle. It is either

(1) An assemblage consisting, at a minimum, of chassis (including the frame) structure, power train, steering system, suspension system, and braking system, in the state that those systems are to be part of the completed vehicle, but requires further manufacturing operations to become a completed vehicle; or (2) An incomplete trailer.[26]

In the multistage vehicle process, the incomplete vehicle manufacturer builds a chassis that has sufficient attributes to meet the definition of incomplete vehicle. After the incomplete vehicle manufacturer completes its work, it ships the chassis. The chassis may range from being relatively close to completion (such as a chassis-cab [27]) to being relatively far from completion (such as a stripped chassis [28]). The chassis may end up at a dealer, in a pool of incomplete vehicles that are readily available for completion, or at a final-stage manufacturer. Following the addition of a truck body or equipment, the chassis could be used for a flatbed truck, dump truck, tow truck (wrecker), box truck (dry freight van), service truck, utility truck or other specialized application.[29] Regardless of the state of completion of the chassis or where it goes after it leaves the incomplete vehicle manufacturer's plant, there is a fundamental fact: once the incomplete vehicle is out of the incomplete vehicle manufacturer's hands, the incomplete vehicle manufacturer does not have control over what is done with or added to the incomplete vehicle.

There can be problems with the vehicle once completed that may not be attributed to the incomplete vehicle manufacturer but that may fairly be attributed to the final-stage manufacturer. For example, assume that an incomplete vehicle manufacturer ships a chassis with brakes that under the IVD would meet the applicable brake systems FMVSS if the chassis were used for light duty applications but not for heavy duty applications. The chassis is then out of the control of the incomplete vehicle manufacturer. Assume that the final-stage manufacturer adds a dump truck body so that the completed truck has a GVWR greater than that specified in the IVD. In a colloquial sense, the truck would be overloaded.[30] Alternatively, assume that the final-stage manufacturer mounts a top-heavy gasoline tank on the chassis. In such cases, the vehicle would not meet the FMVSS for brake systems, and ordinarily would be outside the IVD compliance envelope. As another example, the final-stage manufacturer may make modifications to the interior compartment of a chassis-cab, which could take the incomplete vehicle out of compliance with various FMVSS developed to protect occupants in crashes. Final-stage manufacturers could also add parts and equipment that make the vehicle noncompliant.

In recognition of the fact that incomplete vehicle manufacturers do not control work performed by final-stage manufacturers and can fairly anticipate only some things, but not everything, done by final-stage manufacturers, the regulatory system of ''pass-through'' certification is reasonable. The IVD, prepared by the incomplete vehicle manufacturer, provides the basis for the final-stage manufacturer's certification with enumerated FMVSS, on various conditions, including, for example, that the final-stage manufacturer does not exceed the GVWR of the chassis or introduce modifications to the incomplete vehicle that interfere with compliance. Usually, the IVD is a general document that accompanies the incomplete vehicle. IVDs are typically not limited to one application (one body or type of equipment), but contain limits and conditions in light of the nature and capacity of the chassis and potential problems resulting from completion of an incomplete vehicle. Final-stage manufacturers are informed, by the IVD, of components and systems that should not be altered, and, by following those instructions and other information from the incomplete vehicle manufacturer, they are able to certify.

The system of pass-through certification has existed for more than 25 years, and in that time many multistage vehicles have been built and certified by final-stage manufacturers. This indicates that the system is workable and operates as intended.

3. NTEA's Position

NTEA takes issue with the IVD and pass-through certification process. Assuming that FMVSS apply,[31] NTEA maintains as a sweeping proposition that the IVDs currently provided are unworkable and insufficient.

NHTSA does not accept NTEA's position. The certification provisions are important. Under them, the final-stage manufacturer historically has provided, and under the regulations published in February of 2005 must provide, its certification that the vehicle complies with applicable Federal motor vehicle safety standards. For almost 40 years, these standards have been one of the most critical foundations for motor vehicle safety. Under 49 U.S.C. 30115, the manufacturer may not issue the certificate if, in exercising reasonable care, it has reason to know the

[25] Prior to the 2005 amendments, incomplete vehicle was similarly defined in 49 CFR 568.3 as: ''* * * an assemblage consisting, as a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be part of the completed vehicle, that requires further manufacturing operations, other than the addition of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.''

[26] 49 CFR 567.3 (2006).

[27] A chassis cab is an incomplete vehicle with a completed occupant compartment that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended function. *See* 49 CFR 567.3 (2005). For illustration purposes, an example is a pickup truck without a standard pickup truck bed. These may be built into various trucks including a tradesman's utility service truck, a tow truck, a dump truck, a box truck or a specialized work truck.

[28] A stripped chassis may be viewed as meeting the definition of an incomplete vehicle without more. As shipped by the incomplete vehicle manufacturer, it would have steering control and braking systems (to meet the definition of incomplete vehicle). It ordinarily would not have the windshield, roof, A-pillar (the pillar to which the windshield attaches), B pillar (the pillar behind the front doors) or body components. Ford's E-series incomplete vehicle manual refers to this as a basic chassis. These may not be particularly evident on the road and may underlie, for illustration purposes, school buses or large recreation vehicles.

[29] See NTEA Petition at 4.

[30] The term overloaded has a particular meaning in the context of some FMVSS, not as an issue here. In this preamble, NHTSA is using ''overloaded'' in a colloquial way, meaning too heavy or exceeding GVWR specifications.

[31] In NTEA's view, some FMVSS should not apply to multistage vehicles as a vehicle type, and even if they are applicable under the regulations establishing FMVSS (49 CFR part 571), there should be exemptions from FMVSS based on petitions from individual final-stage manufacturers or groups of such manufacturers. 49 CFR part 555.

certificate is false or misleading in a material respect.

NTEA's petition is conclusory. Overall, NTEA seeks to remove the certification responsibility from final-stage manufacturers and impose much of that responsibility on incomplete vehicle manufacturers. NTEA's petition ignores the fact that incomplete vehicle manufacturers do not control what final-stage manufacturers do with the incomplete vehicles. NTEA also complains generally without constructively delineating the contents of an alternative IVD that would be fair to incomplete vehicle manufacturers and would not require them to be involved in the design and testing of completed vehicle. Finally, NTEA fails to demonstrate that NHTSA has the authority to unilaterally rewrite the IVDs and impose them on incomplete vehicle manufacturers, and does not recognize the fact that the certification process is working and multistage vehicles are being built and certified.

4. The Availability of Multistage Vehicles Belies NTEA's Position

Overall, NTEA offers the view that it is not possible for a final-stage manufacturer to comply with an agency's multistage certification regulations and even if it were possible, such compliance would be economically ruinous. NTEA's position is inconsistent with the current state of the multistage vehicle industry. There are many multistage vehicles on the road that have been certified and the final-stage manufacturers are still in business. For example, most school buses are multistage vehicles. They are certified by final-stage manufacturers to a number of federal standards. The major final-stage manufacturers such as Winnebago, Thomas Built and Blue Bird are able to certify vehicles and are in business.[32] There are also large numbers of other multistage vehicles, such as tanker trucks, work trucks, box trucks, flatbed and stake trucks, tow trucks and dump trucks on the road.

NTEA's position does not correspond to statements by final-stage manufacturers. In the trade, final-stage manufacturers are known as upfitters or as body builders. Many of these companies readily can be found on the web with searches for terms such as upfitter or as body builder or by type of completed truck such as flat bed truck, service truck, school bus or utility truck. They can also be found in the yellow pages under truck bodies. For example, in the Washington, DC area in the Yellow pages there are companies such as Wilbar Truck Equipment Inc. and Fallsway Spring and Equipment Co. They have web sites that refer to their products including *http://www.wilbar.com/* and *http://www.fallswayspring.com/*. The common theme on these web sites is a ''can do'' approach. Their clear message is that they can make a variety of trucks. NHTSA has not found any that state the reservations, expressed by NTEA, that final-stage manufacturers cannot do so.

In addition, NTEA's position sounds a chord not expressed by organizations within NTEA's umbrella organization. NTEA has numerous affiliate divisions that operate ''under the NTEA umbrella'' and ''represent specific product segments within the truck body and equipment industry.''[33] These affiliate groups include the Ambulance Manufacturers Division, which promulgates standards with the General Services Administration to which all ambulances must conform,[34] and two bus divisions, the Manufacturers Council of Small School Buses and the Mid-Size Bus Manufacturers Association.[35] The members of these affiliate divisions have been building and certifying a number of models of multistage vehicles in their niche markets under the existing certification structure.

NTEA's petition does not mention a single final-stage manufacturer that has been unable to certify a vehicle under the existing framework. When NTEA's failure to include a single concrete example is viewed in light of the obvious numbers of multistage vehicles,[36] NTEA's position can not be accepted.

Certification serves an important safety function in the multistage vehicle business. Many multistage vehicles carry people and important cargo—from schoolchildren on school buses to liquid fuel on propane and gasoline trucks. The safety need for certification of compliance with FMVSS in these types of vehicles is uncontroverted. Again, final-stage manufacturers regularly certify these and other types of multistage vehicles.

5. NTEA's Argument Is too Broad and Ignores Gradations in Types of Multistage Vehicles

NTEA's petition paints a broad picture of final-stage manufacturers that are subject to many FMVSS and that must engage in extensive engineering of the vehicle from the ground up to meet the FMVSS. There are at least two problems with this sweeping view. First, many multistage vehicles are heavy vehicles with a gross vehicle weight rating (GVWR) of over 10,000 lbs (4536 kilograms) and are not subject to a number of FMVSS.[37] For illustration purposes, as a rough gauge, most trucks with a GVWR of more than 10,000 lbs have at least four rear wheels (two on each side). Trucks with one rear wheel on each side ordinarily have a GVWR equal to or less than 10,000 lbs. As a general rule of thumb, medium duty and heavy duty trucks have a GVWR of over 10,000 lbs.

To certify a motor vehicle with a GVWR of more than 10,000 lbs requires consideration of fewer FMVSS than for a vehicle with a GVWR of 10,000 lbs or less. Among the FMVSS that do not apply to multistage vehicles, such as work-type and recreation vehicles with a GVWR greater than 10,000 lbs are the following:

FMVSS	Title
114	Theft protection.
118	Power-operated window, partition, and roof panel systems.
138	Tire pressure monitoring systems.
201	Occupant protection in interior impact.
202	Head restraints.
203	Impact protection for the driver from the steering control system.
204	Steering control rearward displacement.
212	Windshield retention.
214[38] ...	Side impact protection.
216[39] ...	Roof crush resistance
219	Windshield zone intrusion.
225[40] ...	Child restraint anchorage systems.
301[41] ...	Fuel system integrity.
303	Fuel system integrity of compressed natural gas vehicles.
305	Electric-powered vehicles: electrolyte spillage and electrical shock protection.

Additionally, for some FMVSS, only some requirements apply. For example, pursuant to FMVSS 208 Occupant Crash Protection, trucks with a GVWR of 8,500 lbs or less or an unloaded vehicle weight of over 5,500 lbs are subject to seat belt and labeling requirements but

[32] They do face economic pressures, such as those associated with competitive bidding in the procurement of the buses.

[33] *http://www.ntea.com/mr/divisions.asp.*

[34] *http://www.ntea.com/mr/divisions/amd/intro.asp.*

[35] *http://www.ntea.com/mr/divisions.asp.*

[36] In its 2004 Annual Report, NTEA characterized truck chassis as $64.7 billion worth of a $98.3 billion commercial truck and transportation equipment industry.

[37] 70 FR at 7420–21.

[38] Dynamic crash test requirements apply to MPVs, trucks and buses with a GVWR of 6,000 lbs and less.

are not required to be equipped with an inflatable restraint system (air bag) at each front outboard seating position.[42] Also, crash tests are not required for heavier vehicles. NTEA does not address the limited applicability of the FMVSS.

Second, many of the lighter multistage vehicles, with a GVWR of 10,000 lbs or less, are often built on chassis-cabs. A chassis-cab is an incomplete vehicle, with a completed occupant compartment, that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended function.[43] Multistage vehicles built on chassis-cabs resemble pickup trucks, except that behind the cab there is another structure instead of a pickup box.

NTEA recognizes that

> chassis-cabs are the most ''evolved'' of the incomplete vehicle types (followed, in descending order, by cutaways, chassis cowls and stripped chassis). Likewise, it is undoubtedly true that the conformity statements provided by incomplete vehicle manufacturers give final-stage manufacturers more pass-through opportunities[44] on chassis-cabs than on other types of incomplete vehicles.[45]

Nevertheless, NTEA does not temper its sweeping assertions or make any allowance for the multistage vehicles that are built on chassis-cabs and thus have more complete IVDs with (to use NTEA's words) more pass-through opportunities. It is easier for final-stage vehicle manufacturers to certify these vehicles in view of the scope of the IVDs.

6. The Existing IVDs Are Workable

One of the principal pillars on which the NTEA petition rests is the contention that incomplete vehicle manufacturers presently provide subsequent stage manufacturers with no meaningful compliance envelope, even on chassis-cabs, for numerous dynamic test standards. As previously noted, NTEA surmised that incomplete vehicle manufacturers have an incentive to make the compliance envelope as narrow as possible or nonexistent to avoid taking on liability and the need to expend resources on testing to determine the proper parameters of such certification. NTEA appended a GM CK Chassis-Cab IVD to its petition, and cited the IVD in many instances as an example of purported deficiencies in IVDs generally. To assess the validity of these contentions, the agency carefully examined the certification statements in the GM IVD that NTEA identified as inadequate. Our findings are set forth below, individually addressing each standard that was the subject of this inquiry.[46]

a. FMVSS 105 Hydraulic and Electric Brake Systems and FMVSS 135 Light Vehicle Brake Systems

NTEA contends that the GM IVD, as it pertains to FMVSS 105 Hydraulic and Electric Brake Systems and 135 Light Vehicle Brake Systems, provides no meaningful pass-through certification opportunities because the compliance envelopes are non-existent. FMVSS 105 and 135 specify performance requirements for hydraulic and electric brake systems. FMVSS 135 applies to vehicles with a GVWR of 3,500 kg/7,716 lbs and less; FMVSS 105 applies to vehicles with a GVWR greater than 3,500kg/7,716 lbs.[47] These standards include stopping distance requirements, as well as requirements for parking brakes and warning indicators.

Incomplete vehicles have functioning braking systems.[48] The GM IVD provides pass-through certification for both FMVSS 105 and 135 if the final-stage manufacturer adheres to certain requirements. Specifically, the GM IVD states that: (1) Alterations by the final-stage manufacturer may not affect the function, properties, location or vital special clearances of the brake system on the chassis installed by GM; (2) the completed vehicle must not exceed the GVWR and gross axle weight ratings (GAWR)[49] front and rear specified by GM for the incomplete vehicle; and (3) the center of gravity of the final vehicle must fall within the bounds of the center of gravity chart in the IVD.[50]

In addition to the IVD, GM's Web site *http://www.gmupfitter.com,* contains publications including ''Body Builder's Manuals'' and ''Best Practices Manuals.'' The Body Builder's Manual for each model (e.g., CK full-size pickups) provides information and instructions about the incomplete vehicle that can be used by final-stage manufacturers to design the second body unit. As specified in the manual's introduction, GM's Best Practices Manuals are intended for use by RV, truck, and commercial upfitters in converting and completing incomplete vehicles. In general, the information in the Best Practices Manual describes how to install the body onto the incomplete vehicle, including clearances between the chassis and the body that must be assured.

The GM IVD is workable and final-stage manufacturers can construct a vehicle that adheres to the instructions in the IVD and therefore carries pass-through certification for FMVSS 105 and 135. To begin, GM's requirement that the final-stage manufacturer not alter the incomplete vehicle in such a way that it changes the function, properties, location or vital spatial clearances of the brake system components[51] is workable. It is common sense that GM would provide pass-through certification with limitations on the retention of the integrity of the brake system and that GM would not provide pass-through certification if a final-stage manufacturer made alterations to the brake system. Beyond not changing the brake system, a final-stage manufacturer also must not add equipment that impinges on vital spatial clearances of the system. In this regard, GM has provided guidance to upfitters. GM's Best Practices Manual states: ''provide at least 2 inches clearance between body- or chassis-mounted components and brake hoses.'' GM's Body Builder's Manual reinforces the clearance check for brake hoses to include brake hose travel with the vehicle's suspension. The Best Practices Manual includes requirements for a 0.7 inch minimum clearance between a brake line and moving components, and 0.5 inch minimum clearance between a brake line and vibrating components. These instructions by GM provide a final-stage manufacturer with ample information to

[39] Quasi-static test applies to MPVs, trucks, and buses other than school buses with a GVWR of 6,000 lbs and less.

[40] Requirements do not apply to MPVs and trucks with a GVWR greater than 8,500 lbs.

[41] Dynamic crash test applies to school buses regardless of GVWR; same for FMVSS 303.

[42] *See* 49 CFR 571.208 S 4.2.6.2.

[43] 49 CFR 567.3 (2005).

[44] NTEA's footnote stated in pertinent part ''Under existing regulations, there is no pass-through certification available for incomplete vehicles other than chassis-cabs.''

[45] Petition at 5.

[46] Our discussion of the FMVSS in this document is not intended to be comprehensive. The reader is referred to the standard itself and associated **Federal Register** documents for a full description of each standard discussed.

[47] Under NHTSA's regulations at 49 CFR 567.4(g)(3), the manufacturer must specify on a vehicle's certification label the vehicle's ''Gross Vehicle Weight Rating'' or ''GVWR.'' The regulation provides that the value specified ''shall not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicle's designated seating capacity [except that] for school buses the minimum occupant weight allowance shall be 120 pounds.'' The requirement for stating the GVWR is intended to inform the operator of the extent to which the vehicle can be safely loaded.

[48] *See* 49 CFR 567.3 (definition of incomplete vehicle) (2006).

[49] GAWR means the value specified by the vehicle manufacturer as the load-carrying capacity of a single axle system.

[50] GM IVD, attached to Petition, at 8–12, 16–19.

[51] GM IVD at 8.

work within the limits of the pass-through certification.

Second, GM's IVD contains a restriction on the completed vehicle's GVWR and GAWRs. The principle that brake systems are designed for limited weight ranges is basic and widely accepted. The GM IVD states that the GVWR and front and rear GAWRs identified on the incomplete vehicle label cannot be exceeded. If the final-stage manufacturer assigns a higher GVWR and changes or increases the GAWRs, or if the completed vehicle, when loaded according to the manufacturer's recommendations, exceeds its GVWR or a GAWR, the vehicle may not meet stopping distance requirements. Viewed in light of the IVD, the vehicle will be overloaded (in the colloquial sense of that term) and GM should not be held responsible.

The final-stage manufacturer can determine whether the GVWR or GAWRs assigned by the incomplete vehicle manufacturer have been exceeded either by weighing the vehicle when fully manufactured or by using engineering analysis and aggregating the weights of the components it adds to the vehicle, which often may be obtained from equipment suppliers, coupled with estimates of further loadings by the user. A key concern for the final-stage manufacturer in complying with this portion of the IVD is to use an appropriate incomplete vehicle (chassis) for the multistage vehicle it is producing, as is addressed more fully in other sections of this preamble. The final-stage manufacturer cannot fairly use a chassis designed for lighter duty than that intended for the ultimate application and then assert that the incomplete vehicle manufacturer is responsible for the completed vehicle's shortcomings. So long as the final-stage manufacturer uses an appropriate chassis, it will be able to comply with this aspect of the IVD.[52]

Finally, the center of gravity of the vehicle must fall within the areas set forth in the GM IVD. The IVD contains a formula to calculate the approximate center of gravity location in a vehicle.[53] The IVD also contains a chart that lists the different vehicle types and the coordinates of allowable centers of gravity for the completed vehicle. There is no question that center of gravity is a fundamental concept, and that the final-stage manufacturer could complete a vehicle in a way that has a problematic center of gravity. There are ample resources beyond the IVD itself to aid final-stage manufacturers in making the correct center of gravity calculations. In fact, NTEA's own Web site includes products for calculating the center of gravity, including off-the-shelf computer programs to perform the calculations.[54] NTEA also conducts workshops on performing the center of gravity calculations and selecting the right chassis.[55] NTEA has not shown that the centers of gravity for GM's vehicles are unreasonable.

In light of the foregoing, the GM IVD is reasonable with regard to FMVSS 105 and 135. It would be manifestly unreasonable to expect an incomplete vehicle manufacturer to provide a ''blank check'' pass-through certification on FMVSS 105 or 135 without providing limitations on the final-stage manufacturer to protect the integrity of the brake system and to ensure that the vehicles are not overloaded in the colloquial sense and have an appropriate center of gravity height. NTEA did not provide any information to support a contrary conclusion.

b. FMVSS 204 Impact Protection for the Driver From the Steering Control System

NTEA also complains about the pass-through certification in the GM IVD pertaining to FMVSS 204 Impact Protection for the Driver from the Steering Control System. FMVSS 204 regulates the rearward displacement of the steering control to reduce the likelihood of chest, neck, or head injury to the driver in the event of a front impact. The standard has limited application in the multistage vehicle context because it does not apply to vehicles with an unloaded vehicle weight greater than 2495 kg (5,500 lbs) or a GVWR of more than 4536 kg (10,000 lbs) and most multistage vehicles exceed one or both of these weights. FMVSS 204 establishes a maximum displacement of the steering column and shaft in a 48 km/hr (30 mph) crash test into a fixed concrete barrier.

The GM IVD provides pass-through certification for FMVSS 204 for vehicles with a GVWR of 10,000 lbs or less and an unloaded vehicle weight of 5,500 lbs or less, which corresponds to the applicable weights in FMVSS 204, provided that the maximum unloaded vehicle weight is not exceeded and no alterations are made to affect the properties, location, or vital spatial clearances of the steering control system and the frontal systems such as the frame, hood and powertrain, which often bear the brunt of a frontal crash. The IVD provides no pass-through certification for incomplete vehicles purchased with any bumper delete option.

The weight restrictions in the IVD are logical and consistent with the realities of a crash. In a crash, the energy of the moving vehicle(s) is dissipated and the metal in the vehicle is displaced and crumples. The energy that is dissipated is a function of the mass of the vehicle and its speed. The incomplete vehicle manufacturer can design a vehicle that will withstand a frontal crash of a certain intensity such that the steering wheel is not displaced beyond allowances in FMVSS 204. If the vehicle, as completed and loaded, exceeds the maximum weight for which the incomplete vehicle manufacturer provided pass-through certification (usually based on a crash test the incomplete vehicle manufacturer performed), it would not be reasonable to expect the certification to apply because in a crash the excess vehicle weight could cause greater front-end displacement than contemplated in the design of the incomplete vehicle and the steering control mechanisms would therefore be displaced further into the passenger compartment. The final-stage manufacturer can readily work within weight requirements by taking care to purchase the appropriate incomplete vehicle chassis for the use to which the vehicle will be put.

Similarly, the restrictions in the GM IVD on alterations that interfere with the integrity of the frontal vehicle systems and steering system are logical and consistent with the realities of a crash. In a crash, the energy of the vehicle is, in lay terms, absorbed by various vehicle systems, including the bumper, front sheet metal, hood and fenders, and drive train. Because the incomplete vehicle manufacturer designs vehicle parts to be displaced and crumple in order to absorb the energy of the crash, actions by the final-stage manufacturer that modify the incomplete vehicle manufacturers' frontal design could reduce vehicle's crashworthiness such that the steering wheel is displaced beyond allowances in FMVSS 204. The final-stage manufacturer could readily satisfy the conditions of the IVD by not modifying the front or engine compartment of the chassis-cab.

Finally, the absence of pass-through certification on incomplete vehicles

[52] NTEA's own documents recognize this. An NTEA handout from the 2006 Design Show states: ''Before ordering a chassis, make sure it can be upfitted as intended.'' *See* Johnson, Robert, *Design and Specifications for Vocational Vehicles; a Functional Approach*, in NHTSA Docket No. NHTSA–99–5673.

[53] GM IVD at 9.

[54] *See, e.g., http://www.ntea.com/tr/techtalk_detail.asp?DOC_ID=101120; http://www.ntea.com/im/prod_detail.asp?prod_id=1.*

[55] *http://www.trailer-bodybuilders.com/mag/trucks_back_basicshow_match/index.html.*

purchased with the ''bumper delete'' option is logical. If a final-stage manufacturer purchases a chassis without a front bumper, it is reasonable to expect that there will not be a pass-through certification for FMVSS 204 because the bumper is an integral component of the front end. In all likelihood, GM based the IVD's pass-through certification on a vehicle with a bumper. Moreover, to satisfy State inspection requirements for bumpers, it is likely that a bumper of some form will be added, which further alters the vehicle's crash performance. GM cannot be expected to provide any certification of front impact crash test standards in such a circumstance because it does not know what, if any, bumper the final-stage manufacturer will install. If the final-stage manufacturer seeks front impact crash test standard compliance, it can purchase an incomplete vehicle with a front bumper, and obtain the workable pass-through certification described above.

c. FMVSS 201 Occupant Protection in Interior Impact

NTEA contends that the GM IVD does not provide a compliance envelope for compliance with FMVSS 201 Occupant Protection in Interior Impact. In general, FMVSS 201 is concerned with head impacts on interior surfaces of the vehicle. FMVSS 201 includes standards for lower areas, such as the instrument panel, and for upper areas, such as the headliner and upper trim. Testing is done with headforms that impact various interior areas when the vehicle is stationary. Single stage vehicle manufacturers routinely comply with FMVSS 201 by installing padding and energy absorbing trim on instrument panels and other areas of the vehicle. The standard has limited application in the multistage vehicle context because it does not apply, among others, to vehicles with a GVWR of more than 4536 kg (10,000 lbs).

The GM IVD provides vehicles with a GVWR of 10,000 lbs or less with pass-through certification for FMVSS 201, which corresponds to the FMVSS, provided that no alterations are made that affect the function, properties, location or vital spatial clearances of various interior components including the air bag system, armrests, headliner, instrument panel, interior compartment doors, seats, seat backs and head restraints, sun visors and upper interior trim. The IVD provides no pass-through certification for incomplete vehicles purchased with any seat delete option.

The restrictions in the IVD are logical and consistent with Standard 201. In essence, if the final-stage manufacturer does not modify the interior of the chassis-cab, it obtains pass-through certification. If it modifies the vehicle, such as by removing padding or by adding its own protruding equipment with sharp edges, it does not obtain the benefit of pass-through certification. This is reasonable. Modifications to the interior of the vehicle may affect the intensity of the impact as measured by the regulatory headform.

Second, with regard to the seat delete option, under FMVSS 201, tests are performed from various reference points. One is the seating reference point.[56] In all likelihood, GM based the IVD's pass-through certification on a vehicle with a standard GM seat and reference points associated with its seat. If a seat other than one supplied by GM with the vehicle were used (seat delete option) those reference points would no longer apply, and it would at the very least be questionable whether the certification would be valid. It would not be reasonable to expect GM to provide pass-through certification for vehicles with different seats and associated reference points from which to gauge regulatory compliance.

Final-stage manufacturers can readily work within the GM IVD by purchasing a vehicle with the GM seat and by not modifying the interior of the vehicle.[57] NTEA did not provide data showing otherwise.

d. FMVSS 212 Windshield Mounting

NTEA levels similar criticisms at the GM IVD's treatment of FMVSS 212 Windshield Mounting. The standard provides for windshield retention in the event of a crash, thus enabling occupants to take advantage of the penetration-resistance and injury-avoidance properties of the windshield materials and preventing ejection of occupants from the vehicle. The standard requires the retention of a minimum portion of the windshield periphery in a front-impact crash test using dummies with the vehicle restraint systems engaged. The portion of the windshield periphery that must be retained varies depending on whether the vehicle is equipped with passive restraints. The standard has limited application in the multistage vehicle context because it does not apply, among others, to vehicles with a GVWR of more than 4536 kg (10,000 lbs).

The GM IVD states that all vehicles with a GVWR of 10,000 lbs or less will conform to FMVSS 212 if (1) no alterations are made that affect the function, properties, location or vital spatial clearances of the components, assemblies or systems of various vehicle parts, including the air bag system, seats, seat belts (including anchorages), frame, hood, powertrain, front impact bar assembly, steering control system, sun visor assemblies, and the windshield system; (2) the completed vehicle does not exceed a specified weight, center of gravity height, and vehicle height (See Table A, p.28); (3) the clearance between the rear-most part of the cab and the added body does not exceed the minimum distance specified (3 inches); (4) the vertical clearance between the cab roof and any added body parts or accessories extending over the roof is not less than 8 inches; and (5) during a frontal barrier impact test, no component installed moves forward from its permanently mounted position.

The GM IVD does not provide pass-through certification if the final-stage manufacturer modifies various parts of the vehicle, including the front of the vehicle, that may be impacted and absorb some of the crash energy, as well as the seat belts and the air bags. As NHTSA has noted in a crashworthiness context, a vehicle is a system comprised of various parts. In a crash, the items of equipment identified in the IVD individually and collectively may prevent the occupants, as represented by crash dummies, from making contact with the windshield or may affect the intensity of their impact. The windshield and associated attachment mechanisms would affect the retention of the windshield periphery. It is understandable that the IVD's pass-through certification for a standard

[56] See 49 CFR 571.201 S8.12.

[57] It also is readily possible to add some controls. The final-stage manufacturer can use equipment switches from GM that come with GM packages, install controls in an area essentially not regulated by FMVSS 201, or use umbilical cable controls so that mounting controls inside the vehicle is avoided altogether. For example, the GM Body Builder's Manual, Special Applications section for snow plow prep, explains how to install a roof-mounted emergency light and switch. On pages 3, 5, and 7 of the manual, option code TRW Provision for Roof-Mounted Emergency Light is identified and on pages 15–17 the installation is explained. A final-stage manufacturer would be able to install a roof-mounted light using factory-installed components (with the purchase of the optional equipment package from GM), without the need to conduct headform tests for FMVSS 201 compliance. The GM Best Practices and the Special Applications manuals describe how final-stage manufacturers can add driver convenience optional equipment, such as switches and controls for equipment mounted on the vehicle, including snow plows. Further, installation of other controls can be accomplished by mounting the controls beneath the instrument panel, so that they fall outside of the target areas in the regulation. The agency also reviewed control systems available from a snow plow supplier, Myer. That company offers plow controls attached to an umbilical cord so that the driver may operate the plow using a hand-held controller. This type of arrangement eliminates the need to install the controls on or near the instrument panel.

involving windshields would not apply if the final-stage manufacturer makes alterations that could increase the likelihood that occupants would contact the windshield, increase the force with which they would impact the windshield, or affect the windshield itself. NTEA provided no data or other specific information on why final-stage manufacturers are not able to meet these provisions of the IVD in order to obtain pass-through certification when upfitting a chassis-cab.

GM's IVD also contains weight, center of gravity height, and vehicle height limitations relating to the body or equipment installed. These parameters affect the vehicle's performance in a crash. This in turn affects windshield retention. The IVD also includes clearance requirements (3 inches) between the rear part of the cab and the body added by the final-stage manufacturer, and minimum vertical clearances between the cab roof and any portion of the installed body that extends over the cab roof. These take into account flexing and movement of the body in a crash. These clearance requirements preserve the integrity of the cab, which in turn supports the windshield. Final-stage manufacturers can refer to GM's Best Practices Manual for additional information regarding mounting a service body to a chassis-cab. The manual includes a section entitled ''NTEA Recommended Body-Mounting Practices.''

In addition, the IVD provides that no component installed by the final-stage manufacturer shall move forward from its permanently mounted position in a 30 mph crash. The rational relationship between this requirement and pass-through certification for FMVSS 212 is plain—the body added by the final-stage manufacturer must be well secured to the chassis. Movement poses a direct threat to the integrity of the cab and, in turn, the windshield, and could lead to separation of more than the allowed portion of the windshield in a crash. There is considerable available information on securing bodies from both GM and NTEA. NTEA's assertion that GM's requirement can only be verified by the performance of a completed vehicle in a dynamic test is incorrect. Engineering judgments may be used. For example, if the final-stage manufacturer mounted a body on the chassis (within weight, center of gravity, and height limitations) and followed the detailed instructions provided in the GM Best Practices Manual for mounting bodies, the final-stage manufacturer could reasonably judge that the body would not move forward.

The GM IVD is workable insofar as it concerns FMVSS 212. NTEA members can take full advantage of its statement if they do not modify the front of the vehicle or the cab, they meet weight, center of gravity height, body height and clearance requirements, and they properly secure the body to the chassis. If based on the final-stage manufacturer's modifications and additions to the chassis, the completed vehicle does not conform to the IVD, there would be an increased likelihood that FMVSS 212 would not be met. That risk properly rests on the final-stage manufacturer.

e. FMVSS 219 Windshield Zone Intrusion

FMVSS 219 Windshield Zone Intrusion sets forth limits for the displacement of motor vehicle components into the windshield area during a crash. In general, the standard requires that in a forward crash up to and including 48 km/hr (30 mph), no part of the vehicle outside the occupant compartment, with the exception of windshield molding or other materials already in contact with the windshield, may penetrate the delineated protective zone by more than 6 mm or penetrate the inner surface of the windshield within that zone at all. The standard has limited application within the multistage vehicle arena because it does not apply to vehicles with a GVWR of more than 4536 kg (10,000 lbs). It also does not apply to certain types of vehicles such as walk-in vans.

The GM IVD states that the vehicle will have pass-through certification for FMVSS 219 provided that (1) no alterations are made to the properties, location or vital spatial clearances of various components, including antennae, body roof, sheet metal and structural components, hood mounts and assemblies, motor compartment structure, and windshield wipers; (2) the vehicle does not exceed a specified unloaded weight; and (3) during a 30 mph test, no component installed by the final-stage manufacturer prevents the hood from folding in its designed folding pattern or penetrates the windshield or protected zone.

The limitation in the IVD on alterations of certain components is logical and based on the reality that in a frontal crash, sheet metal is pushed backward. The IVD basically prohibits final-stage manufacturers from altering the components of the incomplete vehicle that could penetrate or contribute to the penetration of the windshield in a frontal crash, including the hood and windshield wipers. The incomplete vehicle manufacturer engineers these components to comply with FMVSS 219. It would be unreasonable to expect an incomplete vehicle manufacturer to provide pass-through certification to this standard that allows the final-stage manufacturer to override the incomplete vehicle manufacturer's engineering. The final-stage manufacturer could easily work within these limitations by not altering the completed portion of the vehicle.

As discussed elsewhere in this document, the mass of a completed vehicle affects its performance in a crash. It is not unreasonable for GM to include a weight limitation in the IVD. A final-stage manufacturer can take advantage of pass-through certification with respect to this provision of the IVD by installing equipment such that the weight of the vehicle does not exceed GM's limitations.

The final portion of the limitations in the IVD specifies that components added by the final-stage manufacturer cannot make the hood crumple differently in a crash test or penetrate the protected zone in a crash test. NTEA contends that this necessitates the final-stage manufacturers' conducting a crash test. This is not true. Final-stage manufacturers can make reasonable judgments without performing a crash test. For example, in many instances such as in assembly of a work truck, final-stage manufacturers do not install anything in front of a clearance zone behind the rear wall of the cab.[58] They could make objective good-faith judgments that if they do not install anything there, the hood will fold properly and will not penetrate the windshield in a frontal crash test. Also, if they wish to install equipment, they could install an equipment package designed for the vehicle, such as a GM snow plow package, in front of the front bumper.

NTEA expresses concerns about provisions in the IVD on the folding pattern of the hood. To comply with FMVSS 219, the hoods on vehicles fold so that in a crash they do not slice through the windshield. NTEA observes that final-stage manufacturers do not have any information regarding the hood folding pattern for GM C/K platform trucks. Ordinarily, they do not need such information because they can use their judgment when building trucks with nothing added forward of the rear wall of the cab. In any event, GM's 2006 Light Duty Manual for C/K Full Size Trucks, Pickups and Chassis-Cabs, found on the GM Upfitter Web

[58] *See* GM Best Practices Manual at 21–31 of the GM Best Practices manual for body mounting guidance.

site, contains a drawing of the hood inner panel that shows the folding points of the hood.[59] These are the points provided in the hood inner panel that result in the hood folding pattern. As is discussed elsewhere, if a final-stage manufacturer has additional questions after consulting the manual, GM provides a telephone number for contacting its engineering staff. These numbers are found throughout all of the final-stage manufacturer body builder manuals available from the GM Upfitters website, and throughout the CK IVD.

The agency also tests vehicles and makes information from those tests available. NHTSA's Safer Car Web site contains photograph of a 4-door Chevrolet Silverado pickup truck (that is in the GM CK vehicle line to which the IVD under discussion belongs) [60] during a New Car Assessment Program (NCAP) frontal barrier test. This photograph shows that the hood folds upwards from the engine compartment with the fold line at the transverse midpoint of the hood. The photograph also shows that the hood remains attached to the hinges and cowl structure, which are areas that are not to be modified per the IVD for pass-through certification.

The statements in GM's IVD pertaining to FMVSS 219 are workable. It is not reasonable to expect GM to provide pass-through certification for equipment added by the final-stage manufacturer that could go through the windshield or impair the folding pattern of the hood.

f. FMVSS 214 Side Impact Protection

NTEA also contends there is no meaningful pass-through opportunity for FMVSS 214 Side Impact Protection. FMVSS 214 sets forth performance requirements for the protection of vehicle occupants in a side impact crash. In general, FMVSS 214 contains two sets of requirements. In one, vehicles must satisfy crush resistance requirements that apply in the area of the door(s) in a static test. These requirements are applicable to trucks, multipurpose passenger vehicles and buses with a GVWR of 10,000 lbs or less except for walk-in vans. In the other, vehicles must meet dynamic performance requirements when impacted by a moving deformable barrier. Performance is measured on test dummies seated in the vehicle. The dynamic performance requirements have limited application in the multistage vehicle context. Specifically, they do not apply to multipurpose passenger vehicles, trucks and buses with a GVWR of more than 6,000 lbs or to walk-in vans, motor homes, tow trucks, dump trucks, ambulances, fire trucks, vehicles equipped with wheelchair lifts, and other specified vehicles.

The GM IVD provides pass-through certification to vehicles with a GVWR of 4536 kg (10,000 lbs) or less for requirements based on the static test and 2722 kg (6,000 lbs) or less for dynamic requirements. The IVD states the vehicle will comply with the requirements of FMVSS 214 as long as no alterations are made that affect the properties, environment, or vital spatial clearances of various components and systems in the vehicle, including the air bag system, the door assemblies, hinges, and latches, the door pillars, and the seat and seat belt anchorages and assemblies.

The GM IVD is workable insofar as it concerns FMVSS 214. GM has designed vehicles, including the doors and associated structural members, such as pillars, to withstand various forces applied to the side of the vehicle. Ordinarily, GM would have tested the side of a single stage pickup truck. Vehicles completed from a chassis-cab incomplete vehicle have door support structures and doors that are identical to a single stage pickup truck. Unless the final-stage manufacturer makes alterations to the door-related structures and parts enumerated in the IVD, pass-through certification should be available.

It would be unreasonable to expect GM or any other incomplete vehicle manufacturer to provide pass-through certification with FMVSS 214, which is directly contingent on the engineering and performance of the systems set forth in the IVD, without a limitation on alteration of those systems. Moreover, if a final-stage manufacturer replaces the seats in the incomplete vehicle, the new seats may be in a different location or result in different acceleration measurements on the test dummy. A final-stage manufacturer can readily mount a body onto an incomplete GM vehicle without making modifications that would place it outside the pass-through certification provisions of GM's IVD.

g. FMVSS 208 Occupant Crash Protection

NTEA also complains about the pass-through certification in the GM IVD pertaining to FMVSS 208, Occupant Crash Protection. FMVSS 208 specifies vehicle crashworthiness requirements in terms of forces and accelerations measured on dummies in test crashes and by specifying equipment requirements for active and passive restraints, such as seat belts and air bags. There are more substantial requirements related to the front seating positions than the rear seating positions of covered vehicles. The standard has limited application in the multistage vehicle context because various requirements such as those involving air bags do not apply to heavier vehicles.[61]

The GM IVD provides pass-through certification for FMVSS 208 for vehicles with a GVWR of 3,588 kg (8,500 lbs) or less provided that the maximum unloaded vehicle weight specified by GM is not exceeded and no alterations are made that affect the properties, location, or vital spatial clearances of various components, including the number, location and configuration of designated seating positions and seat belt assemblies, the instrument panel, steering wheel, air bag modules and coverings, the Sensor Diagnostic Module (which is involved in triggering air bag deployment) and associated wiring, air bag labels, the vehicle frame and structural members, sheet metal, and the engine compartment, that would result in a difference in the modified vehicle's deceleration if it were subject to barrier impact tests under FMVSS 208.

FMVSS 208 is a complicated crashworthiness standard, and a summary of the standard is beyond the scope of this notice. As NHTSA has pointed out in the FMVSS 208 rulemaking context, a vehicle is a system. That system provides protection with respect to two crashes, the crash of the vehicle into another vehicle or object, and the ensuing crash of the occupants or their surrogate test dummies into one or more parts of the vehicle. In the course of the crash, various parts of the vehicle and its restraint systems (seat belts and air bags) mitigate forces and accelerations on the occupants. In crash tests, dummies are placed in seated positions, the vehicle impacts a barrier and decelerates from a test speed (*e.g.*, 30 mph) to largely a stop in considerably less than a second, and the test dummies move forward following the impact of the vehicle with the barrier. The dummies are used to measure the impacts. The person

[59] This is located about midway along the longitudinal centerline of the hood. *See* GM Light Duty Manual at 86.

[60] *See http://www.safercar.gov/NCAP/Cars/3451.html*

[61] For FMVSS 208, the requirements related to dummy performance in a frontal impact do not apply to vehicles with a GVWR greater than 8,500 lbs or an unloaded vehicle weight greater than 5,500 lbs. In an informal review, NGTSA staff noted that the majority of the multistage vehicles observed at dealerships had a GVWR of 8,600 lbs and greater.

conducting the tests compares the test results to requirements in the NHTSA standard.

The restrictions in GM's Type 1 IVD are logical and consistent with a systematic approach to occupant crash protection employed by manufacturers. GM's first restriction is on unloaded vehicle weight and GVWR. As discussed in the context of other standards, vehicle weight is an essential component of crashworthiness standard certification. If the vehicle, as completed and loaded, exceeds the maximum weight for which the incomplete vehicle manufacturer provided pass-through certification (usually based on a crash test the incomplete vehicle manufacturer performed), it would not be reasonable to expect the certification to apply because the excess vehicle weight could cause different and excessive forces and accelerations on crash dummies. The final-stage manufacturer can readily work within weight requirements by taking care to purchase the appropriate incomplete vehicle chassis for the use to which the vehicle will be put.

The restrictions in the GM IVD on alterations that interfere with the seating positions, seat belts, instrument panel and air bags, SDM, and vehicle frame and body in a way that would result in a difference from the modified vehicle's deceleration if it were subjected to a FMVSS 208 barrier test are not unreasonable. To begin, in all likelihood, GM provided pass-through certification based on tests performed on a pickup truck with stock GM seats and dummies in seating positions specified by FMVSS 208. If the seating positions were different, the test results as recorded on dummies likely would be different. GM could not be held to anticipate performance, as measured on dummies, in these circumstances.

Next, some tests are conducted with dummies restrained by GM seat belts. GM would not provide pass-through certification for other, unknown belts. Other requirements relate to the air bags and their control unit. GM could not be expected to provide pass-through certification if the final-stage manufacturer modified these items.

Finally, the IVD provides that various structural and sheet metal components cannot be modified if the modifications would result in a difference in the modified vehicle's deceleration in a barrier test under FMVSS 208. A basic concept in designing vehicles is to design vehicle structures that minimize the amount of injury-causing crash energy that reaches the occupants. To accomplish this, in part, manufacturers design into the vehicle structural zones that collapse and absorb crash energy. A crashworthy vehicle is designed to deform according to a deceleration-time response, or crash pulse. These vary among vehicles. The frontal structure largely controls the deceleration pulse. Ultimately, the deceleration response of the vehicle affects the response experienced by the test dummies, as gauged by regulatory injury criteria such as the thoracic acceleration of a test dummy. Modifications by a final-stage manufacturer to the frame, sheet metal and other components identified in GM's IVD may change the vehicle's deceleration and its performance in a crash test, including measurements on test dummies. GM could not reasonably be expected to assume certification responsibility in these circumstances. But the final-stage manufacturer could readily satisfy the conditions of the IVD by not modifying the identified components of the incomplete vehicle when it adds equipment to the chassis of the vehicle.

GM's IVD also addresses rear seating positions. It states, in essence, that for pass-through certification, there shall be no changes to the designated seating positions or seat belt assemblies. FMVSS 208 requires seat belts at designated seating positions and the belts must meet specified standards. A change in the vehicle or its seat belts could render the vehicle noncompliant. Most multistage vehicles do not have rear seats, but those that do, such as those having rear seats for crews, can readily meet IVD requirements by retaining original equipment such as rear seats and seat belts.

The GM IVD provides pass-through certification for FMVSS 208 for vehicles with a GVWR of greater than 8,500 lbs or an unloaded vehicle weight of greater than 5,500 lbs. FMVSS 208 has fewer requirements for these heavier vehicles than for lighter vehicles. GM fairly provides pass-through certification for vehicles with complete seats and seat belt anchorages, assemblies and warning systems that the final-stage manufacturer does not modify. A modification by the final-stage manufacturer could result in a noncompliance. The final-stage manufacturer can readily meet these requirements for pass-through certification.

h. FMVSS 216 Roof Crush Resistance

NTEA also contends that the GM IVD provides no meaningful pass-through certification for FMVSS 216 Roof Crush Resistance. FMVSS 216 establishes strength requirements for the passenger compartment roof. Vehicles subject to the standard must pass a static test in which a test device applies a force, based on the vehicle's unloaded vehicle weight, to either side of the forward edge of a vehicle's roof. The lower surface of the test device must not move more than a specified distance. The standard has limited applicability in the multistage context; it applies to passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 2,722 kg (6,000 lbs) or less, a weight that is exceeded by many multistage vehicles. Additionally, the standard does not apply to school buses, which are subject to different standards.

The GM IVD provides pass-through certification for incomplete vehicles with a GVWR of 2,722 kg (6,000 lbs) or less. The certification is conditioned on the final-stage manufacturer's making no alterations which affect the function, properties, or vital spatial clearances of various components and systems, including antennae, body roof structure, body sheet metal and structural components, windshield wipers, structural components and door assemblies.

The alteration limitations on pass-through certification in the IVD are reasonable and logical in light of the function that the various components serve and the effect that their alteration would have on the roof crush capacity of the vehicle. Roof strength is dependent on structural members such as the vehicle's A pillars and B pillars and the roof itself. GM could not be expected to provide pass-through certification if the vehicle components that are related to roof crush resistance are modified. A final-stage manufacturer could readily complete a vehicle without breaching the limitations established in the IVD. As such, a final-stage manufacturer could complete a vehicle without having to conduct any tests of the roof.

i. FMVSS 301 Fuel System Integrity

NTEA also contends that the GM IVD provides no meaningful pass-through opportunity with regard to FMVSS 301 Fuel System Integrity. FMVSS 301 specifies requirements for the integrity of motor vehicle fuel systems. Its purpose is to reduce injuries from fires resulting from fuel spillage during and after motor vehicle crashes and injuries from ingestion of fuels during siphoning. The standard includes barrier testing. Tests under FMVSS 208 cover frontal barrier requirements under FMVSS 301. In addition, there are tests in which moving barriers impact the vehicle from the side and from the rear. These tests are followed by a static roll-over test to determine whether any fuel leaks from the vehicle. The standard

contains various fuel spillage rates for different periods of time after the crash test. It also contains an anti-siphoning requirement. The standard has limited application in the multistage vehicle context because it applies only to vehicles with a GVWR of 4,536 kg (10,000 lbs) or less and to school buses.

The GM IVD provides that the incomplete vehicle, when completed, will comply with FMVSS 301 if (1) no alterations are made that affect the properties, environment or vital spatial clearance of certain components or systems, including the fuel system, the fuel tank assembly, the fuel tank filler neck/pipe assembly, and the fuel tank shields; (2) no alterations are made to the fuel system and attaching or protective structure, the body structure, the chassis structure, the tires and wheels; (3) the unloaded weight of the vehicle does not exceed the specified limits; (4) the final-stage manufacturer completes the fuel filler neck where applicable in accordance with provided instructions; and (5) during all barrier impact tests (a) no component installed by the final-stage manufacturer impinges or causes distortion to the fuel system in such a way that it punctures or separates the fuel system; (b) no vehicle modification results in any portion of the vehicle impinging upon or causing distortion to the fuel system in such a way that the system is punctured or separates; and (c) any body installed is mounted securely to absorb loads and prevent movement relative to the frame which would cause any fuel system component to be punctured, separated or damaged when tested to FMVSS 301.

The GM IVD as it relates to FMVSS 301 is workable. The alteration limitations on pass-through certification in the IVD are reasonable and logical in light of the fact that the systems and components are part of the fuel system. Because the standard regulates the integrity of the fuel system, it is logical that GM would provide pass-through certification for FMVSS 301 only so long as the fuel system is not altered. The GM IVD further limits pass-through certification if alterations are made to the attaching or protective structure, the body or chassis structure of the incomplete vehicle, or to the tires and wheels on the incomplete vehicle. These provisions are logical as well. Many fuel system parts are located inside structural components of the vehicle. If the structure is altered, in a crash, the resulting structure might no longer adequately protect the fuel system or the alterations themselves could impact the fuel system components. The tires and wheels are important to clearances that preserve the integrity of the fuel system.

GM's weight limitation, as discussed in the context of other standards, has a bearing on how the vehicle will withstand the effects of a crash. A final-stage manufacturer can ensure satisfaction of this portion of the IVD by assuring that the chassis to which it adds equipment is appropriate.

The requirements regarding the installation of the fuel filler neck are likewise completely workable. Fuel filler necks need to be installed by final-stage manufacturers because they are not located in the cab. For illustration, in pickup trucks, they are located on the side of the vehicle, outside of the box. GM provides instructions with the fuel filler neck on how to install it, and provides pass-through certification only if the neck is installed in accordance with those instructions. Because the fuel filler neck is an essential component with respect to compliance with portions of FMVSS 301, it would be unreasonable to expect GM to provide pass-through certification for FMVSS 301 when a fuel filler neck is installed in a manner inconsistent with GM's instructions.

The section of the IVD pertaining to the performance of components added by final-stage manufacturers in barrier impact tests is likewise reasonable. The IVD basically provides no pass-through certification for FMVSS 301 if components added by, modifications made by, or a body installed by the final-stage manufacturer will puncture or separate the fuel system in a barrier impact test. It would be unreasonable to expect GM to provide pass-through certification in these circumstances, given the uncertainties about what the final-stage manufacturer may add to the chassis. Moreover, these provisions of the IVD do not require final-stage manufacturers to conduct a barrier impact test. Instead, those manufacturers may exercise their own judgment.

As professionals in their field and sometimes as specialists (such as school bus manufacturers), final-stage manufacturers should be familiar with various types of vehicle bodies that can be fitted to incomplete vehicles. The GM Chassis Upfitter guide provides clear guidance for final-stage manufacturers working around fuel system components and fuel lines. Among other things, the guide instructs final-stage manufacturers to provide a minimum clearance around the exhaust system or to install a protective metal shield around added components. The Upfitter guide also instructs final-stage manufacturers to avoid routing fuel lines around sharp objects and edges and to use metal clips with plastic lining to avoid damaging the fuel lines. The guide advises those manufacturers to leave a minimum clearance between the fuel tank and the body or supports and to direct bolts, screws and other potentially damaging objects away from the fuel tank.[62] In addition, final-stage manufacturers can obtain further information from suppliers. Some equipment manufacturers market equipment as complying with FMVSS 301. For example, Knapheide specifies the use of body installation brackets, called ''Quick Mount brackets,'' that are designed to comply with FMVSS 301.[63]

7. Additional Resources Available to Final-Stage Manufacturers

As a group, final-stage manufacturers do not operate in an informational vacuum. There are many resources available to them. In addition to the IVDs, these resources include upfitter guides from incomplete vehicle manufacturers, incomplete vehicle manufacturer help lines, the final-stage manufacturers' own experience and judgment, and commercially available software.

The instructions and limitations in the IVDs themselves provide information to final-stage manufacturers. For example, in order to provide instructions to final-stage manufacturers, incomplete vehicle manufacturers sometimes limit the types of vehicles into which the incomplete vehicle may be completed. Some incomplete vehicles may be completed as buses but not as school buses. School buses are required to meet some FMVSS that apply only to them (e.g., FMVSS 131, 220, 221); other FMVSS have additional school bus requirements.

Additionally, a number of incomplete vehicle manufacturers provide guides known as upfitter guides or body builder guides, which include information that facilitates the completion of the vehicle. Some incomplete vehicle manufacturers, such as General Motors, also have hotlines staffed with engineers who can answer final-stage manufacturers' questions. These resources are discussed elsewhere in this notice.

Final-stage manufacturers can also use their judgment, including engineering judgment, to certify vehicles. Testing, as provided in the FMVSS, is not required as a matter of

[62] *See* GM Best Practices Guide, available at *http://www.gmupfitter.com/publicat/Best_Practices.pdf*

[63] *See http://www.knapheide.com/pdfpages/pricepages/servicebody/UBPP8.pdf*

law to certify a vehicle.[64] Instead, sound engineering judgment may be used.[65] Many final-stage manufacturers bring considerable judgment to bear. They have been building and certifying vehicles for years. Final-stage manufacturers can and do use their base of experience in certifying vehicles as complying with the FMVSS.

Some final-stage vehicle manufacturers have a wealth of experience in various product lines. This includes buses, school buses and ambulances. They make a variety of models that have evolved over the years. The yellow school buses that one sees on the road are not novel, one-of-a-kind items.

Other final-stage vehicles often are built on chassis-cabs or cutaways[66] using equipment sold by specialized providers. The majority of work-type trucks with a GVWR of 10,000 lbs or less at new vehicle dealers are chassis-cabs with service bodies mounted to the chassis behind the cab, chassis-cabs with stake or dump bodies mounted to the frame behind the cab, and van cutaways with both service and cargo storage bodies mounted to the frame behind the van-body portion of the cutaway. The truck bodies have been manufactured by companies such as America's Body Company, Crysteel, Forest River, Knapheide, Monroe, Morgan, Stahl, Supreme and Unicell (collectively referred to as truck body manufacturers). In some cases, the truck body manufacturer completes the vehicle as a final-stage manufacturer. In other cases, the truck bodies are sold to a distributor who installs the body on the incomplete vehicle as a final-stage manufacturer. The availability of prefabricated vehicle body parts to complete chassis-cab and cutaway vehicles facilitates certification. NTEA is aware of these equipment companies and their products because NTEA annually runs the largest work truck show and many of these companies have booths at the NTEA show.[67]

Many incomplete vehicles are completed as work-type vehicles by the addition of cargo-carrying, work-performing, or load-bearing components. For example, a typical beverage delivery truck is a vehicle completed with a cargo-carrying component, and a dump truck is an example of a vehicle completed with a load-bearing component. These types of vehicles are generally produced by making the same kinds of additions to the incomplete vehicles, thus reducing the variation in the completion work the final-stage manufacturer must perform. The relatively routine nature of these types of variations creates a body of knowledge from which final-stage manufacturers can work. Manufacturer changes to work-truck vehicles are either infrequent or they represent product improvements.

In addition, some of the equipment installed by final-stage manufacturers has been certified as complying with relevant FMVSS. Many final-stage manufacturers rely on that certification. The following components and systems are typically found on work-type vehicles manufactured in two or more stages (the associated FMVSS is stated in parenthesis): Brake hoses (FMVSS 106), lamps, reflective devices and associated equipment (108), brake fluid (116), tires for vehicles other than passenger cars (119), glazing materials (205), door locks and door retention components (206), seat belt assemblies (209), and rear impact guards (223). Recreational vehicles have all of the above except rear impact guards. They also may have platform lifts systems (403) for people who are disabled or who are in wheelchairs. Some of the above-noted FMVSS have additional requirements that must be satisfied by a vehicle manufacturer, including ranges of locations for lamps and reflective devices (108), the track and slide or other supporting means for a sliding door under transverse loading (206), and the installation of rear impact guards (223 and 224) and platform lift systems (403 and 404).

The work of final-stage manufacturers is facilitated by the fact that incomplete vehicle manufacturers do not change the chasses that they offer every year or even every several years. When the vehicle or chassis is not significantly changed from the previous model year, it is referred to as a carryover vehicle. In many cases, the vehicle components and systems that affect compliance with FMVSS requirements are unchanged. Unless other components or systems will influence how the vehicle performs relative to the FMVSS, the work needed to support the final-stage manufacturers' certification to FMVSS requirements will be limited.

Therefore, NTEA's underlying premise that the IVDs currently supplied by incomplete vehicle manufacturers, such as the IVD attached to NTEA's petition, cannot be used to construct compliant vehicles, is invalid.

D. NHTSA's Market Forces Argument Is Justified and Consistent With the Multistage Vehicle Market

In the final rule, NHTSA rejected NTEA's suggestion that the rule specifically require IVDs to be reasonable or be prepared in good faith.[68] Part of the agency's justification for this decision was that ''[t]here is no market for incomplete vehicles that cannot be manufactured into completed vehicles that will meet the applicable FMVSS.'' [69] NHTSA also noted that incomplete vehicle manufacturers have business reasons to provide workable IVDs.[70]

NTEA disputes NHTSA's market force statements.[71] NTEA first contends that NHTSA's position is incorrect because incomplete vehicle manufacturers have been required to provide conformity statements in IVDs for almost 30 years and market forces have not caused reasonable compliance envelopes to exist today. NTEA's argument is extraordinarily general, conclusory and unsupported. From a macro standpoint, NTEA's market force argument ignores the fact that many types of multistage vehicles are being manufactured and offered for sale, including those manufactured by NTEA members. These include ambulances, service trucks, small school buses, mid-size buses, tow trucks and vans.[72] The fact that vehicles such as these are being made indicates that the IVDs are workable. Moreover, as discussed above, we do not agree that the IVDs supplied by incomplete vehicle manufacturers are insufficient to permit final-stage manufacturers to construct compliant vehicles and certify their compliance with federal motor vehicle safety standards.

NTEA next contends that final-stage manufacturers do not have sufficient

[64] This has been recognized in interpretations by NHTSA's Chief Counsel.

[65] Manufacturers of passenger cars and multipurpose passenger vehicles, among others, routinely conduct one or more tests to assure that a representative vehicle is compliant based on the test procedure in the FMVSS. For carryover vehicles, they may not conduct tests.

[66] A cutaway is similar to a chassis cab in that it contains the cab and ordinarily the seat supplied by the incomplete vehicle manufacturer. For illustration purposes, it may be viewed as a van without any body structure rearward of the vehicle's B pillar (located slightly rearward of its front seating positions) There is no rear wall. Thus, the occupant compartment is essentially complete, surrounding the front seating positions but open to the rear.

[67] NTEA also holds educational sessions at the Work Truck Show. For example, at the March, 2006 Work Truck Show there was a session on Designs and Specifications for Vocational Vehicles—A Functional Approach.

[68] 70 FR 7414, 7425 (Feb. 14, 2005).

[69] *Id.*

[70] *Id.*

[71] Petition at 9.

[72] *See, e.g., http://www.ntea.com/mr/divisions.asp*

market presence to choose the brand of the chassis on which they will complete a vehicle. NTEA offers the hypothetical of a customer who goes to a Ford truck dealer that assists the customer in developing the specification for the vehicle. In this example, the final-stage manufacturer has no say but is willing to complete the vehicle. NTEA observes that if the final-stage manufacturer were to decline the business, ''another final-stage manufacturer undoubtedly would be glad to take it.'' [73]

NTEA's hypothetical of a customer simply going to a Ford dealer is unduly narrow. It assumes that there are no communications with the final-stage manufacturer with regard to the truck body to be chosen. It implies that the final-stage manufacturer faces substantial difficulties in completing the vehicle but does not identify what those difficulties are. Even that implication is contradicted by NTEA's hypothetical. NTEA's point that another final-stage manufacturer undoubtedly would be glad to finish the vehicle strongly indicates that such a manufacturer can do so within the confines of the current rule while maintaining its business. We assume NTEA did not mean to suggest that the final stage manufacturer that would accept the work would do so with an intention to ignore its certification responsibilities.

Moreover, a customer ordinarily is not limited to the franchised truck dealer of one brand of truck. For example, many of the chasses for multistage vehicles in the service truck category are known, based on payload, as ¾ ton trucks and 1 ton trucks. A number of manufacturers make these chasses, including DaimlerChrysler (Dodge), Ford and General Motors. These manufacturers compete in the sale of chasses. As such, they must be, and are, sensitive to the concerns of the marketplace.

As important, customers purchasing trucks can and do go directly to final-stage manufacturers to purchase trucks. Many of the final-stage manufacturers use chasses built by more than one incomplete vehicle manufacturer. Thus, final-stage manufacturers do have choices with regard to the incomplete vehicles on which they work. The incomplete vehicle manufacturers are marketing to, and working with, the truck purchasers and final-stage manufacturers. For example, in NTEA's 2004 and 2006 Work Truck Shows, at least 12 of the world's leading chassis manufacturers displayed product, and many of those manufacturers hosted chassis update sessions.[74] This is another reflection of a competitive marketplace in which the chassis manufacturers are sensitive to the marketplace.

In addition, NTEA ignores the cooperative relationships between incomplete and final-stage manufacturers. For example, GM has relationships with final-stage manufacturers it refers to as Special Vehicle Manufacturers (SVMs). SVMs ''are contractual partners who must provide a quality upfit product that will enhance GM chassis and van vehicles. SVMs are selected on the merit of their upfit/conversion, financial stability, and adherence to governmental and trade association requirements.'' [75] Of 108 distinct companies listed as SVMs on GM's Web site, 20 are NTEA members. Thus, 18.5 percent, or nearly one fifth, of the SVMs are NTEA members, illustrating that NTEA is well aware of this cooperative relationship between incomplete and final-stage manufacturers. These partnerships between final-stage and incomplete vehicle manufacturers demonstrate that both groups play a large role in the market for multistage vehicles.

NTEA also focuses too narrowly on the IVD itself and ignores other resources available to final-stage vehicle manufacturers. A number of incomplete vehicle manufacturers provide substantial resources to assist final-stage manufacturers in the completion of multistage vehicles. For example, GM has extensive Web sites geared toward both selecting the proper incomplete vehicle [76] and completing the incomplete vehicle once it is purchased.[77] The purpose of the extensive Web site is ''to improve the quality of Chevrolet and GMC second stage manufactured vehicles by assisting the Upfitter, Body Builder and Aftermarket Accessory communities.'' [78] The Web site goes on to say that GM accomplishes this goal through various avenues, including:

> a ''Hotline'' assistance program, which provides engineering support and technical information; publications including Body Builders Manuals and Technical Bulletins; and New Product Preview; meetings, to name a few. We also represent General Motors at upfitter association tradeshows and committee meetings, which enables us to be your ''Voice of Customer'' within the GM Vehicle Engineering organization.[79]

The Hotline, which provides technical assistance, can be accessed both via phone and via online submissions.[80] GM also publishes a Best Practices Guidelines Manual, which includes examples of how to complete incomplete vehicles and comply with Federal standards.[81]

GM's Fleet Division [82] assists consumers or final-stage manufacturers in selecting the correct GM incomplete vehicle for the intended use of the truck. The GM Fleet advisors are either dealers or advisors who can be reached through another help line. GM also publishes a Light Commercial Vehicle Body Application Guide, which contains the specifications and possible uses of the GM incomplete vehicles.

As another example, Ford offers other contact information for choosing the correct incomplete vehicle.[83] Additionally, Ford offers the *Ford Truck Body Builders' Layout Book,* which provides additional engineering information and is referenced in the IVDs for Ford incomplete vehicles.

These examples of additional resources for final-stage manufacturers indicate that the incomplete vehicle manufacturers devote substantial resources that facilitate the work of final-stage manufacturers. The incomplete vehicle manufacturers' allocation of resources to the needs of final-stage manufacturers demonstrates the market power possessed by final-stage manufacturers.

NTEA does not address the fact that the multistage vehicle industry is a multi-billion dollar industry in which the incomplete vehicle manufacturer and the final-stage manufacturer have complementary interests. NTEA's arguments, which are not supported by evidence, are inconsistent with the reality that final-stage manufacturers are doing business and certifying vehicles within the existing IVD framework. NTEA submitted no data demonstrating that final-stage manufacturers are going out of business, NTEA's prediction for what will happen to final-stage manufacturers who either complete vehicles with unworkable IVDs or refuse to complete vehicles with unworkable IVDs. Thus, the foundation for NTEA's argument lacks support.

[73] Petition at 9–10.

[74] NTEA Annual Report, 2004. At NTEA's 2006 Work Truck Show, the following Truck Manufacturers had major displays: International, Work Horse, Toyota, Hino Tucks, Mitsubishi Fuso, Sterling Trucks, General Motors, Isuzu, Ford, Kenworth, Dodge, Freightliner, Peterbilt and Nissan Diesel.

[75] *http://www.gmfleet.com/gmfleetjsp/svm/administration /locator/index.jsp.*

[76] *http://www.gmfleet.com*

[77] *http://www.gmupfitter.com*

[78] *Id.*

[79] *Id.*

[80] *http://www.gmupfitter.com/wwedo/wwwd.htm.*

[81] *Id.*

[82] *http://www.gmfleet.com*

[83] *See generally http://www.fleet.ford.com.*

E. NHTSA's Decision Not To Include a Reasonableness Requirement Is Consistent With Other NHTSA Regulations

In the final rule, NHTSA rejected NTEA's proposal that NHTSA require that incomplete vehicle manufacturers use ''good faith'' efforts to provide ''reasonable'' conformity statements that are susceptible to being passed through to final-stage manufacturers.[84] NHTSA stated it would not adopt the suggested language because ''due to its subjectivity, the suggested language is not susceptible to effective enforcement.'' [85] NTEA contends that this is inconsistent with the ''good faith'' standard for determining the application of civil penalties in the context of certification and the final rule's provision that applications for temporary exemptions contain complete descriptions of each manufacturer's good faith efforts to comply with the standards.[86]

NTEA states that the agency does not explain why it is unable to fashion a workable reasonableness standard.[87] However, it is NTEA that has not met its burden. Although NTEA did submit comments in response to the SNPRM recommending an alternative approach to multistage certification, it did not provide a workable means for incorporating a reasonableness standard under the Safety Act. If such a means exists, NTEA has had more than an ample opportunity to suggest a workable approach, in response to an NPRM, in a regulatory negotiation, and in a response to a supplemental notice of proposed rulemaking. It is not the agency's obligation to take a vague concept from a commenter, make it workable, flesh it out, and include it in a rule. NTEA has not offered any basis by which the agency could determine whether an incomplete vehicle manufacturer exercised good faith in producing an IVD that might be usable by a final-stage manufacturer, since it is the particular final-stage manufacturer's actions that largely control its usability. As shown above, the typical IVDs are usable on their face.

The two provisions that NTEA cites are not analogous. First, the imposition of civil penalties is based on a statutory provision, 49 U.S.C. 30165, which authorizes the agency to impose and compromise civil penalties. This provision does not provide for consideration of ''good faith,'' but does provide for consideration of other matters—the size of the business and the gravity of the violation. The statutory certification provision states that a person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect.[88] Second, the good faith requirement in the final rule's provisions for temporary exemptions requires a manufacturer to make a good faith effort to comply with FMVSS prior to seeking exemptions from those standards, and the petition for an exemption must include a discussion of these good faith efforts.[89]

Unlike civil penalties, which are considered in an enforcement context between the government and a regulated entity and on a case-by-case basis, or petitions for exemptions from FMVSS, which are addressed in an administrative proceeding involving the agency and a regulated entity on a case-by-case basis, IVDs are documents of general application that are passed from one private entity—incomplete vehicle manufacturers—to another private entity—final-stage manufacturers—when a multistage vehicle is manufactured. The agency does not have a statutory role in this private process to rewrite IVDs and impose a rewritten IVD on the manufacturers involved in making a multistage vehicle. Moreover, the agency does not have the resources to do so.

The agency cannot police or enforce a nebulous ''reasonableness'' standard for IVDs particularly given that, for all of the reasons discussed above, NTEA has demonstrated that it cannot agree with NHTSA as to what a workable IVD contains. The agency would thus be left policing a relationship between companies that have sometimes competing interests and concerns regarding IVDs, and NHTSA would have to do so with its only norm being the one of ''reasonableness'' in the context of particular upfits of trucks.

F. Impracticability Should Be Decided in Context of Rulemaking for Each FMVSS or on a Petition for a Temporary Exemption

NTEA contends that it is impracticable for final-stage manufacturers to comply with standards that require dynamic tests. To the extent that impracticability is a legitimate concern, it is properly addressed in the context of an individual FMVSS itself. In the final multistage rule, NHTSA recognized that multistage vehicles are a type of vehicle. As a result, within a particular FMVSS, separate requirements may be established for multistage vehicles. NHTSA is following this approach on a standard-by-standard basis. For example, in the August 2005 NPRM [90] on roof crush standards, NHTSA proposed the designation of incomplete vehicles ''as a vehicle type subject to different regulatory requirements.'' [91] The NPRM proposed allowing final-stage manufacturers to certify ''non-chassis-cab vehicles to the roof crush requirements of FMVSS 220, as an alternative to the requirements of FMVSS 216.'' [92] Alternatively, the final-stage manufacturer should apply for a temporary exemption as provided by the final rule and amended in this document.

G. The Current Certification Scheme Is Not an Unlawful Delegation of Agency Authority

NTEA position: NTEA observed that under the final rule, the incomplete vehicle manufacturer creates the IVD and the IVD controls the assignment of certification responsibility. NTEA further asserts that narrow compliance envelopes shift responsibility for certifying compliance to the final-stage manufacturer. Based on these observations, NTEA contends that the agency has, in effect, delegated to a private, self-interested party (i.e., the incomplete vehicle manufacturer) the authority to determine, as between itself and the final-stage manufacturer, which entity bears certification responsibility. NTEA contends that the determination of certification responsibility by this private, self-interested party is essentially non-reviewable, as the agency declined to impose a reasonableness standard for conformity statements in the IVD. Noting that courts disfavor delegation of agency responsibility to outside entities, particularly private entities whose objectivity may be questioned on grounds of conflict of interest, NTEA argues that the agency's delegation to incomplete vehicle manufacturers of unfettered authority to determine certification responsibility should be subject to careful review.

Agency's response: NTEA relies on a case involving an unlawful delegation of an agency's authority to a private entity.[93] However, NTEA ignores the

[84] 70 FR at 7425.

[85] *Id.*

[86] Petition at 10–11.

[87] Petition at 11.

[88] 49 U.S.C. 30115.

[89] 49 CFR 555.13(b).

[90] 70 FR 49223 (Aug. 23, 2005).

[91] *Id.* at 49235.

[92] *Id.* FMVSS 216 regulates standard roof crush resistance for passenger compartments, while FMVSS 220 regulates school bus rollover protection.

[93] *Nat'l Park and Conservation Ass'n* v. *Stanton,* 54 F.Supp. 2d 7 (D.D.C. 1999).

central premise of the case, namely, that the relevant inquiry on a private delegation issue is to assess Congressional intent, based on the pertinent statute(s) and its legislative history. Moreover, NTEA does not refer at all to the statutory certification provisions in the Vehicle Safety Act. Specifically, NTEA does not cite to any statutory provision assigning to NHTSA any duty to regulate the allocation of certification responsibility for any particular vehicle between the incomplete vehicle manufacturer and final-stage manufacturers.

In the National Traffic and Motor Vehicle Safety Act, Congress imposed the responsibility to certify compliance on manufacturers and distributors.[94] The Safety Act created a self-certification scheme. Under this statutory framework, the agency promulgates the FMVSS, and it is then the manufacturer's or distributor's responsibility to comply with these standards and to furnish a certification to the distributor or dealer that the vehicle or equipment conforms to all applicable FMVSS. The statute, as originally enacted, did not provide for agency review and approval of the manufacturer's certification or for agency allocation of responsibility of certification in the multistage vehicle context.

In the 1970s, NHTSA promulgated regulations specifying certification requirements for manufacturers of vehicles manufactured in two or more stages and prescribing the method by which manufacturers of vehicles manufactured in two or more stages shall ensure conformity of those vehicles with FMVSS.[95] Under these regulations, certification responsibility may rest with incomplete vehicle manufacturers, or with intermediate or final-stage manufacturers. NHTSA's regulations do not provide for the agency to allocate certification responsibility between incomplete vehicle manufacturers and final-stage manufacturers.

In 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.[96] Section 9 of the Act amended 49 U.S.C. 30115 to address certification labels.[97] In general, the amendments required an intermediate or final-stage manufacturer to certify with respect to each FMVSS either that it has followed the compliance documents provided by the incomplete vehicle manufacturer or that it has chosen to assume responsibility for compliance with that standard.[98] The amendments further provided that if an intermediate or final-stage manufacturer assumes responsibility for compliance with a standard covered by the documentation, it must notify the incomplete vehicle manufacturer within a reasonable time.[99] Significantly, the TREAD Act amendments did not alter the regulatory approach in 49 CFR 567.5 and 49 CFR part 568. They did not require NHTSA to allocate certification responsibilities between the various manufacturers in the chain of production of multistage vehicles.

In contrast to this regulatory approach, Congress has enacted other regulatory schemes that require agency review and approval of manufacturers' certifications. For example, the Clean Air Act requires the Administrator of the Environmental Protection Agency (EPA) to test or require testing of motor vehicles or engines to determine whether they comply with the emissions requirements and, if they conform, to issue a certificate of conformity.[100] In that context, EPA has a significant administrative role. In contrast, in the Vehicle Safety Act, Congress did not provide for agency review or approval of a manufacturer's certification. Moreover, the TREAD Act amendments specifically addressed certification in the multistage vehicle context and did not assign the agency an arbiter role in the certification process.

In view of the foregoing, NHTSA does not accept NTEA's argument that the certification scheme in the final rule delegates too much power to the final-stage vehicle manufacturers. Accordingly, NHTSA will not modify the final rule on this ground and denies this aspect of NTEA's petition.[101]

H. The Agency's Decision Not To Change Default Recall Responsibility, Which Historically Has Been Assigned to Final-Stage Manufacturers, Was Reasonable

NTEA position: NTEA notes that in the SNPRM, NHTSA sought to change its practice of allocating recall responsibility to the final-stage manufacturer in the case of a dispute between manufacturers, and proposed instead to allocate recall responsibility to the party it believed to be best able to conduct the recall (referencing 69 FR 36047). NTEA further notes that the agency did not carry this through in the final rule. NTEA contends that the correct approach is the one proposed in the SNPRM—the elimination of any default allocation of recall responsibility and the assignment of such responsibility to the party responsible for the defect. NTEA observes that if the agency does not wish to resolve disputes, then the default responsibility should be on the incomplete vehicle manufacturer. Alternately, the agency could hold all manufacturers responsible.

NTEA further observes that in the SNPRM, the agency recognized that final-stage manufacturers may lack the financial resources to conduct recall campaigns (referencing 69 FR 36047). NTEA contends that the agency downplayed this in the final rule by noting that ''historically, incomplete and final-stage manufacturers have been able to resolve issues of determination of responsibility'' (referencing 70 FR 7427). According to NTEA, these disputes are typically resolved by the final-stage manufacturer ''agreeing'' to conduct the recall because it can ill afford to do otherwise. NTEA contends that NHTSA's treatment of the final-stage manufacturer as the default party gives extraordinary leverage to the incomplete vehicle manufacturer, because in case of a disagreement, the incomplete vehicle manufacturer can report the defect to NHTSA, causing the final-stage manufacturer to take on the recall to avoid a costly legal challenge. NTEA characterizes NHTSA's policy as ignoring the final-stage manufacturer's lack of bargaining power with the incomplete vehicle manufacturer. According to NTEA, the final-stage manufacturer values its relationship with the incomplete vehicle manufacturer more than the incomplete vehicle manufacturer values its relationship with the final-stage manufacturer.

NTEA also contends that safety will be enhanced if incomplete vehicle manufacturers have default recall responsibility. Noting that most incomplete vehicle manufacturers are large multi-national companies that have dealerships in most counties in the United States, NTEA postulates that the campaigns will be more efficiently conducted, particularly where vehicles are sold over a wide geographic area. In this circumstance, NTEA observes that disruption to customers will be minimized.

[94] *See* Section 114 of the Act, Pub. L. 89–563, 80 Stat. 726 (recodified at 49 U.S.C. 30115).

[95] *See* 49 CFR 567.5 and 49 CFR part 568 (1977).

[96] Pub. L. 106–414.

[97] 114 Stat. 1805.

[98] *Id.*

[99] *Id.*

[100] 42 U.S.C. 7525(a).

[101] The agency also notes that NTEA has not addressed the practical implications of its assertions. The imposition of reponsibilities on NHTSA to arbitrate certification issues would delay the introduction of vehicles into the market. NHTSA does not have staff to undertake these activities.

NTEA further notes that the incomplete vehicle manufacturer makes or supplies most of the complex components on the vehicle that are likely to be involved in recall campaigns, and the final-stage manufacturer may lack technical expertise with regard to these components. Disputing the agency's expressed (70 FR 7427) presumption that the present recall scheme ''provides an incentive for a final-stage manufacturer to deal with a solid and reputable incomplete vehicle manufacturer,'' NTEA reiterates its contention that the final-stage manufacturer cannot choose which incomplete vehicle supplier to use. NTEA further observes that most final-stage manufacturers cannot identify owners from sales and warranty records because they have no interaction with the end user, and the incomplete vehicle manufacturer is in a better position to obtain this information through the dealer.

Agency response: For the reasons set forth below, we deny this aspect of NTEA's petition.

1. Background

NHTSA's basic approach to, and regulation of, recall responsibility has been in effect for several decades. The regulations on recall responsibility were adopted in 1978 and codified in 49 CFR part 579. In essence, the regulations provided that each manufacturer of a motor vehicle shall be responsible for any safety-related defect determined to exist in the vehicle or in any item of original equipment.[102] Under the agency's interpretations, an incomplete vehicle is classified as an original equipment item for which the final-stage manufacturer has recall responsibility. Separately, the rules on certification of multistage vehicles were adopted in 1971 and codified in 49 CFR part 568.[103]

In 1988, NTEA petitioned NHTSA to institute a rulemaking to amend 49 CFR part 579 to clarify and equitably apportion between incomplete vehicle manufacturers and final-stage manufacturers the responsibility for conducting recalls.[104] NHTSA granted the petition to institute a rulemaking proceeding.[105] The decision to grant the petition was influenced by a conflict between an incomplete vehicle manufacturer and final-stage vehicle manufacturers that produced ambulances. The defect at issue, which caused the contents of the vehicle's fuel tank to boil and seep through the gas cap, posed a grave risk of vehicle fires. The parties to the dispute denied their own fault and attributed the defect to the others' actions. This dispute delayed the recall. Ultimately, the incomplete vehicle manufacturer agreed to conduct the recall.[106]

In 1993, NHTSA terminated the rulemaking on the grounds that there was no need for the requested rule. NHTSA pointed out that the conflicts between incomplete vehicle manufacturers and final-stage manufacturers that the agency had witnessed in the ambulance recall had not been evident in subsequent enforcement actions involving multistage vehicles.[107] The agency further explained that its regulations do not mandate that responsibility for defects be borne exclusively by final-stage manufacturers. Instead, the recall could be conducted by either the incomplete vehicle manufacturer or the final-stage manufacturer. NHTSA emphasized that its objective was to ensure that a manufacturer in the production chain assumes responsibility for the recall.[108]

In 1991, NHTSA issued an NPRM that proposed to extend the certification requirements then being exercised by chassis-cab manufacturers to all incomplete vehicle manufacturers.[109] This would have permitted pass-through certification for multistage vehicles built on all types of incomplete vehicles. The proposal generated a great deal of controversy. [110] Following a public meeting in 1995 [111] and the creation of an ad hoc advisory committee on the subject of multistage vehicle certification,[112] in 1999, NHTSA initiated a negotiated rulemaking in an effort to resolve the assignment of certification responsibilities among multistage vehicle manufacturers.[113]

Although, historically, the agency has addressed certification and recall responsibility for multistage vehicles separately, in the negotiated rulemaking the interests representing final-stage manufacturers added issues related to recall responsibility. In the negotiated rulemaking, the final-stage and incomplete vehicle manufacturers largely maintained opposing positions. The final-stage manufacturers contended that the incomplete vehicle manufacturers should be responsible at least for recalls involving incomplete vehicles. The incomplete vehicle manufacturers asserted that final-stage vehicle manufacturers should be held responsible for the vehicles. The incomplete vehicle manufacturers pointed out that the final-stage manufacturer is free to add to or modify the incomplete vehicle in any way, as the vehicle is no longer under the control of the incomplete vehicle manufacturer. These additions and modifications may introduce defects or affect the conformity of the vehicle to federal standards. These diametrically opposed positions could not be harmonized without substantial compromise, which led in part to the failure of the negotiated rulemaking. After several years of meetings that did not culminate in an agreed-upon rule, in 2004 NHTSA published an SNPRM.[114]

In the SNPRM, NHTSA, although not legally bound to do so, honored a commitment made in the course of the negotiated rulemaking to propose a regulation that mirrored a report produced, but not agreed upon, in the negotiated rulemaking process. NHTSA made clear in the SNPRM that it was proposing ''the applicable regulations as drafted by the committee,'' [115] not as proposals NHTSA itself supported. In this vein, NHTSA proposed for the first time to amend its recall responsibility regulation, which had been recodified at 49 CFR 573.5 from 49 CFR part 579.[116] The proposal provided that when there is a determination of a safety-related defect and the incomplete vehicle manufacturer and final-stage manufacturer can not agree as to which manufacturer is responsible for the defect, NHTSA would determine which manufacturer is in the best position to conduct the recall.[117] NHTSA's decision would not be reviewable.

[102] 49 CFR 579.5 (1978).

[103] The regulations defined an ''incomplete vehicle'' as ''an *assemblage* consisting, as a minimum, of frame and chassis structure, power train * * *.'' In contrast, a ''complete vehicle'' was defined as ''a *vehicle* that requires no further manufacturing operations.'' 49 CFR 568.3 (emphasis added). The Act defined a motor vehicle as ''any vehicle driven or drawn by mechanical power manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.'' 15 U.S.C. 1391(3) (1985), recodified at 49 U.S.C. 30102(a)(6) (1994). Because it requires further manufacturing operations to perform its intended function, an incomplete vehicle cannot be regarded as having been primarily manufactured for use on public streets, roads, and highways, and therefore does not qualify as a ''motor vehicle'' under the above definition.

[104] 58 FR 40402, 40403 (July 28, 1993).

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] 58 FR at 40404.

[109] 56 FR 61392 (December 3, 1991).

[110] 60 FR 57694 (November 17, 1995).

[111] 64 FR 57499, 27500 (May 20, 1999).

[112] *Id.*

[113] 64 FR 66447, 66447 (Nov. 26, 1999).

[114] 69 FR 36038 (June 28, 2004).

[115] 69 FR at 36041; *see id* at 36048.

[116] In 2002, the regulations on recall responsibility were moved to 49 CFR 573.5 and the early warning rules were added to 49 CFR part 579.

[117] 69 FR at 36047.

As noted in the preamble to the SNPRM, this proposal was the subject of vociferous objection by many of the incomplete vehicle manufacturers.[118] Their primary concern was that NHTSA's determination would not be reviewable. One incomplete vehicle manufacturer offered alternative language that did not provide a dispute resolution mechanism.[119] As NHTSA further noted in the preamble, the alternative language also did not assure that in the event of a dispute that is not easily resolvable, a recall campaign is conducted in a timely manner. The agency observed that ''[h]istorically, NHTSA has maintained that while any stage manufacturer may assume responsibility for a recall campaign, the final-stage manufacturer is responsible for any campaign that a previous stage manufacturer has not agreed to conduct.'' [120]

In the SNPRM, NHTSA further noted that the allocation of recall responsibility was a ''difficult issue.'' [121] The agency observed that final-stage manufacturers often may not have the resources to conduct a recall for a safety problem they did not cause. On the other hand, NHTSA maintained that allocating recall responsibility to a specific party in the event of a dispute as to legal responsibility allows the agency to achieve the result it believes is essential to its safety-based mission: getting defective systems or equipment remedied as soon as possible so as to reduce the likelihood of motor vehicle-related injury or death.[122] In the absence of a default allocation of recall responsibility, recalls would be delayed by disputes.

NHTSA also voiced concerns in the SNPRM that the non-reviewability provision in the proposed rule may ''ultimately be determined impermissible.'' [123] In connection with our concerns about the non-reviewability provision's chances of withstanding judicial review, we asked commenters to ''provide arguments and analysis as to which manufacturer should be deemed responsible for a recall campaign in the event that NHTSA and the various-stage manufacturers could not determine in a timely manner which party should bear responsibility for the recall.'' [124]

In February 2005, NHTSA issued the final rule that is the subject of the NTEA petition.[125] In the final rule, NHTSA decided not to amend the rules on allocation of recall responsibility. Thus, the final-stage manufacturer continued to have default responsibility for recalls in the event of a dispute with the incomplete vehicle manufacturer. NHTSA recognized that the majority of commenters opposed the proposal for NHTSA to allocate recall responsibility.[126] The agency stated:

> NHTSA's primary concern is safety; NHTSA is also concerned that the rule be workable. The most compelling fact is that under existing § 573.5, in general, recalls are not delayed by disputes between manufacturers. In fact, practical disputes rarely occur * * * It is clear from this fact that the private parties are able to resolve and in fact are successfully resolving the issues regarding the conducting of recalls * * * In addition, the proposal was not well received.[127]

The agency concluded that ''the existing rule meets the fundamental safety need for prompt recalls.'' [128]

2. Summary of NTEA's Position

In its petition, NTEA asserts that NHTSA should adopt the proposal published in the SNPRM and rejected in the final rule—that should the manufacturers in the production chain of a multistage vehicle or NHTSA be unable to determine or agree which manufacturer is responsible for a safety-related defect, NHTSA shall make a nonreviewable determination as to which manufacturer is to conduct the recall campaign.[129] This would eliminate the default responsibility of final-stage manufacturers that has long existed under NHTSA's regulations. In its petition, the NTEA further proposed that if the agency does not wish to resolve recalls in this manner, default recall responsibility should rest with the incomplete vehicle manufacturer instead of the final-stage manufacturer. Alternatively, NTEA proposed that default recall responsibility be placed on all manufacturers of a defective or noncompliant multistage vehicle.[130] NTEA does not explain how the latter alternative would work.

In support of its request, NTEA asserts, first, that final-stage manufacturers lack the financial resources needed to have default recall responsibility.[131] Second, NTEA contends that safety will be enhanced if incomplete vehicle manufacturers have default recall responsibility.[132] NTEA's arguments why NHTSA should reconsider its position on this issue basically mirror these concerns.

3. NTEA Has Not Demonstrated That, Based on Size, Default Responsibility Should Be Shifted From Final-Stage Manufacturers

In its petition, NTEA notes that in the preamble to the SNPRM, NHTSA recognized that final-stage manufacturers often ''may'' not have the resources to conduct a recall for a safety problem they did not cause.[133] NTEA offers that the cost of a recall campaign could easily bankrupt a final-stage manufacturer.[134] In its view, the final rule downplays the adverse consequences the assignment of disputed recalls can have on final-stage manufacturers by asserting that ''historically, incomplete and final-stage manufacturers have been able to resolve issues of determination of responsibility.'' [135] In NTEA's view, disputes typically are resolved by the final-stage manufacturer agreeing to conduct the recall because it can not afford to do otherwise.[136] NTEA provides no factual support for its assertions.[137]

NTEA's argument is based in part on the assertion that incomplete vehicle manufacturers are in a better financial position to conduct recalls. This disregards the fact that the Vehicle Safety Act (49 U.S.C. Chapter 301) does not identify financial means as a criterion for exercising recall responsibility. The Safety Act states that the vehicle's manufacturer shall conduct the recall.[138] In the multistage vehicle context, NHTSA has interpreted that to be the final-stage manufacturer, because the incomplete vehicle is an original equipment item, and not a vehicle.[139] Further, assuming that recall responsibility could be allocated between incomplete and final stage manufacturers, NTEA has not addressed the issue of whether the Federal courts would be likely to accept the view that under the Safety Act, NHTSA may make decisions allocating recall responsibility that would be unreviewable by the courts, as discussed in the SNPRM.[140] NTEA has also not addressed the resource demands for NHTSA involvement in the allocation of recall

[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.* at 36047–48.
[123] *Id.* at 36048.
[124] *Id.*
[125] 70 FR 7414 (February 14, 2005).
[126] 70 FR at 7425.
[127] *Id.* at 7427.
[128] *Id.*
[129] Petition at 12.
[130] *Id.*
[131] Petition at 12–14.
[132] Petition at 14–15.
[133] Petition at 12.
[134] *Id* at 13.
[135] *Id.*, quoting 70 FR at 7427.
[136] Petition at 13.
[137] Petition at 13.
[138] *See* 49 U.S.C. 30118.
[139] *See* 58 FR 40402, 40403 (July 28, 1993).
[140] *See* 69 FR 36047–48.

responsibility and NHTSA's corresponding lack of resources to be so engaged. In any event, on the question of finances, it is a matter of public record that a number of incomplete vehicle manufacturers are financially strained.

NTEA's arguments regarding default recall responsibility rest in general on NTEA's premise that final-stage manufacturers are left with the responsibility for recalling vehicles to remedy problems that were not of their own making. NTEA goes on to argue that final-stage manufacturers left with the responsibility for these recalls will be put out of business by the crippling costs of these recalls.[141]

In an effort to evaluate these assertions, NHTSA assessed recalls of multistage vehicles over a three model-year period.[142] As detailed below, the review revealed that incomplete vehicle manufacturers conducted the recalls in 98 percent (193 of 197) of the instances in which the underlying cause could be attributed to them. Additionally, final-stage manufacturers conducted recalls for which the underlying cause could be attributed to incomplete vehicle manufacturers in only 2 percent (4 of 197) of the recalls conducted for which the incomplete vehicle manufacturer was most likely responsible.

To conduct the assessment, the agency reviewed about three years of recall data covering model year 2003 and more recent vehicles.[143] Based on our experience with recalls, this would provide sufficient relevant information upon which to make an assessment. We searched Artemis, NHTSA's central repository of vehicle data on, among other things, vehicle complaints, investigations and recalls. More particularly, Artemis contains summaries of safety recalls of motor vehicles and motor vehicle equipment, as well as Defect and Noncompliance Information Reports submitted by manufacturers under 49 CFR 573.6 and copies of notification letters from manufacturers to vehicle owners under 49 CFR part 577 and 49 CFR 573.6(c)(11).[144]

Artemis does not include a separate code for multistage vehicles. Agency staff screened the vehicle recalls in Artemis to identify those involving multistage vehicles. The search produced three hundred seventy-nine (379) recalls of MY 2003 and more recent vintage multistage vehicles. Next, agency staff made an assessment of the nature of the safety-related defect, the manufacturer likely to be responsible for the defect and the manufacturer that conducted the recall. The assignment of responsibility was made by engineers based on the information about the problem and the remedy based on summary information from part 573 and 577 reports and the reports in Artemis.

Based on this review, a substantial portion of the recalls of multistage vehicles were conducted by incomplete vehicle manufacturers. Of the 379 recalls of multistage vehicles, 193 (51%) were conducted by the incomplete vehicle manufacturer. This is illustrated by the following examples:

- On September 14, 2005, Ford notified ODI (05V–415) [145] about F–650/750 medium duty trucks built with a defective park brake anchor bolt, which upon failure could allow the truck to roll away from a parked position.
- On September 2, 2005, Freightliner notified ODI (05V–408) of a defect on its motor home chassis in which the steering shaft was pushing through the lower yoke, resulting in a loss of steering.
- On November 10, 2005, International Truck and Engine notified ODI (05V–523) of a defect concerning a cab entry step failure, possibly resulting in personal injury.
- On October 11, 2005, Hino Motors Sales USA Inc. notified ODI (05V–492) of a defect in which the battery box was not properly torqued in place on certain cabs and chassis. This could result in the battery and box becoming dislodged from the vehicle.
- On July 7, 2005, Mack Trucks notified ODI (05V–312) of a defect concerning non-conforming transverse beam castings on the AD Series suspensions. If a part were to fail, it could drop to the ground and become a projectile or cause sparks and ignite a fire.
- On June 29, 2005, Four Winds International, a final-stage manufacturer, notified ODI of a defect in certain RV chassis-cab vehicles built by Ford (05V–306). Ford notified Four Winds of a fuel line which could disconnect resulting in a stall. Ford, the incomplete vehicle manufacturer, conducted the recall (05V–266).
- On June 23, 2005, International notified ODI (05V–297) of a defect on model year 2006, model 4200 and 4300 trucks. The defect involved the rub through of a front brake hose resulting in diminished brake performance.
- On June 16, 2005, General Motors notified ODI of a defect (05V–288) in which a power steering hose was chafing on the intermediate steering shaft. The trucks involved were model year 2003–2005 4500/5500 Kodiak school bus chassis and the GMC Top Kick. The defect is loss of power steering fluid, which could result in an increased steering and braking effort, increasing the risk of a crash.
- On June 15, 2005, Spartan Chassis Inc. notified ODI of a defect (05V–283) in the steering system on certain model Spartan chassis. Due to a defect in the linkage between the steering wheel and steering gear, the connection could be lost, resulting in a loss of steering.

Of the 193 recalls conducted by incomplete vehicle manufacturers for problems that can be attributed to the incomplete vehicle manufacturer, 18 warrant a comment. These 18 recalls, using NHTSA's nomenclature, are: 03V–040, 03V–041, 03V–047, 0V–048, 03V–059, 03V–060, 03V–064, 03V–066, 03V–068, 03V–069, 03V–080, 03V–092, 03V–116, 03V–119, 03V–148, 03V–149, 03V–152, and 03V–347. These 18 recalls stemmed from a notification letter sent by Ford Motor Company (02V–327) in January 2003 pertaining to model years 2000–2003 F53 chassis built at the IMMSA and Detroit chassis plant and assembled at the final stage manufacturer's facility. Ford's letter states ''The instrument panel, as shipped by Ford[,] may not be wired correctly to illuminate the brake warning indicator and/or low brake fluid light as required by FMVSS 105 S5.3.''

In reviewing the owner notifications for these recalls, ODI found examples where the remedy was apparently conducted by the final stage manufacturer, with such language as ''Damon Corporation will notify owners and dealers of the affected vehicles to return them to a dealer to have the remedy performed at no charge to them.'' We found other statements which indicated that Ford, the incomplete vehicle manufacturer, would conduct the recall. For example, ''Winnebago Industries will assist Ford to correct the situation by sending them a list containing the names and addresses of the owners and dealers who have the defective panel installed in their motor homes.'' During this review, NHTSA discussed the matter with Ford and was informed that any final stage manufacturer that conducted the recall was notified to submit a form for each remedied vehicle and Ford would reimburse the final stage

[141] *See generally* Petition at 12–14.

[142] *See* report, in administrative record. NHTSA Docket No. 99–5673.

[143] The agency began its assessment in November of 2005, based on data that was available as of that date. The data do not include recalls in November and December of 2005.

[144] Artemis contains no information not contained in 573 reports and 577 reports.

[145] The numbers in parentheses are the identifying Recall Numbers assigned by NHTSA.

manufacturer $110.00 dollars per vehicle in an attempt to reduce or eliminate the financial burden associated with this recall. The $110 reimbursement appeared to be sufficient. For example, in one recall NHTSA found that .7 hours of labor were allowed by the final stage manufacturer for an inspection and repair. Therefore, even though some of these recalls could technically be classified as being performed by the final stage manufacturer, NHTSA has decided that all recalls related to this matter will be binned into the group where the incomplete manufacturer is listed as conducting the recall, since they either did conduct the recall or they reimbursed the final stage manufacturers when appropriate paperwork was submitted for reimbursement.

Forty-one (41) percent of the recalls of multistage vehicles (157 of 379) were conducted by the final-stage manufacturer. In 80 percent of these recalls (126 of 157), the underlying problem appeared to have been created by the final-stage manufacturer. In these recalls, there were problems in or with parts or equipment installed by the final stage manufacturer. For example, some problems stemmed from parts and equipment that themselves were flawed or noncompliant (including rendering a vehicle noncompliant). Others were the result of the final stage manufacturer's improper installation of parts and equipment by (e.g., improper attachment of parts and equipment, installation of equipment that was missing parts such as bolts, and improper routing of parts). Some problems originated from the installation by the final stage manufacturer of parts and equipment that were not proper for the application. Still others involved parts and equipment installed by the final stage manufacturer that could interfere with the functioning of parts or equipment on the chassis or the vehicle as a whole, such as parts that were too close to or could rub chassis components such as fuel lines and brake lines. Also, some recalls were based on improper labels added by final stage manufacturers (e.g., labels stating GVWR, tire pressure). For example:

• On October 7, 2005, Winnebago Industries notified the agency (05V–475) of a safety-related defect in 3,613 Winnebago recreational vehicles built on a Ford chassis. Winnebago discovered that the fasteners holding the fuel tank mounting straps may not have been properly tightened, allowing the possibility for the fuel tank to loosen and fall, which has the potential to ignite.

• On September 22, 2005, Gulf Stream Coach, Inc. notified ODI (05V–446) of a safety defect in 306 Class ''B'' motor homes built on the Sprinter chassis. The steel bracket securing the holding tank was installed in a location that pressed against the OEM brake line. This created points of possible wear due to vibration during vehicle operation, which, over time, could cause the brake lines to leak brake fluid, thus causing deterioration in braking performance. Winnebago was made aware of this matter by an owner.

• On September 23, 2005, the agency was notified (05V–440) of a safety defect by Collin Bus Corporation. The company identified 150 school buses built on the Chevrolet and Ford ''cutaway'' van chassis as having a safety defect. On the vehicles in question, the fasteners securing the seats and barriers to the wall tack may not have been adequately tightened. This could allow the seat or barrier to move relative to the vehicle wall in a crash and compromise passenger crash protection.

• On August 11, 2005, Monaco Coach Corporation notified the agency of a defect (05V–366) on 114 Class ''A'' motorhomes built on a Roadmaster chassis. Monaco determined that the headlight switch was overloading, possibly causing the headlights to stop functioning without warning.

• On July 3, 2005, McNeilus Truck and Manufacturing Company notified the agency (05V–357) of a safety defect on 107 trucks. McNeilus discovered a potential overload on the front axle that was rated at 10,000 lbs. The wheels were rated at 9,000 lbs. and the tires were rated at 8,270 lbs. Thus, both the tires and wheels would be overloaded in a maximum (10,000 lbs) front axle load condition.

• On April 28, 2005, ElDorado National notified the agency (05V–194) of a safety defect on 39 low-floor conversions built on the Chrysler minivan chassis. The defect involved a rubber fuel line that could come in close proximity to the van's exhaust system, thus resulting in a fire.

• On August 19, 2005, Girardin Minibus notified the agency (05V–365) of a non-compliance with Federal Motor Vehicle Safety Standard 221, on certain school buses built on Ford and General Motors chassis. Compliance testing showed that the company had built 10 buses with inadequate body joint strength. This could lead to a compromise of the passenger compartment in the event of a crash.

Twenty-seven (27) of the recalls conducted by the final-stage manufacturers were attributed to components manufactured by an equipment supplier and added to the incomplete vehicle by the final-stage manufacturer. For example, safety recalls 05V–429, (Les Enterprises Michel Corbel Inc.), 05V–490 (Mid Bus Inc.), 05V–352 (Girardin Minibus, Inc.), 05V–347 (Thomas Built Buses), 05V–345 (Collins Bus Corporation), 05V–336 (U.S. Bus Corporation), and 05V–308 (Van-Con Inc.) were all conducted by the final-stage manufacturers as the result of notification from an equipment supplier, Specialty Manufacturing Company (05E–032) advising of a safety defect in school bus stop arms. The stop arms had a micro switch that could malfunction in extremely cold and wet weather, causing the arm to not open or close. Other examples of recalls based on faulty equipment manufactured by an equipment supplier and added to the incomplete vehicle by the final-stage manufacturer involved water heaters on recreational vehicles. Safety recalls were conducted by Featherlite Inc. on motor coach conversions (05V–280), Tiffin Motorhomes, Inc. (05V–268), and Gulf Stream Coach Inc. (05V–258) after they were advised by Aqua-Hot heaters of a problem (05E–015) that could result in the ignition of combustible materials in and around the vehicle.

Four (4) safety recalls were conducted by final-stage manufacturers for problems that appeared to be attributable to an incomplete vehicle manufacturer.[146] These include the following:

• On November 1, 2005, Winnebago Industries, Inc. notified the agency (05V–496) of a defect in certain motor homes in which the cinch bolt in the steering column that connects to the intermediate shaft was improperly tightened, resulting in the possibility of bolt threads being stripped. This could cause a loss of steering control.

• On February 20, 2003, Jayco Inc. notified the agency (03V–057) of a defect in motor homes which involved a change made by the chassis manufacturer that increased pressure in the fuel return line. Jayco was not aware of the change. On account of the change, when connecting the RV's generator system into the chassis fuel system, fuel could overflow from the generator's carburetor, resulting in fuel spillage. This creates a fire hazard.

• On July 25, 2003, Monaco notified the agency of a defect (03V–268) in

[146] Nothing herein constitutes a finding of fact as would be the case after a hearing or trial, or a final agency action.

which the parking brake bracket was improperly secured to the chassis by the chassis manufacturer. This could allow the coach to roll away.

• On May 5, 2003, Fleetwood notified the agency of a defect (03V–169) in which drive shaft carrier bolts were not properly torqued. This could lead to carrier bearing failure and resulting drive shaft failure.

The remaining 29 recalls were conducted by equipment manufacturers for problems attributed to the equipment supplied by the equipment manufacturer. For example:

• On May 4, 2005, Country Coach, Inc. submitted a 573 report (05V–209) notifying NHTSA of a recall that would be conducted by Vehicle Systems, Inc. Vehicle Systems, Inc. had informed Country Coach that certain coolant heaters supplied to Country Coach by Vehicle Systems, Inc., had a burner tube that may have been made out of material that is not within specification and could fail prematurely and cause a fire. Vehicle Systems, Inc. conducted the recall (05E–015).

• On September 14, 2004, Glaval Bus informed NHTSA (04V–458) that Sure-Lok would be conducting a recall on wheelchair securement retractor assemblies installed in Glaval's buses (04E–058).

• On September 30, 2004, Daimler Chrysler notified NHTSA of a recall (04V–505) Sure-Lok was conducting on a seatbelt retractor assembly installed in certain Daimler Chrysler commercial buses (04E–058).

• On January 15, 2003, Georgie Boy Manufacturing, LLC (Georgie Boy), filed a 573 Report (03V–012) alerting NHTSA to a recall being conducted by Caterpillar on certain engine models sold in the 2000 model year and which were installed in ten Georgie Boy vehicles. The engines experienced a fuel system problem that could result in a stall. Caterpillar conducted the recall (03V–012.001).

Thus, only 8 percent of the recalls (31 of 379) conducted on multistage vehicles were conducted by final-stage manufacturers for problems that appeared to have been created by others. This indicates that, contrary to NTEA's assertion, incomplete vehicle manufacturers are not exploiting the final-stage-manufacturers' default recall responsibility, but are, instead, in the overwhelming majority of cases assuming responsibility for the recalls for which they were the source of the defect. Indeed, of the 197 recalls for which NHTSA staff informally determined that incomplete vehicle manufacturers were the source of the precipitating problem, the incomplete vehicle manufacturers conducted the recalls in 98 percent of the cases (193 of 197).

The remaining 2 percent (the 4 safety recalls conducted by final-stage manufacturers for problems attributable to incomplete vehicle manufacturers addressed above) demonstrate the need to maintain the default rule. Those recalls involved significant safety concerns, including brakes, steering, fires, and motive power. It is very important that problems such as these be corrected promptly. In the absence of a default rule, there would be delays while the various manufacturers pointed fingers at each other, ramped up their legal teams and engaged in a dispute. Meanwhile, the safety problem would go unresolved. To make matters worse, NHTSA might not know about the safety-related defect. The first notification that NHTSA receives is the manufacturer's Defect and Noncompliance Information Report under 49 CFR 573.6 (part 573 Report). Section 573.6(b) requires the report to be filed with NHTSA not later than five days after the manufacturer determines the existence of the defect or noncompliance. In the case of a dispute between manufacturers, it is likely that neither manufacturer would file a part 573 Report in order to avoid taking responsibility for the recall. If default responsibility were placed on the incomplete vehicle manufacturer, those manufacturers would face responsibility in many circumstances to remedy defects or noncompliances that they had no hand in creating.

We also considered NTEA's assertion that final-stage manufacturers that conducted recalls for problems caused by incomplete vehicle manufacturers were being driven out of business. NTEA did not support its assertion. We researched multistage vehicle manufacturers whose products have been the subject of recall campaigns or compliance tests. A review of the available financial information on multistage vehicle manufacturers (both intermediate and final-stage) involved in the recalls, concluded that these companies are not being run out of business.[147] No business failures have been identified among multistage vehicle manufacturers that can be specifically traced to any Federal safety recall campaigns. Moreover, in the small number of cases in which final-stage manufacturers conducted recalls for problems attributable to incomplete vehicle manufacturers, we have no information on whether the final-stage manufacturers obtained any reimbursement for some or all of their expenses.

NHTSA's review of the recalls, set forth above, does not support NTEA's contention that disputes between final-stage and incomplete vehicle manufacturers over recall responsibility ''typically are resolved by the final-stage manufacturer 'agreeing'' to conduct the recall because it cannot afford to do otherwise.'' Contrary to NTEA's unsusstantiated assertion, incomplete vehicle manufacturers in practice took responsibility for the defects and noncompliances they created and conducted recalls to remedy those problems 96 percent of the time.

NTEA has failed to demonstrate any actual harm to any final-stage manufacturers, and instead relies on unsubstantiated allegations regarding the theoretical impact of default recall responsibility. NHTSA's own review of three years of multistage vehicle recalls demonstrates that NTEA's general assertions about the harm likely to befall final-stage manufacturers due to the retention of default recall responsibility are not valid.

4. NTEA Has Not Demonstrated That Safety Will Be Enhanced by Assigning Default Recall Responsibility to the Incomplete Vehicle Manufacturers

NTEA offers several rationales for shifting recall responsibility to incomplete vehicle manufacturers. Before turning to those reasons, we note that NTEA ignores the fact that the system that has been in place for over twenty-five years is working. That is reflected, in part, by the analysis of recalls explained above.

NTEA advances two arguments as to why safety would be enhanced if default recall responsibility were assigned to the incomplete vehicle manufacturer. These are premised on the contention that final-stage manufacturers are often confined to a single geographic location while incomplete vehicle manufacturers are large international organizations with a much greater geographic range. NTEA argues that the incomplete vehicle manufacturers' geographic diversity would allow recalls to be more efficiently conducted, because more outlets would be available to perform remedies. NTEA also argued that recalls conducted by incomplete vehicles manufacturers are likely to be more effective because owners are more likely to respond to recall notices when the remedy is available at multiple locations.[148]

[147] *See* Report on Business Failures Resulting from Recall Campaigns, NHTSA Docket No. 99–5673.

[148] Petition at 14.

NTEA submits no information or data that suggests that final-stage manufacturers' products are dispersed over a geographically wide area that would make recalls difficult. Additionally, NTEA has not submitted evidence of situations in which a final-stage manufacturer could not conduct a recall effectively. Also, as discussed more thoroughly above, NHTSA's analysis of multistage vehicle recalls reveals that in nearly all of the cases in which an incomplete vehicle manufacturer was responsible for the problem necessitating a recall, that manufacturer conducted the recall campaign. Thus, final-stage manufacturers are most often conducting recalls only to remedy problems they created. The fact that incomplete vehicle manufacturers often have a more widespread network of locations and service centers provides no rationale for requiring them to shoulder responsibility for problems caused by final-stage manufacturers. Finally, NTEA has not demonstrated that incomplete vehicle manufacturers' dealers have the knowledge and wherewithal to address many of the defects and noncompliances that final-stage manufacturers introduce into a vehicle, such as those inherent in the equipment (including such items as hot water heaters in recreational vehicles) a final-stage manufacturers may install.

NTEA also argues that because the incomplete vehicle manufacturer supplies the most complicated components of the vehicle, a recall campaign is more likely to involve components installed by the incomplete vehicle manufacturer.[149] NTEA cites this as another reason why default recall responsibility should be assigned to the incomplete vehicle manufacturer. NTEA's argument relies on, and assumes the truth of, its underlying assertion that incomplete vehicle manufacturers do not conduct recalls when they are responsible for the underlying defect or noncompliance. As discussed at great length above, this contention is inconsistent with the facts and utterly groundless.

NTEA contends that NHTSA's position that default recall responsibility should remain with the final-stage manufacturer rests on a faulty interpretation of the market power of incomplete vehicle manufacturers. Specifically, NTEA takes issue with the agency's position that the default recall responsibility scheme ''provides an incentive for a final-stage manufacturer to deal with a solid and reputable incomplete vehicle manufacturer.''[150] The agency has addressed the weakness of NTEA's market forces argument in the section of this notice pertaining to the reasonableness of IVDs. NHTSA relies on that analysis in rejecting NTEA's argument on this issue as well. As reflected in that analysis, final-stage manufacturers have been shown to be a considerable market force in a multi-billion dollar industry.

NTEA also takes issue with a statement in a 1993 **Federal Register** notice published by NHTSA.[151] In that notice, NHTSA announced that it was terminating a rulemaking proceeding, initiated in response to an NTEA petition, that sought to allocate recall responsibility for vehicles built in two or more stages to the various manufacturers in the chain of production for those vehicles [152] Among the reasons stated for NHTSA's termination of the rulemaking was that ''the final-stage manufacturer is most likely to be able to identify owners from sales and warranty records, as well as State registration records, which may not be available to incomplete or intermediate stage vehicle manufacturers.'' [153] NTEA contends that this justification is not true.

NTEA considerably overreaches in asserting that:

> The incomplete vehicle manufacturer is in a much better position to obtain information about the current owner of a vehicle subject to a recall. The incomplete vehicle manufacturer is likely to have the longer and more lucrative relationship with the dealer, and, consequently, more leverage to obtain the dealer's prompt cooperation in compiling the necessary information.[154]

NTEA overlooks the fact that there are many different kinds of incomplete vehicles, and incomplete vehicles are sold in various stages of completion. Similarly, for some types of multistage vehicles (*e.g.*, school buses, recreational vehicles and ambulances), the customer often purchases the vehicle from a final-stage manufacturer or one of its dealers rather than from a dealer franchised by the incomplete vehicle manufacturer. Moreover, NTEA ignores the fact that mailing lists for many recalls, particularly those for vehicles in service for some time, are obtained from companies such as R.L. Polk, which cull the names and addresses of vehicle owners from State motor vehicle registries. NTEA provides no information or support for its statements regarding the relationships between incomplete vehicle manufacturers and dealers or its contention that ''the incomplete vehicle manufacturer is in a much better position to obtain information'' about owners to conduct a recall.

NTEA's position also contradicts the manner in which NHTSA has historically treated multistage and incomplete vehicles. As discussed above, NHTSA has traditionally regarded an incomplete vehicle as an item of original equipment installed on the vehicle, as finally assembled, at the time it is delivered to its first purchaser.[155] Under provisions of the Safety Act now codified at 49 U.S.C. 30102(b)(G) and (b)(F), a defect or noncompliance in original equipment ''is deemed to be a defect or noncompliance of the motor vehicle in or on which the equipment was installed at the time of delivery of the first purchaser,'' and ''the manufacturer of a motor vehicle in or on which original equipment was installed at the time of delivery to the first purchaser is deemed to be the manufacturer of the equipment.'' As such, the final-stage manufacturer properly holds default recall responsibility.

5. Additional Points in Support of NHTSA's Decision

NTEA's alternative argument is that default responsibility should rest with incomplete vehicle manufacturers. Apart from the legal issues and practices noted above, this ignores the fact that there are considerable fairness issues associated with assigning default recall responsibility to a class of manufacturers that has no say in what happens to an incomplete vehicle once it leaves their hands. The incomplete vehicle manufacturer transfers the incomplete vehicle to a subsequent manufacturer over which the incomplete vehicle manufacturer has no control, and the subsequent manufacturer builds on the incomplete vehicle a completed vehicle about which the incomplete vehicle manufacturer may have no knowledge. Given these circumstances, to require the incomplete vehicle manufacturer to have default recall responsibility over the vehicle as finally assembled would be to impose a regulatory scheme without logical support, which NHTSA declines to do.

6. Conclusion

Because NTEA's arguments regarding default recall responsibility are

[149] Petition at 14.

[150] *Id.* (quoting 70 FR at 7427).

[151] Petition at 14.

[152] 58 FR at 40402.

[153] *Id.* at 40404.

[154] Petition at 14.

[155] *See* Interp. letter to B.H. Smith, Nabors Trailers, Inc. (Oct. 3, 1969).

founded, in large part, on a factual premise (*i.e.*, that final-stage manufacturers often unfairly assume the burden of recalls for problems they did not cause) expressly controverted by NHTSA's review of multistage vehicle recalls, many of NTEA's arguments cannot be accepted. Moreover, the logic and policy behind assigning default recall responsibility to final-stage manufacturers are supported by both the agency's historical treatment of multistage vehicles and the documented practice of incomplete vehicle manufacturers taking responsibility for recalls for which their actions are the precipitating cause. Therefore, NHTSA must deny NTEA's petition as it pertains to recall responsibility.

I. There Is No Need for NHTSA To Require IVDs for Completed Vehicles That Are Commonly Altered, or To Allow Alterers To Rely on Pass-Through Certification Opportunities Presented in IVDs

Noting that IVDs and the related pass-through opportunities are available only for incomplete vehicles, but that some IVDs include conformity statements for completed vehicles as well as for incomplete vehicles, NTEA asked that alterers be allowed to rely on such conformity statements in performing their own certification responsibilities. NTEA further requested the agency to require IVDs for completed vehicle configurations commonly altered prior to first retail sale.

Agency response: Unlike incomplete vehicles, completed vehicles that are altered prior to first retail sale have already been certified by their original manufacturer as complying with all applicable FMVSS. By affixing the appropriate label, as required under 49 CFR 567.4, the original manufacturer discharges its certification responsibilities with respect to the vehicle. It would be unreasonable to expect the original manufacturer to be able to anticipate that a vehicle it has fully manufactured and certified will be altered prior to first retail sale, and even more unreasonable to expect the manufacturer to anticipate the myriad kinds of alterations that could be performed on such a vehicle. The agency is therefore unwilling to require manufacturers to supply IVDs with completed vehicles. Accordingly, we deny this aspect of NTEA's petition.

Nevertheless, the agency is aware that IVDs for some incomplete vehicle models are readily available on their manufacturers' websites and elsewhere. To the extent that a vehicle to be altered is similar to one produced in an incomplete vehicle configuration, the alterer is able to rely on appropriate compliance statements made in the relevant IVD, if any, in certifying that the vehicle remains in compliance with all applicable FMVSS affected by the alteration.

The agency notes that unlike a final-stage manufacturer, which must certify a vehicle's compliance with all applicable standards, an alterer need only ''ascertain that the vehicle as altered conforms to the standards which are affected by the alteration,'' and must certify that the vehicle, as altered, ''conforms to all applicable Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards affected by the alteration.'' [156] Given the more circumscribed nature of this certification, the agency does not recognize alterers as needing the same opportunities for pass-through certification that are needed by final-stage manufacturers.

J. Technical Amendment

NTEA noted that section 568.4(a)(5), as amended under the final rule, provides that the IVD should include the ''[g]ross axle weight rating (GAWR) for each axle of the completed vehicle * * *'' (Emphasis added.) NTEA suggested that ''incomplete vehicle'' be substituted for the highlighted phrase. The agency agrees that the existing language in paragraph (a)(5) is unclear, and has reworded the first sentence of that paragraph to correspond to the language of paragraph (a)(4), pertaining to the gross vehicle weight rating specification in the IVD. By doing so, the agency grants this aspect of NTEA's petition.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures, and for the following reasons have determined that it is not a ''significant regulatory action'' within the meaning of section 3 of E.O. 12866 and is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. There are only two non-technical amendments adopted in this rulemaking. The first permits manufacturers of multistage vehicles to petition the agency for temporary exemptions from ''dynamic test requirements'' in the FMVSS, as opposed to ''dynamic crash test requirements,'' which was specified in the February 2005 Final Rule. This amendment places no additional requirements on multistage vehicle manufacturers for the purpose of obtaining temporary exemptions, and can have no adverse consequence, financial or otherwise, for any party that stands to be affected by the rule.

The second non-technical amendment requires multistage vehicle manufacturers who petition the agency for a temporary exemption under the expedited procedures in subpart B of 49 CFR part 555 to discuss in the petition the availability of alternate incomplete vehicles that could allow the petitioner to rely on IVDs when certifying a completed vehicle, instead of petitioning under that subpart. This amendment does not preclude multistage vehicles manufacturers who fail to discuss the availability of alternate incomplete vehicles from petitioning for a temporary exemption, as the temporary exemption procedures set forth in subpart A of 49 CFR part 555 could still be used in that circumstance. However, given the critical time limitations that the agency faces in processing a petition under subpart B, obvious means to avoid the need for filing such a petition must be addressed. This document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.''

For the following reasons, NHTSA concludes that this final rule will not

[156] *See* 49 CFR 567.7 and 568.8.

have any quantifiable cost effect on motor vehicle manufacturers or motor vehicle equipment manufacturers. Even though multistage vehicle manufacturers stand to be affected by the two non-technical amendments adopted in this final rule, one of those amendments confers a benefit on those manufacturers by broadening the range of requirements in the FMVSS from which multistage manufacturers may obtain temporary exemptions. The other non-technical amendment merely adds a requirement for a fuller discussion of the need for a multistage manufacturer to obtain a temporary exemption on an expedited basis, but does not preclude those manufacturers from obtaining temporary exemptions under other procedures.

Because the economic effects of this final rule are so minimal, no further regulatory evaluation is necessary.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBFEFA) of 1996), whenever an agency is required to publish a notice of proposed 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 governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Deputy Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for the certification is that this final rule, formulated in response to a petition for reconsideration, makes two non-technical amendments to the agency's regulations. The first allows multistage vehicle manufacturers, many of which qualify as small businesses, to obtain temporary exemptions on an expedited basis from a broader range of requirements in the FMVSS than were previously permitted under the regulation in question. The second non-technical amendment requires a petitioner to provide a fuller discussion of the need to obtain a temporary exemption on an expedited basis, but does not preclude a petitioner unwilling to provide this discussion from seeking an exemption under other applicable procedures. As such, the amendments impose no adverse economic impact on any party.

For these reasons, and for the reasons described in our discussion on Executive Order 12866 and DOT Regulatory Policies and Procedures, NHTSA concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA 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.'' The Executive Order defines ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the regulation.

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The agency has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This rule will not have any substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Thus, the requirements of section 6 of the Executive Order do not apply.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written assessment is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation as to why that alternative was not adopted.

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Accordingly, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' this agency has considered whether this final rule would have any retroactive effect. NHTSA concludes that this final rule will not have any retroactive effect. Judicial review of the rule may be obtainable under 5 U.S.C. 702. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not impose any new information collection requirements for which a 5 CFR part 1320 clearance must be obtained.

H. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rulemaking is not economically significant and does not involve any environmental, health, or safety risks that disproportionately affect children.

I. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA 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, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rulemaking only addresses the allocation of legal responsibilities among regulated parties. As such, the issues involved here are not amenable to the development of voluntary standards.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

List of Subjects in 49 CFR Parts 555, 567, 568, and 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

■ 1. The authority citation for part 555 of title 49 continues to read as follows:

Authority: 49 U.S.C. 30113, 32502, Pub. L. 105–277; delegation of authority at 49 CFR 1.50.

■ 2. Part 555 subpart B is amended by revising §§ 555.11, 555.12, and 555.13 to read as follows:

§ 555.11 Application.

This subpart applies to alterers and manufacturers of motor vehicles built in two or more stages to which one or more standards are applicable. No manufacturer or alterer that produces or alters a total exceeding 10,000 motor vehicles annually shall be eligible for a temporary exemption under this subpart. Any exemption granted under this subpart shall be limited, per manufacturer, to 2,500 vehicles to be sold in the United States in any 12 consecutive month period. Incomplete vehicle manufacturers and intermediate manufacturers that do not intend to certify the vehicles in accordance with 49 CFR 567.5(f) or (g), and instead furnish Incomplete Vehicle Documents to final-stage manufacturers in accordance with 49 CFR 568.4 or 49 CFR 568.5, are not eligible for temporary exemptions under this subpart.

§ 555.12 Petition for exemption.

An alterer; an incomplete vehicle manufacturer intending to certify the vehicle in accordance with 49 CFR 567.5(f); an intermediate manufacturer intending to certify the vehicle in accordance with 49 CFR 567.5(g); a final-stage manufacturer; or an industry trade association representing a group of alterers, incomplete vehicle manufacturers, intermediate manufacturers and/or final-stage manufacturers may seek, as to any vehicle configuration altered and/or built in two or more stages, a temporary exemption or a renewal of a temporary exemption from any performance requirement for which a Federal motor vehicle safety standard specifies the use of a dynamic test procedure to determine compliance. Each petition for an exemption under this section must be submitted to NHTSA and must:

(a) Be written in the English language;

(b) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590;

(c) State the full name and address of the applicant, the nature of its organization (e.g., individual, partnership, corporation, or trade association), the name of the State or country under the laws of which it is organized, and the name of each alterer, incomplete vehicle manufacturer, intermediate manufacturer and/or final-stage manufacturer for which the exemption is sought;

(d) State the number, title, paragraph designation, and the text or substance of the portion(s) of the standard(s) from which the exemption is sought;

(e) Describe by type and use each vehicle configuration (or range of vehicle configurations) for which the exemption is sought;

(f) State the estimated number of units of each vehicle configuration to be produced annually by each of the manufacturer(s) for whom the exemption is sought;

(g) Specify any part of the information and data submitted that the petitioner requests be withheld from public disclosure in accordance with part 512 of this chapter, as provided by § 555.5(b)(6).

(1) The information and data which petitioner requests be withheld from public disclosure must be submitted in accordance with § 512.4 of this chapter.

(2) The petitioner's request for withholding from public disclosure must be accompanied by a certification in support as set forth in appendix A to part 512 of this chapter.

§ 555.13 Basis for petition.

The petition shall:

(a) Discuss any factors (e.g., demand for the vehicle configuration, loss of

market, difficulty in procuring goods and services necessary to conduct dynamic tests) that the applicant desires NHTSA to consider in deciding whether to grant the application based on economic hardship.

(b) Explain the grounds on which the applicant asserts that the application of the dynamic test requirements of the standard(s) in question to the vehicles covered by the application would cause substantial economic hardship to each of the manufacturers on whose behalf the application is filed, providing a complete financial statement for each manufacturer and a complete description of each manufacturer's good faith efforts to comply with the standards, including a discussion of:

(1) The extent that no Type (1) or Type (2) statement with respect to such standard is available in the incomplete vehicle document furnished, per part 568 of this chapter, by the incomplete vehicle manufacturer or by a prior intermediate-stage manufacturer or why, if one is available, it cannot be followed;

(2) A description of the incomplete vehicle to be used to manufacture the vehicle(s) subject to the petition. This description must identify the manufacturer of the incomplete vehicle, state the incomplete vehicle's GVWR, and provide other available specifications;

(3) The availability of alternative incomplete vehicles, including incomplete vehicles of different size, GVWR, and number of axles, from the same and other incomplete vehicle manufacturers, that could allow the petitioner to rely on Incomplete Vehicle Documents when certifying the completed vehicle, instead of petitioning under this subpart;

(4) The existence, or lack thereof, of generic or cooperative testing that would provide a basis for demonstrating compliance with the standard(s); and

(c) Explain why the requested temporary exemption would not unreasonably degrade safety.

PART 568—VEHICLES MANUFACTURED IN TWO OR MORE STAGES

■ 1. The authority citation for part 568 of title 49 continues to read as follows:

Authority: 49 U.S.C. 30111, 30115, 30117, 30116; delegation of authority at 49 CFR 1.50.

■ 2. Part 568 is amended by revising the first sentence of paragraph (a)(5) of § 568.4 to read as follows:

§ 568.4 Requirements for incomplete vehicle manufacturers.

(a) * * *

(5) Gross axle weight rating (GAWR) for each axle of the completed vehicle for which the incomplete vehicle is intended, listed and identified in order from front to rear (*e.g.*, front, first intermediate, second intermediate, rear). * * *

* * * * *

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 06–4387 Filed 5–12–06; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Monday,
May 15, 2006

Part V

Department of Energy

10 CFR Part 950

Standby Support for Certain Nuclear Plant Delays; Interim Rule

DEPARTMENT OF ENERGY

10 CFR Part 950

RIN 1901–AB17

Standby Support for Certain Nuclear Plant Delays

AGENCY: Department of Energy.

ACTION: Interim final rule and request for comment.

SUMMARY: The Department of Energy (Department) is promulgating interim final regulations to implement section 638 of the Energy Policy Act of 2005, which authorizes the Secretary of Energy to enter into Standby Support Contracts with sponsors of advanced nuclear power facilities to provide risk insurance for certain delays attributed to the regulatory process or litigation.

DATES: *Effective Date:* This interim final rule is effective June 14, 2006, except for §§ 950.10(b), 950.12(a) and 950.23 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Department of Energy will publish a document in the **Federal Register** announcing the effective date of those sections.

Comment Date: Written comments must be received by June 14, 2006. Comments may be mailed to the address given in the **ADDRESSES** section below. Comments also may be submitted electronically by e-mailing them to: *StandbySupport@Nuclear.Energy.gov.* We note that e-mail submissions will avoid delay currently associated with security screening of U.S. Postal Service mail.

ADDRESSES: You may submit written comments, identified by RIN Number 1901–AB17, by any of the following methods:

1. E-mail to *StandbySupport@Nuclear.Energy.gov.* Include RIN 1901–AB17 and ''Interim Final Rule Comments'' in the subject line of the e-mail. Please include the full body of your comments in the text of the message or an attachment.

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

3. Mail: Address the comments to Kenneth Chuck Wade, Office of Nuclear Energy, (NE–30) U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. The Department requires, in hard copy, a signed original and three copies of all comments. Due to potential delays in the Department's receipt and processing of mail sent through the U.S. Postal Service, we encourage commenters to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Kenneth Chuck Wade, Project Manager, Office of Nuclear Energy, NE–30, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. (301) 903–6509 or Marvin Shaw, Attorney-Advisor, U.S. Department of Energy, Office of the General Counsel, GC–52, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–2906.

SUPPLEMENTARY INFORMATION:

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I. Section 638 of the Energy Policy Act of 2005

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (the Act) (Pub. L. 109–58, 119 Stat. 594). Section 638 of the Act addresses the President's proposal to reduce uncertainty in the licensing of advanced nuclear facilities. (42 U.S.C. 16014). The purpose of section 638 is to facilitate the construction and full power operation of new advanced nuclear facilities by providing risk insurance for such projects. Such insurance is intended to reduce financial disincentives and uncertainties for sponsors that are beyond their control in order to encourage investment in the construction of new advanced nuclear facilities. By providing insurance to cover certain of these risks, the Federal government can reduce the financial risk to project sponsors that invest in advanced nuclear facilities that the Administration and Congress believe are necessary to promote a more diverse and secure supply of energy for the Nation.

Section 638 contains a number of provisions to establish the Standby Support Program (the ''Program''). These provisions are related to (1) the Secretary's authority to enter into contracts and details related to such contracts, (2) the establishment of funding accounts, (3) the funding of these accounts, (4) the types of regulatory and litigation delays Congress determined were to be covered by the Program, (6) the types of delays that Congress determined were to be excluded from coverage, (7) the amount of coverage for up to six advanced nuclear facilities with a distinction made for the initial two reactors and the subsequent four reactors, (8) the types of costs to be covered by the Program, and (9) reporting requirements by the Nuclear Regulatory Commission (''Commission'').

Section 638(g) provides for regulations necessary to carry out section 638. This section directs the Secretary to issue an interim final rule within 270 days after enactment of the Act and to adopt final regulations within one year after enactment.

II. Rulemaking History

Prior to developing and issuing this interim final rule, the Department issued a Notice of Inquiry (NOI) and request for comments to provide an opportunity for public input. (70 FR 71107, November 25, 2005) The NOI discussed the major topics related to section 638, including the types of sponsors and facilities covered, the Secretary's contracting authority, appropriations and funding accounts, covered and excluded delays, covered costs and requirements, and disagreements and dispute resolution. For some topics, this NOI indicated implementation approaches and interpretations under consideration by the Department. The NOI included a general request for comments and identified certain topics on which the Department specifically requested comments. Among other matters, the Department sought comment about how the statute could be implemented most effectively to achieve the objective of reducing the risks associated with certain delays in the advanced nuclear facility licensing process and thereby facilitating the expeditious construction and operation of new advanced nuclear facilities.

On December 15, 2005, the Department sponsored a public workshop to allow the public to provide oral comments about section 638 and the NOI. Over 60 people attended the public workshop. A transcript of the

proceedings is posted at *www.nuclear.gov.*

The Department received nine written comments on the NOI, including comments from the Commission, a nuclear energy trade association, several utilities and other potential sponsors, an economic consulting firm, and a public advocacy group. In addition to responding to the questions posed in the NOI, the commenters provided their general views on implementing section 638.

III. Interim Final Rule

A. Overview of the Rule

The interim final rule establishes a new part 950 in Title 10 of the Code of Federal Regulations (CFR). The rule sets forth the procedures, requirements and limitations for the award and administration of Standby Support Contracts indemnifying a project sponsor for certain costs that may be incurred due to a delay in full power operation of the sponsor's advanced nuclear facility.

Subpart A sets forth the purpose, scope and applicability, and definitions of the regulation.

Subpart B sets forth provisions addressing the Standby Support Contract process, including the process whereby a sponsor and the Program Administrator would enter into a Conditional Agreement prior to a Standby Support Contract, obligations of a sponsor prior to entering into a Conditional Agreement, the provisions of that Conditional Agreement, conditions precedent that a sponsor must satisfy prior to entering into a Standby Support Contract, funding issues related to the Standby Support Program, reconciliation of costs, and termination of a Conditional Agreement. Subpart B also addresses the provisions for each Standby Support Contract. These include general contracts terms, including the contract's purpose, the advanced nuclear facility that is the subject of the contract, the sponsor's contribution, the maximum aggregate compensation, the term of the contract, cancellation provisions, termination by sponsor, assignment, claims administration, and dispute resolution; and specific contract terms that implement section 638's provisions related to covered events, exclusions, covered delay, and covered costs.

Subpart C sets forth the claims administration process, including the submission of claims and payment of covered costs under a Standby Support Contract. This subpart includes sections addressing notification by a sponsor of a covered event, covered event determinations made by the Department's Claims Administrator, certification of covered costs by the sponsor, determination of covered costs by the Claims Administrator, issuance of a Claim Determination of a covered delay and covered costs by the Claims Administrator, conditions for payment of covered costs, and adjustments for and payment of covered costs.

Subpart D sets forth provisions related to dispute resolution, including disputes involving covered events and disputes involving covered costs. In each case, subpart D provides a two-step process, first requiring non-binding mediation and then binding arbitration, if the parties cannot reach agreement.

Subpart E sets forth miscellaneous provisions about the Department's authority to monitor and audit a sponsor's activities and the public disclosure of information provided by a sponsor to the Department.

B. Section-by-Section Analysis

Subpart A—General Provisions

Section 950.1 Purpose

The Department is adopting this interim final rule to provide risk insurance to facilitate the construction and full power operation of new advanced nuclear facilities. Section 638 provided for such insurance to reduce the financial disincentives that make sponsors reluctant to invest in construction of new advanced nuclear facilities, including the risk that a facility may be constructed but may not achieve full power operation in a timely manner.

In response to the NOI, commenters stated that there are additional factors that the Department should consider in implementing the statute. These include having well-defined regulations that are sufficiently definite and realistic, protecting taxpayer funds from being unreasonably allocated to the nuclear industry, and ensuring that the regulations do not undermine the government's traditional role of ensuring the safe design and operation of nuclear facilities.

The Department agrees with these general comments. Accordingly, the Department has implemented section 638 in a transparent manner that is sufficiently detailed, workable, and fair. This regulatory framework will provide sponsors risk insurance for certain regulatory and litigation delays, while protecting taxpayer funds by having sponsors contribute a portion of the premium for this insurance. Further, the Department intends that this insurance reflects the magnitude of the risk and the extent of the protection provided. The Department also is mindful that in facilitating the construction and full power operation of advanced nuclear facilities, its efforts should not undermine the responsibility of government agencies to address safety concerns during the permitting and licensing processes for such new facilities.

In the NOI, the Department requested comment on whether a sponsor should be eligible to participate in the Standby Support Program as well as any loan guarantee program for which the sponsor may be eligible pursuant to Title XVII of the Act, or the production tax credits for advanced nuclear facilities in section 1306 of the Act. (Subsequent to the NOI, the Department has become aware of other Federal programs such as the Rural Utility Service that may provide subsidies to a sponsor. Accordingly, any consideration of multiple subsidies would include such additional programs). The Department requests comment on whether sponsors should be eligible to participate in multiple loan guarantee or other subsidy programs and, if so, on whether clarification is needed on issues such as the amounts an entity can receive under more than one Federal program.

Section 950.3 Definitions

Certain definitions set forth in the Act are included in the interim final rule verbatim from the Act, and are repeated in the rule for ease of reference. In several areas, the interim final rule clarifies or further defines terms in the statutory definitions. In addition, the interim final rule defines certain terms that are either referenced in section 638 but not defined or are in addition to terms in the statute. The following provides an explanation of certain key definitions that may benefit from additional description and clarification here. Other terms are discussed in the section discussing subpart B.

Advanced nuclear facility. Several commenters suggested that further clarification of the definition of advanced nuclear facility is warranted because it relates to the issue of project eligibility. Commenters also specifically requested further clarification of the phrase ''substantially similar'' in the statutory definition of the term advanced nuclear facility. One commenter suggested that the definition include the concept that no reactor design that is certified by the Commission after December 31, 1993 should be considered ''substantially similar'' to a design certified by the Commission prior to that date, and that the rule should not include a ''no later

than'' date for design certification, thereby providing sponsors the ability to proceed with design certification and combined licensing on a parallel process.

The definition of advanced nuclear facility in the interim final rule is taken verbatim from the Act. After reviewing current reactor designs, the Department concludes that there are likely no reactor designs that have been approved after December 31, 1993 that are ''substantially similar'' to designs that were certified before that date for which potential project sponsors have suggested interest. The Westinghouse System 80-plus design is the only reactor design which is somewhat similar to a pre-1993 design, called the System 80. However, there are enough differences between the two designs to indicate that they should not be considered substantially similar. Based on the Department's review, any reactor design that obtains design certification by the Commission after December 31, 1993 likely will not be considered substantially similar. In particular, appendices to 10 CFR part 52 (Appendix A, ''Design Certification Rule for the U.S. Advanced Boiling Water Reactor, Appendix B, ''Design Certification Rule for the System 80+ Design,'' and Appendix C, ''Design Certification Rule for the AP600 Design'') specify reactor designs that have received certification by the Commission. Nevertheless, the Department reserves the right to make a final determination if a project sponsor chooses a design that the Department has not anticipated. This interpretation meets the statute's intent to promote advanced nuclear reactor designs by eliminating from eligibility a nuclear reactor design whose major elements had been reviewed and approved by the Commission prior to December 31, 1993.

In recognition of the fact that some sponsors may pursue design certification in tandem with the combined license process, the Department has decided not to impose a ''no later than'' date for Commission design, review, and approval. However, at the time a sponsor has satisfied the other conditions precedent to enter into a Standby Support Contract with the Department, including obtaining a combined license and commences construction, a determination would then be made as to whether the sponsor's reactor design was approved after December 31, 1993 and is not ''substantially similar'' to a reactor design of comparable capacity that was approved on or before that date.

Commencement of construction. Several commenters also requested that the Department define the phrase ''commencement of construction'' in the regulations, and suggested an appropriate definition would include the pouring of safety-related concrete. It was noted that this action by a sponsor was an accurate and clear indicator of a ''real'' project, with a high likelihood of achieving commercial operation, thereby satisfying the Act's statutory intent. Clarity on this topic is particularly important since a sponsor is eligible for a Standby Support Contract only if, in addition to receiving a combined license, the sponsor has commenced construction. Commencement of construction is defined to mean the point in time when a sponsor initiates the pouring of safety-related concrete for the reactor building. This definition represents a clear and unambiguous event, and an event that denotes a firm commitment to nuclear plant construction in accord with the purposes of the Act.

Combined license. One commenter suggests that the term ''combined license'' not be altered since it was established by the Commission and should therefore be identical to that in 10 CFR part 52. The definition of combined license in the interim final rule is taken verbatim from section 638 of the Act. The Department notes that the definition of combined license is somewhat different in the Commission's licensing regulations, 10 CFR part 52, although the Department believes that this difference is not significant. Nevertheless, to clarify, the Department interprets the definition of ''combined license'' in the Act and part 950 as having the same meaning as that term is given in the Commission regulations at 10 CFR 52.3.

Sponsor. The Department sought comment in the NOI on the definition of sponsor. Many commenters agreed a definition was necessary because it addresses the question of contract eligibility. In particular, commenters requested further clarification of the phrase ''applied for'' in the definition of sponsor. They suggested that an appropriate clarification would indicate that ''applied for'' meant that a sponsor's application was accepted as sufficient for docketing by the Commission, and not merely submitted to the Commission.

The Department agrees that clarification of the phrase ''applied for'' is warranted, and the clarification suggested by the commenters is reasonable and appropriate. The intent of the Act is to encourage the development of advanced nuclear facilities. An initial and essential step toward that goal is the submission of a combined license application to the Commission. While the Department fully supports this goal, it is also important that the Department utilize its limited resources to enter into Conditional Agreements only with those entities that have provided the Commission with an application of sufficient quality to be docketed by the Commission. Under the Commission's regulations, any person may submit an application for a combined license. However, the Commission will accept such an application for docketing only after it has conducted a preliminary review to determine whether the application is complete and contains sufficient information to support the Commission's detailed technical review. The Department believes it is appropriate to clarify that a sponsor is any person that has ''applied for'' a combined license and such application by the person has been docketed by the Commission. The Department is aware of the possibility that one entity may be receiving payments for a covered event, but that the debt obligation may actually be held by an entity other than the sponsor. The Department emphasizes that only a sponsor is eligible to enter a Standby Support Contract and thus be eligible for covered costs under the Standby Support Program. If necessary, the Department may include provisions in the Standby Support Contract to ensure that only a sponsor is eligible for payments under the Program.

Subpart B—Standby Support Contract Process

Section 950.10 Conditional Agreement

Purpose

Section 638(b) authorizes the Secretary to enter into Standby Support Contracts with sponsors of advanced nuclear facilities. That paragraph directs that sufficient funding be placed in designated Departmental accounts before the contracts are executed. In the NOI, the Department noted that the Secretary has considerable discretion as to the timing and method of entering into Standby Support Contracts. The NOI then stated the Department's tentative goal of permitting sponsors to enter into Standby Support Contracts as early as practicable, while recognizing that entering into a contract with a sponsor before the sponsor receives a combined license and commences construction may raise implementation issues. Consequently, the NOI stated that the Department should consider entering into ''binding agreements'' with sponsors that submit combined license

applications that are docketed by the Commission. Although the Conditional Agreements between the Department and project sponsors would not themselves be Standby Support Contracts, they would commit the Department to enter into Standby Support Contracts with the first 6 project sponsors who have met the requirements of the conditional agreements and section 638 (including the provision of adequate budgetary resources) have been satisfied.

Commenters generally agreed with the Department's discussion of the benefits of a two-step approach in which an agreement could be converted into a Standby Support Contract when a combined license is issued by the Commission and construction commences, and the requirements of the statute, including adequate budgetary resources, are otherwise satisfied. Industry commenters noted that long before construction, a project developer would need to obtain approval from its Board of Directors and obtain construction financing. In contrast, one commenter stated that the Department should not enter into binding agreements, which it stated was inconsistent with section 638's provision that the Secretary ''shall not enter into a contract unless sufficient funds are already in the Standby Support Program Account to cover the facility's debt costs.'' In addition to these general comments about a two-step implementation process, commenters provided additional detailed comments which will be addressed below.

The Department concludes that it is consistent with the provisions in section 638 and the statutory goal of facilitating the construction and operation of advanced nuclear facilities to implement a two-step process involving a Conditional Agreement, which then can, for the first six qualifying sponsors, be converted into a Standby Support Contract at a later date, if the sponsor meets certain conditions and budgeting resources are provided. Specifically, the Department has significant discretion to establish the procedures needed to manage the Standby Support Program, provided that they are consistent with section 638. Such a two-step implementation process allows the Department and potential sponsors to manage the difficult timing issues inherent in both the federal appropriations process and business concerns in planning and financing a multi-billion dollar advanced nuclear facility. In making this determination to require a Conditional Agreement, the Department reviewed other similar federal programs, including the Department of Transportation's Transportation Infrastructure Finance and Innovation Act (TIFIA) program, which provides loans for surface transportation projects. (See 64 FR 29742, June 2, 1999.) The TIFIA program first requires a potential recipient to enter into a ''conditional term sheet,'' which commits the Department of Transportation to provide federal assistance to a project at a future point in time upon satisfaction of specified conditions. The Conditional Agreement is similar in concept to the TIFIA program. Unlike TIFIA (under which funds are obligated at this ''commitment'' point), no funds would be obligated when the Conditional Agreement is signed. Rather, a Standby Support Contract would be executed only after sufficient budgetary resources are available.

Eligibility

In the NOI, the Department discussed tying the implementation of the Standby Support Program to the Commission's process for issuing a combined license set forth in 10 CFR part 52. Specifically, the NOI stated that the Department should be able to enter into an initial agreement with a sponsor that submits a combined license application at any time on or after such application is submitted. Commenters, including the Commission, generally agreed with tying the initial agreement to the Commission's analysis of combined license applications. Accordingly, the Department in § 950.10(b) of the interim final rule specifies that a sponsor is eligible to enter into a Conditional Agreement with the Program Administrator after the sponsor has submitted a combined license application and the Commission has docketed the combined license application, and after the sponsor has submitted information to the Department and the Program Administrator has determined that information to be complete, accurate and the Conditional Agreement is consistent with applicable statutes and regulations. (The Department notes that in today's interim final rule, the notice distinguishes the terms ''Program Administrator'' and ''Department.'' ''Program Administrator'' is used to identify situations involving the execution of a Conditional Agreement or a Standby Support Contract; whereas, ''Department'' is used to identify general statements of policy and situations involving more general matters such as funding and appropriations). The Department notes that it costs millions of dollars to prepare an application for a combined license and that the Commission has the discretion to reject any such application that is incomplete. The Department further notes that section 638 provides the Secretary with broad discretion to issue regulations implementing the Standby Support Program. Accordingly, the Department has determined that it is appropriate to allow a sponsor to enter into a Conditional Agreement at any time on or after the Commission dockets a combined license application, because the sponsor has shown sufficient seriousness and its combined license application is of sufficient quality.

Section 950.10(b) further indicates that a sponsor may enter into a Conditional Agreement from the time the Commission dockets its combined license application but before the Commission has issued the license. The Department notes that it will likely take several years for the Commission to issue the combined license, a time period which the Department has determined is sufficient for a sponsor to decide whether it wants to participate in the Standby Support Program.

In section 950.10(b), the Department further requires a sponsor that plans to enter into a Conditional Agreement to provide certain information including: (1) An electronic copy of the combined license application docketed by the Commission pursuant to 10 CFR part 52; and if applicable, an electronic copy of the early site permit or environmental report referenced or included with the sponsor's combined license application; (2) a summary schedule identifying the projected dates of construction, testing and full power operation; (3) a detailed plan of intended financing for the project including the credit structure and all sources and uses of funds for the project, and the projected cash flows for all debt obligations of the advanced nuclear facility which would be covered under the Standby Support Contract; (4) the sponsor's estimate of the amount and timing of the Standby Support payments for debt service under covered delays; and (5) the estimated dollar amount to be allocated to the sponsor's covered costs for principal or interest on the debt obligation of the advanced nuclear facility and for incremental costs, including whether these amounts would be different if the advanced nuclear facility is one of the initial two reactors or one of the subsequent four reactors.

The Department notes that this information is needed to determine the score under the Federal Credit Reform Act of 1990 (FCRA). This documentation requirement should pose only a nominal burden on a sponsor

because the sponsor likely has this information readily available in the normal course of obtaining financing for the advanced nuclear facility and Commission approval for a combined license. The Department will not use this documentation to select among potential sponsors. Rather, the actual awarding of a Standby Support Contract is based on fulfillment of the requirements and conditions in the Conditional Agreement, including the Commission's issuing of a combined license and the sponsor's commencement of construction (i.e., the pouring of safety-related concrete for the reactor building). This documentation will allow the Department's representative, the Program Administrator, to enter into a Conditional Agreement and to monitor the progress of various competing sponsors, prior to entering into Standby Support Contracts. This relatively modest information requirement is in lieu of an application process similar to those required by the Department of Transportation's Transportation Infrastructure Finance and Innovation Act (TIFIA) program or the Overseas Private Investment Corporation (OPIC). For these reasons, the Department generally agrees with the commenters who, in response to the NOI, noted that it would be appropriate for the Department to request the combined license application in lieu of a separate application to the Department to be eligible for a Standby Support Contract.

In section 950.10(c), the Department sets forth the bases upon which it will determine whether to enter into a Conditional Agreement. This determination will be based on a review of the information provided by the sponsor under § 950.10(b) to determine eligibility for a Conditional Agreement, and the accuracy and completeness of the information provided. The Department also will determine whether the Conditional Agreement may be executed consistent with applicable statutes or regulations, including the National Environmental Policy Act (NEPA). The Department anticipates that its environmental review under NEPA for the Conditional Agreement or Standby Support Contract would acknowledge or be based upon the NEPA review conducted by the Commission in relation to its review and approval of the sponsor's combined license application.

Section 950.11 Terms and Conditions of the Conditional Agreement

General

Section 950.11(a) requires that the Conditional Agreement include a provision requiring the Program Administrator and the sponsor to enter into a Standby Support Contract, provided that a sponsor is one of the first six sponsors to fulfill the conditions precedent to a contract, and subject to certain statutory funding requirements and limitations, which are set forth in § 950.12, and any other applicable contractual, statutory and regulatory requirements. Upon a satisfaction of these conditions precedent, the Program Administrator will enter into a Standby Support Contract with the first six sponsors. Imposing such requirements is consistent with the goal of section 638 which is for the Department to enter into such a contract to facilitate the construction and full power operation of advanced nuclear facilities.

This approach strikes a balance between two different concerns expressed by commenters. Most industry commenters stated that the ''binding'' agreement should be binding on the Department without conditions, not be contingent on subsequent appropriations, and be subject to specific performance. Other commenters stated that it was inappropriate for the Department to needlessly commit itself to such contracts. The Department believes that given the statutory constraints, a sponsor has as much certainty as possible that it can rely on the Conditional Agreement in which the Program Administrator agrees to enter into a Standby Support Contract, provided the critical regulatory and statutory conditions precedent are met. The Department further believes that it would be imprudent to commit the Secretary and future Secretaries to enter into a Standby Support Contract, absent any of these conditions precedent. This commitment, of course, remains subject to the normal budgetary process and does not (and could not) obligate the President to seek, nor the Congress to provide, budget authority for a Standby Support Contract.

In both the public workshop and in comments to the NOI, several potential sponsors stated that it was critical to understand the pricing of the loan costs related to the Program Account, prior to a sponsor entering into such a Standby Support Contract. They noted that the key to an effective Standby Support Program would be the premium charged to cover the principal or interest of a loan. If the sponsor's portion of the premium were too high, project sponsors likely would elect not to use the coverage. Industry commenters recommended that the loan costs be priced similarly to other insurance coverage provided by OPIC and other private and public insurers against sovereign political risk. These commenters stated that OPIC risk insurance carries an annual premium of 40–70 basis points of the face value of coverage and that the commercial insurance market carries an annual premium of 100 basis points. Accordingly, a $500 million Standby Support Contract would cost a sponsor $5 million per year.

The Department agrees with the general proposition that a sponsor should know its funding needs prior to execution of the Standby Support Contract, and has included § 950.11(b), (c) and (d) in the regulations to reflect the need for specificity, transparency and accuracy on funding of Standby Support Contracts prior to execution. Nevertheless, the Department emphasizes that the sponsor's contribution is based on the amount of appropriated funds, and that the cost estimate for the Program Account will be calculated consistent with FCRA.

The Department notes that there are significant differences between the risks being covered by the Standby Support Program and those covered by OPIC. OPIC and the traditional commercial insurance market pool the risk faced by potential insured entities. For instance, OPIC typically provides insurance coverage for scores of different projects at a given time. Accordingly, by distributing the risk among many projects, the insurer—whether OPIC or a commercial insurer—spreads the risk among many projects. OPIC uses a risk management strategy that diversifies risk based on sector and geographic location. Such risk diversification is not possible in the Standby Support Program. Moreover, the average size of an individual liability is smaller for an OPIC insured policy than for Standby Support, allowing OPIC to have greater risk diversification for an equal amount of underwritten policy.

In response to the NOI and at the public workshop, several potential sponsors indicated little interest in obtaining coverage for incremental costs. Given the differences between the Program Account and the Grant Account, the Department believes that it is reasonable to expect that the amount of funding a sponsor would be willing to provide for the Grant Account, if it decides to obtain coverage for incremental costs, would be less than for the Program Account. As with the

Program Account, the sponsor and the Department will be required to indicate the anticipated amounts each would expect to contribute to the Grant Account. For each account, the Department has no obligation to make contributions in excess of any amounts appropriated for that purpose.

Allocation of Coverage and Funding

Section 950.11(b) and (c) address the issues related to section 638(b)(2), which establishes a funding requirement that must be met before the Program Administrator can enter into a Standby Support Contract. To carry out these statutory provisions and depending on whether the coverage is for one of the initial two or for the subsequent four reactors, the Department requires in § 950.11(b) that the Conditional Agreement include a provision addressing how to allocate the $500 million or the $250 million between the accounts. The Department notes that there is a certain degree of uncertainty inherent at the Conditional Agreement stage, given that this step precedes entering into a Standby Support Contract possibly by several years and that funding and appropriations issues likely will have not yet been decided. Accordingly, the Department believes that it is sufficient at the time of the Conditional Agreement to have the parties agree upon the anticipated amounts for each account.

Section 950.11(c) specifically addresses the issue of how the Standby Support Contracts will be funded. Section 638 mandates that before entering into a Standby Support Contract, the Department establish two separate accounts and have a specified amount of funds in the relevant accounts before entering into a contract. The first account is a ''Standby Support Program Account'' (''Program Account''), and the second account is a ''Standby Support Grant Account'' (''Grant Account''). Section 638 treats the funding requirements differently for each account. Section 638(b)(2) specifies that consistent with the cost of a loan guarantee under FCRA, the Program Account receives appropriations or loan guarantee fees in an amount sufficient to cover the loan costs in advance of the Standby Support contract; this may be a combination of appropriated funds and loan guarantee fees from the sponsor or other non-Federal source. The funds in the Program Account must be in an amount sufficient to cover the loan costs for the principal or interest on the debt obligation of the advanced nuclear facility covered by a Standby Support Contract for the time period of covered delay in full power operation, as described in section 638(d)(5)(A). Section 638(b)(2)(C)(ii) specifies that the Grant Account must receive funds appropriated to the Secretary, funds paid to the Secretary by the sponsor, or a combination of both appropriated funds and sponsor payments. The funds in the Grant Account must be sufficient to cover the incremental cost of replacement power the sponsor may need to purchase to fulfill power supply contracts for the time period of covered delay in full power operation, as described in section 638(d)(5)(B). (Section 638(c)(ii) refers to three different paragraphs in paragraph (d)(5); however, only one of those referenced paragraphs, (d)(5)(B), was enacted into law.) With respect to the Grant Account, the Secretary's responsibility to pay covered costs is expressly limited in section 638(d)(4) to the payment of those costs for which the Secretary has received appropriations or payments from a non-federal source in an amount sufficient to pay the covered costs. Section 638 does not contain such a limitation with respect to the Program Account. For either account, section 638(d)(4)(B) permits the Secretary to receive and accept payments from any non-federal source.

With respect to the question of which party is responsible for funding the Standby Support Contracts, Congress provided a flexible mechanism for the parties to consider in structuring the contracts. In general, section 638 allows for the Program Account and Grant Account to be funded by contributions from government appropriations, the sponsor, or a non-federal source; or a combination of these sources. The Department has structured its regulations to reflect this statutory intent. An explanation of the funding requirements for each account is described below.

Pursuant to section 638, § 950.11(c) requires that each Conditional Agreement contain a provision that the Program Account or the Grant Account be funded in advance of the Standby Support Contract. The Program Account is required to be funded by appropriated funds that are received by the Department, or a combination of appropriated funds and loan guarantee fees that are in an amount equal to the loan costs associated with the amount of principal or interest covered by the available indemnification. Section 950.11(c)(1) further requires the parties to specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Program Account to be contributed by appropriated funds to the Department, by the sponsor or by a non-federal source. The purpose of this provision is to obtain some specificity as to the anticipated funding responsibilities of the Department and the sponsor, and thereby aid both the Department and the sponsor in preparing for a Standby Support Contract in the future.

Section 950.11(c)(2) requires each Conditional Agreement contain a provision that the Grant Account be funded in an amount equal to the amount of coverage allocated to cover incremental costs. Section 950.11(c)(2) further requires the parties to specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Grant Account to be contributed by appropriated funds to the Department, by the sponsor, or by a non-federal source.

The similar language in § 950.11(c)(1) and (2) reflects the Department's understanding that funding for each account may come from a combination of Department appropriations and contributions by the sponsor or other non-federal source, and that these options should be available for the parties to consider. The Department believes it is reasonable and consistent with Congressional intent to maintain the option that some or all of the funding may be provided by the sponsor, while recognizing that the same option holds true for Congressional appropriations.

For the Department, the actual funding contribution anticipated under the Conditional Agreement is dependent on the extent to which Congress appropriates funds for a particular Standby Support Contract. For the sponsor, the actual funding contribution under the Conditional Agreement is dependent upon how much the sponsor anticipates contributing—which could be all, some or nothing—taking into account the fact that the Department's contribution is subject to Congressional appropriations. The Department believes such an approach is reasonable since, while there is no guarantee as to what amount of funds, if any, will be appropriated for funding either the Program or Grant Accounts for a particular Standby Support Contract, it is likely that one of the factors that will be considered in deciding whether to appropriate funds will be the extent to which the sponsor provided funds. In that regard, the Department would expect that sponsors would view funding the Program Account similar to an insurance contract. That is, like an insurance contract, the sponsor (insured) is responsible for paying the insurance premium and the Department

(insurer) is responsible for paying the cost of any valid claims covered by the insurance.

The most significant difference between funding the Program Account and Grant Account is that only the Program Account is subject to the FCRA. In section 638, Congress clearly directed that the funding in the Program Account is to be the ''loan cost'' associated with the covered costs for principal or interest on the debt obligation of the sponsor's advanced nuclear facility, where loan cost has the same meaning as ''cost of a loan guarantee'' under FCRA. FCRA is a federal law designed to improve the cost structure and budgetary basis of federal credit programs. Under FCRA, the cost to the federal government of a loan guarantee made to a private entity is generally equal to the net present value of the estimated costs to cover defaults and delinquencies, interest, or other payments under the loan. In other words, the amount of the loan cost is not the same as the loan amount itself, but a lesser amount that represents the net present value of anticipated long-term costs to the Government of providing the loan guarantee.

In accordance with section 638, the Department defines the loan costs for a Standby Support Contract consistent with FCRA. In so doing, the Department necessarily adopts the method for calculating the amount of funding for the account, that is, the loan cost, consistent with FCRA. Further, the Department interprets section 638, and the specific requirement in section 638(b)(2) that the Program Account need only contain amounts sufficient to cover the loan costs, to mean that the Program Account does not need to be funded in an amount equal to the costs for which coverage is provided and that are specified in section 638(b)(5)(A). This method of funding the Program Account is consistent with FCRA, and is a logical outgrowth of the Congressional directive in section 638(b)(2) to define loan costs consistent with the cost of a loan guarantee under FCRA. Similarly, the Department's responsibilities under section 638 to pay covered costs out of the Program Account are consistent with loan guarantee programs under FCRA. (See 2 U.S.C. 661a(3)). That is, the Department is required to pay any claims for covered costs under the Program Account, up to the available indemnification, without further appropriations to the Secretary for such payments. (See 2 U.S.C. 661d(c)).

Although section 638 does not contain an express directive regarding this obligation of the Department, such as a provision that the contract is backed by the full faith and credit of the United States, it is within the Department's discretion to interpret statutory intent where Congress is silent or unclear, and implement the statute according to its interpretation. The Department's interpretation of its need to pay covered costs under the Program Account is consistent with FCRA and the obligations of the federal government under other credit programs. Moreover, it is not necessary for Congress to include a provision specifying that the Department's obligation for such costs is backed by the full faith and credit of the United States. Though it would have been desirable had such language been included in section 638, its absence does not negate the Department's obligation to pay the covered costs under section 638 and FCRA, nor does its absence prevent the Department from entering into a contract backed by the full faith and credit of the United States. Accordingly, the Secretary of the Treasury would be required to fund future obligations arising from the payment of covered costs under section 505(c) of FCRA, even though section 638 does not expressly use the term ''full faith and credit.''

The applicability of FCRA to the Program Account contrasts with the Secretary's obligation to pay covered costs under the Grant Account. Section 638(d)(4) specifies conditions on the Secretary's obligation to pay certain covered costs. That provision limits the Secretary's obligation to pay covered costs under section 638(d)(5)(B) (i.e., incremental costs) to the receipt of funds sufficient to pay those covered costs. Congress did not place a similar restriction on the Department's obligation to pay covered costs under section 638(d)(5)(A) (i.e., principal or interest on debt obligation).

Reconciliation. Given the potentially lengthy period of time between execution of a Conditional Agreement and execution of a Standby Support Contract, the Department believes it is necessary to re-assess the amount of funds necessary prior to execution of the Standby Support Contract. Accordingly, in § 950.11(d), each Conditional Agreement is required to include a provision that the sponsor provide no later than 90 days prior to execution of a Standby Support Contract sufficient information for the Program Administrator to recalculate the loan costs and the incremental costs associated with the advanced nuclear facility, taking into consideration whether the sponsor's advanced nuclear facility is one of the initial two reactors or the subsequent four reactors. The Department believes that having the reconciliation process within 90 days of executing the Standby Support Contract provides the sponsor and Department additional certainty that the pricing will realistically reflect the risks associated with the Standby Support Contract.

Limitations

Section 950.11(e) addresses limitations related to the Department entering into a Standby Support Contract. In particular, each Conditional Agreement is required to include a provision limiting the Department's obligations to contribute federal funding to the Program Account or the Grant Account to only those amounts, if any, that are appropriated to the Department in advance of the Standby Support Contract for the purpose of funding the Program Account or Grant Account. The purpose of this provision is to recognize and clarify that the Department's contribution is contingent upon Congressional appropriations.

Section 950.11(e) further provides that if the amount of appropriated funds is not sufficient to fund the Department's anticipated contribution under the Conditional Agreement, the sponsor has the option to either (1) not execute a Standby Support Contract or (2) provide additional contributions to fund the total amount of coverage in either the Program Account, Grant Account, or both accounts as specified in the Conditional Agreement. The Department believes that these provisions take into account the change in circumstances that may occur between the time of the Conditional Agreement and the Standby Support Contract. The provision also provides a sponsor the option either to enter into a contract or forego that opportunity. Nevertheless, if the sponsor elects to execute the Standby Support Contract, it is required to make up the difference attributable to the Department and fully fund the total amount of costs as specified in the Conditional Agreement. Moreover, the sponsor may not elect to change the allocation of coverage for either account based on the Department's lowered contribution level and thereby potentially negate its additional contribution. This provision is reasonable and consistent with the purposes of section 638 to provide more coverage to those sponsors that are first in line in the construction and operation of advanced nuclear facilities.

Termination of Conditional Agreements

The Department has determined that it is appropriate to specify situations in which the Conditional Agreement should no longer remain in effect. These

situations, specified in § 950.11(f), include when a sponsor enters into a Standby Support Contract with the Program Administrator, when the sponsor has commenced construction of an advanced nuclear facility but declines to enter into a Standby Support Contract within 30 days after commencement of construction, when the sponsor notifies the Program Administrator that it wishes to terminate the Conditional Agreement, when contracts for three different reactor designs have been executed and the Conditional Agreement is for another reactor design (thereby implementing section 638(b)(1)), and when the Department has reached the statutory limit and entered into six Standby Support Contracts. In addition to being the logical outgrowth of administering a regulatory program, this provision allows other sponsors to take advantage of the Standby Support Program when a different sponsor wishes to terminate coverage. Such flexibility anticipates evolving circumstances and is consistent with the Department's goal to facilitate the full power operation of advanced nuclear facilities. Further, it is consistent with several commenters' concern that this risk insurance might be tied up by a sponsor but not be used.

Sections 950.12, 950.13 and 950.14 Standby Support Contract

Section 950.12 sets forth the conditions and limitations associated with the execution of a Standby Support Contract. Section 950.13 addresses the contract's purpose, identification of the advanced nuclear facility covered under the contract, amount of sponsor contribution, maximum aggregate compensation, term, cancellation, termination by sponsor, assignment, claims administration, and dispute resolution. In addition, § 950.14 sets forth provisions addressing the interrelated issues of covered events, exclusions, covered delay, and covered costs. Each of these provisions will be discussed below.

In the NOI, the Department addressed whether to include various terms and conditions via regulation or in a sample contract. A few commenters recommended that the Department provide a standard contract format, which they believed would allow them to evaluate its effect on risk allocation and the resulting impact on financing.

The Department has determined that it is sufficient to include the critical contract terms in this regulation rather than provide a sample contract at this time. The Department believes that a sponsor can appropriately evaluate the potential contract's effect on risk allocation and financing during the pre-contract discussions set forth in §§ 950.10 and 950.11. Accordingly, including a sample contract is not necessary.

Section 950.12 Standby Support Contract Conditions

Conditions Precedent

In § 950.12(a), the Department sets forth nine conditions precedent that a sponsor must fulfill to be eligible to enter into a Standby Support Contract. These provisions must be included in the Standby Support Contract. By requiring satisfaction of the conditions precedent prior to obtaining a Standby Support Contract, the Department intends to ensure that the sponsor will be able to construct an advanced nuclear facility. Accordingly, such protections are consistent with some commenters' concerns that the Standby Support Contracts only be awarded to viable entities. The Department has undertaken to require practicable and necessary conditions precedent that should not impose an unreasonable burden on a sponsor. The conditions precedent are the logical outgrowth of the provisions of section 638 of the Act and the Commission's licensing process. Some of these conditions precedent relate to the regulatory process, while others closely correlate to the actual construction of the advanced nuclear facility. Among those tied to the regulatory process are the need for the sponsor to have: (1) A Conditional Agreement with the Department, (2) a combined license issued by the Commission, (3) the payment of any required fees into the Program Account and the Grant Account, (4) a detailed schedule for the completion of the sponsor's performance of inspections, tests, analyses and acceptance criteria (ITAAC) and for informing the Commission of such completion, and (5) a detailed system-level construction schedule identifying projected dates of construction, testing and full power operation of the advanced nuclear facility. The regulation requires the sponsor to provide the detailed schedule for completing ITAAC and informing the Commission of ITAAC completion, and the systems-level construction schedule no later than ninety days prior to execution of the Standby Support Contract. This timing requirement will facilitate the contracting process so it is done in an orderly fashion. Among those tied to any construction project include documentation that the sponsor has: (1) Obtained all Federal, State or local permits required by law to commence construction, (2) commenced construction, and (3) obtained coverage of required insurance for the project. Further, no later than ninety days prior to execution of the Standby Support Contract, the sponsor must provide to the Program Administrator, a detailed and up-to-date plan of financing for the project including the credit structure and all sources and uses of funds for the project, including the projected cash flows for all debt obligations of the advanced nuclear facility.

The Department will review the foregoing information, as well as any applicable statutes and regulations, and enter into a Standby Support Contract upon satisfaction that the conditions precedent have been met, the contract is consistent with applicable statutes and regulations, and the necessary funding is in place.

Funding and Limitations

In § 950.12(b), the Department requires that no later than thirty days prior to execution of the Standby Support Contract, funds in an amount sufficient to fully cover the loan costs or incremental costs as specified in the Conditional Agreement shall be deposited in the Program Account or the Grant Account. The purpose of this provision is to ensure that the administration and funding of the Standby Support Program occurs in an efficient and orderly manner.

In § 950.12(c), the Department provides limitations about entering into a Standby Support Contract, based on statutory direction in section 638, that sufficient funding for a contract must be deposited in either the Program Account of Grant Account prior to execution of the contract.

Section 950.13 Standby Support Contract: General Provisions

General Contract Provisions

In § 950.13, the Department specifies that each Standby Support Contract include provisions addressing basic contract terms, including the contract's purpose, covered facility, sponsor contribution, maximum aggregate compensation, the term, cancellation, termination by a sponsor, assignment, claims administration, and dispute resolution.

Covered Facility. Section 950.13(b) requires each Standby Support Contract to include a provision specifying that the Secretary provide coverage only for an advanced nuclear facility, which must be owned by a non-federal entity, pursuant to section 638. In addition, this section requires the contract to

include the specific advanced nuclear facility to be covered, the reactor design, and its location. Inclusion of the facility's location is standard for any property insurance contract. Inclusion of the reactor type is necessary to implement section 638(b)(1).

Sponsor Contribution. Section 950.13(c) requires each Standby Support Contract to include a provision specifying the amount that a sponsor has contributed to fund each type of account. This is necessary to implement the funding and appropriations considerations in section 638(b), which distinguish between the Program Account and the Grant Account.

Maximum Aggregate Compensation. Section 950.13(d) requires each Standby Support Contract to include a provision specifying the maximum amount of coverage permitted by section 638(d). Specifically, the provision states that the Department is prohibited from paying compensation under the contract in an aggregate amount that exceeds the amount of coverage up to $500 million each for the initial two reactors or up to $250 million each for the subsequent four reactors. In addition, the Secretary may include a provision setting a minimum amount of coverage, given that the Department will incur significant costs in implementing and administering the program. These potential costs include evaluating the funding for coverage, contract negotiations, monitoring, claims administration, and dispute resolution.

Term. Section 950.13(e) requires each Standby Support Contract to include a provision specifying the date at which the contract commences as well as the term of the contract. The Department notes that the contract's effective date will be the date at which it has been signed by both the sponsor and the Program Administrator. Subject to the cancellation provisions in paragraph (f), the contract terminates when full power operation is achieved, and when all claims have been paid or any disputes involving claims under the contract have been resolved in accordance with the claims administration process in subpart C and the dispute resolution process in subpart D.

Cancellation Provisions. Section 950.13(f) requires each Standby Support Contract to include a provision specifying that the parties may cancel the contract under certain conditions. First, the Program Administrator may cancel the contract if the sponsor abandons the project, provided that the abandonment is not caused by a covered event or force majeure. Second, the sponsor may cancel the contract if the sponsor determines that it no longer requires continued coverage. In either case, this provision requires the party canceling the contract to provide written notification to the other party. Third, the parties may cancel the contract for other causes as agreed upon. Such cancellation provisions are consistent with requests by commenters that the Department should have the right to cancel a contract where a project has been abandoned. However, the Department decided not to require a fixed timeframe for determining that a sponsor is experiencing an unexcused, extended suspension of construction, because the Department believes mandating cancellation based on a fixed timeframe would inappropriately reduce the Department's flexibility in assessing a particular situation. Nevertheless, the Department's general decision to include cancellation provisions is consistent with the Department's goal of facilitating the construction and operation of advanced nuclear facilities.

Section 950.13(g) contains a limitation that if a sponsor elects to terminate a Standby Support Contract, then the sponsor or any related party is prohibited from entering into another Standby Support Contract. Such a provision is necessary to prohibit potential sponsors from ''gaming'' the Standby Support Program. Specifically, a sponsor could be on the verge of full power operation of an advanced nuclear facility, without the need to make any claims on the Standby Support Program. Absent this provision, the sponsor could terminate its initial Standby Support Contract and then enter into a new contract for a different facility.

Assignment. Several commenters stated that it is necessary to permit a sponsor to transfer its rights and obligations under the contract. This would allow project lenders or other entities to complete a project. These commenters requested that the sponsor have full discretion to assign its rights under the contract.

The Department generally agrees that it may be appropriate to allow a sponsor to assign its rights under the Standby Support Contract. Accordingly, § 950.13(h) requires each Standby Support Contract to include a provision specifying the assignment of a sponsor's rights and obligations under the contract. Specifically, this provision states that the sponsor is permitted to assign the rights under the contract with the Secretary's prior approval. The sponsor must obtain this approval, in writing, prior to assigning such rights. The Department believes that it is necessary to retain oversight related to the assignment of such rights, given that such assignments typically involve significantly changed circumstances with new parties. The Department notes that any transfer of control over a license requires prior Commission approval.

Claims Administration. Section 950.13(i) requires each Standby Support Contract to include a provision specifying a mechanism for administering claims pursuant to the procedures set forth in subpart C.

Dispute Resolution. Section 950.13(j) requires each Standby Support Contract to include a provision specifying a mechanism for resolving disputes about the terms of the Standby Support Contract pursuant to the procedures set forth in Subpart D.

Reestimation. Section 950.13(k) requires each Standby Support Contract to include a provision specifying that consistent with the Federal Credit Reform Act (FCRA), the sponsor provide all needed documentation to allow the Department to annually re-estimate the loan cost needed in the financing account under 2 U.S.C. 661a(7) funded by the Program Account. The ''financing account'' is defined by FCRA as ''the non-budget account or accounts associated with each credit program account which holds balances, receives the cost payment from the credit program account, and also includes all other cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made on or after October 1, 1991.''

Section 950.14 Covered Events, Exclusions, Covered Delay, and Covered Costs

Section 638(c) specifies situations in which the Secretary will pay ''covered costs.'' Among the situations expressly set forth in paragraph (c)(1) are: (A) ''the failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses, and acceptance criteria [ITAAC] established under the combined license or the conduct of preoperational hearings by the Commission * * *'' or (B) ''litigation that delays the commencement of full-power operations * * *''

Covered Events

Section 950.13(a) requires each Standby Support Contract to include a provision setting forth an agreement between the parties that addresses the contract's purpose, which is for the Secretary to provide compensation for covered costs incurred by a sponsor against covered events that result in a covered delay of full power operation of

an advanced nuclear facility. Aside from the term ''covered event,'' these other terms—Secretary, covered costs, sponsor, covered delay, full power operation, and advanced nuclear facility—are referenced in section 638. The Department determined it is necessary to add the term ''covered event'' to reflect that not all events appearing to fall under section 638(c)(1) will warrant compensation. Compensation is dependent on whether a covered event in fact leads to a delay in full power operation. For instance, there may be a delay in the Commission staff's meeting the ITAAC review schedule for an individual ITAAC, but the delay does not actually cause a delay in full power operation, because other factors may have caused the delay. In addition, there may be a delay in meeting the ITAAC review schedule but the ITAAC-related delay may have no actual effect on a facility obtaining full power operation. The same may be true for delays attributable to the pre-operational hearing or litigation.

ITAAC Delays. In the NOI, the Department first noted that the covered delay set forth in paragraph (c)(1)(A) are closely related to the Commission's part 52 combined licensing process. The Commission requires verification that the licensee has completed the required inspections, tests, and analyses, and that the acceptance criteria have been met before the reactor can operate. However, the Commission's regulations do not set any schedules for completing ITAAC review. Rather, under the combined license application, the licensee sets the schedule for ITAACs and may change the schedule as circumstances warrant. Although the Commission may set informal, internal schedules for auditing the licensee's performance of its ITAAC and will provide public notice upon completion of its review, there is no regulatory requirement for the Commission's conduct or timing of such auditing.

Potential sponsors commented that realistic, definite schedules for review and approval of ITAAC be included in the contracts executed in accordance with section 638. The nuclear energy trade association commented that ITAACs were not unreasonably complex, because they are precise, quantitative and unambiguous indicators that provide unambiguous and unequivocal proof that the plant will operate safely. It then stated that the small percentage of total ITAAC that are completed late in the process, but on schedule should not represent a potential source of delay in commercial operation.

In its comments to the NOI, the Commission again emphasized that its regulations do not require any schedule for completing ITAAC review. It further stated that the licensee is not bound to any schedule for completion of an ITAAC. Nor is the Commission staff bound to any schedule for review of a licensee statement that an individual acceptance criterion has been met or that all ITAACs have been met. Notwithstanding the complexity of the ITAACs, their facility-specific nature, the lack of a required review schedule, and the possibility that a licensee may leave large numbers of ITAAC for resolution in the last few weeks before fuel load, the Commission did note that:

> The NRC staff intends to coordinate its schedule for ITAAC review with the licensee's schedule for performing the [ITAACs] and submitting ITAAC determination letters. In order to do so, the NRC would have to develop guidance on the length of ITAAC reviews, particularly those reviews occurring during the final 20% of construction schedule and the six months before the schedule fuel load * * * The staff believes this process could be used for setting the schedules for ITAAC review to which Section 638 refers. The staff envisions that a licensee would submit its schedule for meeting the ITAAC to be completed in the final 20% of the construction schedule as soon as the licensee develops such a schedule. Without comment on the licensee's schedule or otherwise reviewing it, the NRC would determine the review time for each ITAAC in accordance with the guidance and issue a schedule for ITAAC review that could be referenced in the insurance contract.

Based on these comments and the Department's understanding of the ITAAC process, § 950.14(a)(1) requires each Standby Support Contract to include a provision setting forth a two-tier level of review for assessing whether an ITAAC-related delay should be considered a covered event. The Department further notes that the Commission issued a notice of proposed rulemaking in which it is considering modifying the ITAAC process (*See*, 71 FR 12782, March 13, 2006). If between the Department's issuance of this interim final rule and determining whether there has been an ITAAC-related delay under a Standby Support Contract, the Commission issues any rule, guidance, audit procedures or formal opinions setting schedules for its review of ITAACs, then such Commission rules—whether formal or informal—would guide the Department in determining whether a delay in a sponsor's ITAAC schedule should be considered a covered event. Given that the Commission is considering amending part 52 and addressed the issue of ITAAC schedules in a public workshop held on March 14, 2006, it is possible that the Commission will issue such guidance by the time the Standby Support Contracts take effect.

The Commission has indicated that it intends to issue such guidance, and would initially set a schedule for reviewing the sponsor's completion of ITAAC, based on the sponsor's schedule for informing the Commission that the ITAAC have been completed. The Commission has also indicated that it would make its review schedule available to the sponsor and the Department. In any event, the Commission commented that nothing in this rule shall be interpreted to require or encourage the Commission or its staff to render any required safety determination without the necessary and sufficient documentation of information from the sponsor/licensee (including any of its contractors, sub-contractors, vendors, manufacturers, consultants, etc.) needed to ensure adequate protection and common defense and security under the Commission's regulations.

Nevertheless, if the Commission has not provided any rules, guidance, audit procedures or formal opinions setting schedules for ITAAC review, then the Department, pursuant to § 950.14(a)(2), would evaluate the sponsor's proposed schedule for Commission review of ITAAC completion, subject to the Department's review and approval for such a schedule. In such a situation, the sponsor is required to submit its initial schedule for informing the Commission of ITAAC completion, along with any revisions of that schedule and a suggested schedule for review of completed ITAAC by the Commission.

Preoperational Hearing. Section 638(c)(1)(A) refers to delays in full power operation of advanced nuclear facilities caused by ''the conduct of preoperational hearings by the Commission * * *''. In the NOI, the Department requested comment about two possible interpretations: (1) To allow coverage only for delays associated with preoperational hearings under part 52 or (2) to allow coverage for delays associated with any preoperational hearings, regardless of who requested or caused the hearing and regardless of whether there was a ''failure'' of any kind by the Commission.

Several potential sponsors commented that the phrase ''the conduct of pre-operational hearings by the Commission'' should include any delay covered by any pre-operational hearings. These commenters contend such an interpretation reflects the plain language and intent of the statute. In

contrast, one commenter stated that only hearings under 10 CFR 52.103 should be covered, given that a broader reading would undermine the Commission's safety mission. The Commission commented that the scope of a pre-operational hearing concerns only whether the ITAAC have been or will be satisfied. In addition, the Commission commented that a person seeking such a hearing must meet the standards of 10 CFR 52.103(b), i.e., the petitioner must show *prima facie* that one or more of the acceptance criteria have not been met and the specific operational consequence of nonconformance would be contrary to public health and safety.

The Department has determined that for purposes of the Standby Support Contracts, the phrase ''the conduct of pre-operational hearings by the Commission'' means the non-mandatory hearing conducted by the Commission in accordance with 10 CFR 52.103. The Department included a definition of this term in the regulations to avoid any confusion that this term referred to more than one type of pre-operational hearing or to some other hearing that the Commission may conduct in the context of a part 52 licensing proceeding. The Department believes that it would be inappropriate and unnecessary to broaden the term to include all hearings taking place prior to operation or fuel load, particularly in light of the Commission's comment about how it views the § 52.103 hearing. Under the Commission's rules addressing part 52, it is unlikely that any other hearing would be held by the Commission other than the one already expressly set forth at § 52.103.

Litigation. Section 638(c)(1)(B) refers to ''litigation that delays the commencement of full-power operations * * *'' In the NOI, the Department noted that the Act is silent as to what type of litigation section 638 refers. The Department further noted its inclination to interpret the term ''litigation'' in paragraph (c)(1)(B) as meaning only litigation in State, Federal, or tribal courts, including appeals of Commission licensing decisions, and excluding administrative litigation that occurs at the Commission as part of the combined license process, because paragraph (c)(1)(A) already refers to certain Commission proceedings that may delay full power operation. The Department requested comment as to what type of litigation-related delays should be covered by the Program.

Several commenters suggested the definition of litigation should be broadly defined, while other commenters suggested the definition should be narrow. Under a broad definition, litigation would encompass both judicial and administrative litigation, including any hearings under 10 CFR 52.103 and any litigation commenced before or after issuance of the combined license, as well as litigation initiated by a sponsor, a governmental agency or a third party. Under a narrow definition suggested by some commenters, litigation would not include administrative litigation before the Commission, appeals of Commission decisions to the courts, or any litigation other than frivolous claims.

The Department has decided to define litigation in the interim final rule to include only adjudication in State, federal, or tribal courts, including appeals of Commission decisions related to the combined license to such courts, and excluding administrative litigation that occurs at the Commission related to the combined license process. The Department believes this is the most reasonable interpretation of the term as used in the Act. Since the Act covers the risk of a pre-operational hearing, and Commission reviews of ITAAC, the Department assumed that the reference to litigation is to litigation outside the context of the Commission proceeding on the combined license. On the other hand, the Act does not suggest a limitation based on what party brings suit. Hence, the interim final rule would apply to litigation, if in federal, State or tribal court, initiated by a sponsor, a governmental agency or a third party. In addition, any appeal of a Commission decision to an appropriate court would be considered ''litigation.'' The Department interprets this term to apply only to situations in which a sponsor is unable to continue construction or attain full power operation based on a court order, e.g., a stay of a permit, a Temporary Restraining Order (TRO), or an injunction. It does not apply to or cover delays that are only secondarily caused by the litigation, e.g., a company's decision to delay operation because a matter is in litigation, even though a court has not barred operation or the permit at issue is in effect.

Exclusions

Section 638(c)(2) expressly precludes the Secretary from paying costs resulting from three general areas: ''(A) The failure of the sponsor to take any action required by law or regulation; (B) events within the control of the sponsor; or (C) normal business risks.'' In the NOI, the Department requested comment on how best to interpret and apply this section, including examples of each category of exclusion.

No commenter addressed situations involving the failure of the sponsor to take any action required by law or regulation. Nevertheless, the Department has decided to require each Standby Support Contract to include a provision addressing this exclusion of coverage for the failure of a sponsor to take actions required by law or regulation. For example, in the construction of any large commercial project, including an advanced nuclear facility, a builder is required to obtain permits and take other steps required by Federal, State, and local laws, regulations and ordinances. In particular, a builder typically has to comply with environmental laws such as those related to pollution abatement or protection of human health or the environment (including ambient air, surface water, ground water, and land surface requirements). Further, with respect to an advanced nuclear facility, a sponsor may have to comply with other laws or regulations due to its unique characteristics. Where a sponsor had failed to take any of these or similar types of actions required by law or regulation, any associated delay would not be covered. Section 950.14(b) further requires the Standby Support Contract to include a provision that excludes coverage for events in which the sponsor either must re-perform an ITAAC due to a Commission disapproval of the sponsor's ITAACs or redress deficiencies in ITAACs as a result of a Commission disapproval of fuel loading.

All commenters agreed that standby support should not extend to delays and losses caused by factors that fall within the control of a sponsor. Potential sponsors and the nuclear industry trade association stated that situations like the late delivery of equipment should not be covered. Several commenters stated that the Department needs to provide examples of such events and define the terms ''events within the control of the sponsor'' and ''normal business risk.''

The Department agrees with those commenters that requested examples of events it considers within the control of the sponsor. To this end, the Department reviewed commercial insurance contracts and practices, particularly for large construction projects, in developing § 950.14(b)(2) which sets forth a list of examples of such situations. Based on this review, the Department provides the following, non-exhaustive set of examples for situations within the control of a sponsor. These include delays attributable to a range of project planning and construction problems including wear and tear, rust,

deterioration, latent defects in property and routine construction delays; and labor-management disputes. In addition, other events the Department considers within the sponsor's control include (1) the sponsor's performance of inspections, tests, analyses, and acceptance criteria in accordance with its schedule, (2) the sponsor's obtaining adequate funding for construction and testing of the advanced nuclear facility, and (3) the sponsor's decision not to continue construction or not to attain full power operation as the result of litigation in which the sponsor is not subject to a court order.

With respect to normal business risks, a utility recommended that it would be appropriate to define this term as ''traditional exposures for which insurance is currently available on commercially reasonable terms and conditions.'' Commenters further recommended that the Department follow generally accepted practices in the insurance industry.

The Department generally agrees with the commenters and has provided examples of normal business risk consistent with standard industry practice. These include events where businesses normally would be expected to absorb any additional cost burdens including costs resulting from changing economics or market conditions, weather delays, labor difficulties, supplier/contractor failures, and other difficulties. Normal business risks also would include those related to obtaining approvals or permits from regulatory agencies, except for the regulatory approvals that constitute a covered delay under the Standby Support Contracts. In other words, the Department interprets ''normal business risk'' to mean all the typical risks of a commercial enterprise, except for those risks that ordinarily may be considered a ''normal business risk'' but, in this case, Congress determined should be covered risks under the contracts. Other examples of normal business risks set forth in standard commercial insurance contracts include (1) delays attributable to force majeure such as strike or weather delay, the failure of power or other utility services supplied to the location, (2) natural events such as earthquake, landslide, mudslide, volcanic eruption, other earth movement, flood, (3) government action meaning the seizure or destruction of property by order of governmental authority, (4) acts or decisions, including the failure to act or decide, of any person, group, organization, or government body (excluding those acts or decisions or failure to act or decide by the Commission that are covered events), (5) supplier or subcontractor delays in performance, (6) litigation, whether initiated by the sponsor or another party, that is not a covered event, (7) failure to timely obtain regulatory permits or approvals that is not a covered event, and (8) unrealistic and overly ambitious schedules set by the sponsor.

The Department agrees with commenters that it would be impracticable to develop an all-inclusive list addressing all such delays in all future situations. Accordingly, in addition to this preamble discussion providing some examples of exclusions, the Department has developed a claims administration process which is discussed in subpart C.

Covered Delay and Full Power Operation

Whether a covered event leads to covered delay depends on whether the covered event directly causes a delay in full power operation of an advanced nuclear facility. Accordingly, the concept of full power operation is a critical element in determining covered delay and covered costs under a Standby Support Contract.

Several commenters suggested that the Department should define full power operation to mean at or near 100 percent of power on a sustained basis. These commenters reasoned that defining full power operation to be operation at five percent or greater is not consistent with the intent of the Act, and that this interpretation, though applicable in the context of a part 50 reactor license, is not useful or applicable under a part 52 license where the regulations do not expressly require Commission authorization for power operations greater than five percent.

The Department notes that Congress did not define this term in the Act, leaving it to the Department's discretion. This term is defined in the interim final rule as that point at which the sponsor first synchronizes the advanced nuclear facility to the electrical grid. The Department notes that such an event typically occurs between 10 to 25 percent of a facility's licensed thermal power capacity. The Department believes that this definition of full power operation is appropriate because it is clear, addresses the sponsor's desire for coverage until it is able to generate revenue from the facility, and represents a point where the risks covered under the contracts are either not applicable or no longer likely to occur. Once the Commission has found that the acceptance criteria have been met in accordance with 10 CFR 52.103(g), the Commission's review of ITAAC is complete. The sponsor may then load fuel and begin power ascension testing. Hence, there is no opportunity after fuel load for a delay in full power operation caused by the Commission's failure to review and approve ITAAC on schedule. Similarly, any delay from a pre-operational hearing would not exist after fuel load, since the covered event also would only occur prior to loading fuel. The remaining risk, litigation in Federal, State or tribal court that delays the sponsor from achieving full power operation, is less likely to occur after fuel load and the first time the sponsor synchronizes to the electrical grid. Even if this type of delay could occur after first grid connection, there is no clear or reasoned basis to determine precisely when that time may occur in operating life of an advanced nuclear facility.

Based on these considerations, § 950.14(c) requires each Standby Support Contract to include a provision specifying the payment of covered costs if a covered event is determined to cause a delay in attainment of full power operation. In addition, for a contract for one of the subsequent four reactors, payment for covered delay will occur only after the initial 180-day period of delay.

Due Diligence. Section 638(e) specifies that any Standby Support Contract requires ''the sponsor to use due diligence to shorten, and to end, the delay covered by the contract.'' In the NOI, the Department requested comments on how this term should be used in the context of a Standby Support Contract. Two commenters recommended that the Department define due diligence consistent with the concept of using commercially reasonable efforts to shorten and end the delay. They further commented that the Department should have the burden of demonstrating that a sponsor failed to use due diligence.

Section 950.14(c)(2) requires each Standby Support Contract to include a provision to require the sponsor to use due diligence to mitigate, shorten, and end covered delay under the contract. Similarly, § 950.23(b)(2)(iii) requires a sponsor to use due diligence to mitigate, shorten and end the covered delay and the associated costs. The Department notes that Black's Law Dictionary defines ''diligence'' as (1) a continual effort to accomplish something and (2) the attention and care required from a person in a given situation. In turn, Black's Law Dictionary defines ''due diligence'' as ''[t]he diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or a discharge of an

obligation.'' As several commenters noted, the claims administration process set forth in subpart C is the forum for determining whether a sponsor in fact acted with due diligence to mitigate, shorten or end the covered delay and associated costs under the Standby Support Contract. The Department notes that requiring a sponsor to use due diligence to mitigate costs associated with the Standby Support Contract is consistent with general principles of mitigating damages in contract disputes.

Covered Costs

Paragraph (d) of Section 638 provides for the coverage of costs that result from a delay during construction and in gaining approval for full power operation, specifically (A) principal or interest and (B) incremental cost of purchasing power to meet contractual agreements. In the NOI, the Department requested comments on how these costs should be documented, especially the extent to which they are used in calculating the funding needed prior to entering into a contract. In particular, although the Department stated that it anticipated only covering those costs specifically described in paragraphs (d)(5)(i) and (ii), it noted that it might consider providing coverage for costs in addition to those specifically described in those sections.

Commenters expressed divergent views on whether to have an expansive or limited interpretation of paragraph (d)(5) which states that the covered costs shall be those that result from certain delays ''including'' the costs specifically described in that provision (e.g., principal or interest). Two commenters agreed with a more limited reading of ''including.'' One stated that the statute clearly states ''including'' and does not state ''including but not limited to.'' That commenter stated that to interpret the statute otherwise would be an improper broadening of the law. In contrast, potential sponsors commented that the statute's use of the term ''including'' without any additional qualifying language such as ''and limited solely to'' suggests that Congress intended an inclusive and expansive definition of covered costs. They suggested coverage for additional costs such as operations and management including the costs of demobilization and remobilization, idle time costs incurred in respect to equipment and labor, increased general and administrative costs, and escalation of costs for completion of construction.

The Department believes that there is more than one reasonable interpretation of paragraph (d)(5) and that it is not clear on its face; as a result, the Department has broad discretion to interpret the term ''including'' in paragraph (d)(5). After reviewing the implications of interpreting the term broadly, the Department has concluded that it is more appropriate to limit the concept of covered costs to those expressly set forth in paragraph (d)(5). This will enable the Department to control the costs of the program, without undermining the purpose of section 638 which is to facilitate the construction and full power operation of advanced nuclear facilities. Moreover, expanding the coverage to down-time costs suggested by some commenters could reduce a sponsor's incentive to expeditiously complete a project. Accordingly, § 950.14(d) requires each contract to include a provision to specify that the covered costs under the Program Account are limited to principal or interest on any debt obligation financing the advanced nuclear facility. The Program Account would not cover penalty interest or other charges due to borrower delinquency or other failure to meet debt terms that are not related to a covered event. In other words, under the Program Account the Department will indemnify sponsors for the cost of principal or interest on the debt obligation for the period or duration of covered delay, less 180 days for one of the subsequent four reactors.

Covered costs under the Grant Account involve the incremental difference between (i) the fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for the delay; and (ii) the contractual price of power from the advanced nuclear facility subject to the delay.

The Department has defined fair market price of power and contractual price of power as follows in § 950.25: The fair market price may be determined by the lower of the two options: (A) The actual cost of the short-term supply contract for replacement power, purchased by the sponsor, during the period of delay, or (B) for each day by its day ahead weighted average index price in $/MWh at the hub geographically nearest to the delayed nuclear facility posted the previous day by the Intercontinental Exchange (ICE) or an alternate electronic marketplace deemed as reliable by the Secretary. The determination of which option represents the lower price necessarily cannot be an after-the fact mechanical determination but rather must be made in the context of whether the sponsor exercised due diligence in selecting an option to pursue.

In addition, the contractual price of power is calculated as the price for which power would be sold if full power operation of the advanced nuclear facility had not been delayed. In the event of covered delay, standby support coverage would indemnify the sponsor for the extra costs that may be incurred purchasing replacement power at a higher price than the price at which the sponsor has sold it because the sponsor may be required to make firm power deliveries regardless of the delay and at sales prices that may be below the current market price of power in the sponsor's region. The amount indemnified is a function of the incremental difference between the current market price for replacement power purchase and the contractual selling price for firm power deliveries, as well as the quantity of power under contract. Only the quantity of power that is under contract at the time of the covered event, i.e., only power that had been contracted for prior to the occurrence of a covered event will be used to determine the amount of replacement power indemnified for the associated portion of covered delay. In addition, only supply contracts that have a definite date for delivery that cannot be met due to a covered delay would be eligible for cost recovery. The upper limit on the amount of power deliveries from the advanced nuclear facility can be no more than the net generating capability, which is calculated by using the average nuclear industry-wide capacity factor and site usage and line losses.

The Department determined that it would be inappropriate to adopt a commenter's recommendation to offer a pre-defined ''weekly indemnity'' for debt service and other costs when the Standby Support Contract is implemented. The commenter suggested that the Department emulate the Accidental Outage Policy or business interruption-type insurance provided by the Nuclear Electric Insurance Limited (NEIL). The Department notes that providing a pre-defined ''weekly indemnity'' patterned after NEIL would be inconsistent with section 638. A pre-defined amount might allow for payments in excess of those actually incurred by a sponsor.

Subpart C—Claims Administration Process

Subpart C of the regulation sets forth the procedures and conditions to be followed by a sponsor for the submission of claims and the payment of covered costs under a Standby Support Contract. In the NOI, the Department requested comment on how

it should determine covered costs and covered delay under the contracts. Recognizing the inherent difficulty in prescribing ahead of time all the factors that may determine whether a delay is covered by the contract or the costs are properly calculated and recoverable, several commenters suggested the Department institute a claims management process to handle such issues as they arise. They also recommended that the Department institute a claims procedure to expedite processing and payment of covered costs.

Industry commented that the insured should have the burden of making a good-faith showing of a covered delay and covered loss. The Department believes that a sponsor has the burden of establishing that there is a covered event, covered delay and covered loss, as the sponsor is the entity primarily in possession of the facts necessary to support aclaim. Accordingly, § 950.20 states that ''a sponsor is required to establish that there is a covered event, a covered delay and a covered loss.''

In establishing an efficient and workable claims administration process, the Department reviewed claims administration of other Federal agencies and private sector insurers of large construction projects, including the procedures established by the Department of the Treasury to implement its *Terrorism Risk Insurance Program* at 31 CFR part 50. (69 FR 39296, June 29, 2004)

Based on this analysis, the Department, in subpart C, establishes a two-step process for filing and payment of claims for covered costs. The first step in the process, covered in §§ 950.21 and 950.22, is a notice requirement regarding the occurrence of a covered event. The second step in the process, covered in §§ 950.23 through 950.28, is the requirements for certification of covered costs and the procedures for payment of those costs by the Department. The process is set up this way to ensure that the Department is receiving timely, advance notice of events that may result in covered delay, so that when the sponsor submits a claim for covered costs the Department can more quickly and accurately determine the duration of a covered delay and the associated covered costs. This bifurcation is particularly necessary given that the period of coverage will extend over several years, *i.e.*, from commencement of construction through testing to full power operation of the facility. A covered event may occur at various times during this multi-year period. On the other hand, a determination that covered delay occurred, and the exact duration of the delay, can only be made at the time when full power operation is scheduled to occur. This point in time may come several years after the covered event. Accordingly, the regulations provide for early notification of covered events that will enable the Department to determine whether an event qualifies for coverage, and any changes in schedules and other expectations as a result of the event. In addition, the regulations provide for payment of claims at the time when the sponsor expected to attain full power operation to enable the Department to determine accurately whether a covered delay occurred, the duration of the delay, and the amount of covered costs to be paid.

Covered Event Determination

The first step in the claims process, § 950.21, is for the sponsor to notify the Claims Administrator that a covered event has occurred, and provide certain information in support of the claim. For example, the sponsor provides information about the covered event, its duration, the sponsor's projection of the duration of covered delay, and any revisions to schedules for construction, testing or ITAAC review resulting from the event. An authorized representative of the sponsor is required to sign the notification of a covered event, and certify that the notification is made in good faith, and represents that the supporting information is accurate and complete to the best of the sponsor's knowledge and belief.

The Claims Administrator is the official within the Department responsible for the administration of the Standby Support Contracts, including the responsibility to determine whether claims are appropriate and should be paid. This information is reviewed by the Claims Administrator and, within 60 days of receipt, the Claims Administrator issues a determination whether the event is a covered event under the contract. The second step in § 950.22 provides the Department with the opportunity to evaluate the threshold question of whether the event is in fact an event covered by the contract. The Claims Administrator bases his or her decision on review of the conditions and exclusions under subpart B for a covered event. For example, if the Commission failed to review an ITAAC on the approved schedule under § 950.14(a), and this failure of the Commission was not caused by one of the events excluded from coverage under § 950.14(b), e.g., an event within the control of the sponsor, then the event is a covered event. If the Claims Administrator does not agree with the sponsor's representation of the event as a covered event, then the sponsor must invoke the dispute resolution procedures in subpart D. In addition, the Claims Administrator considers the effect of concurrent events (e.g, a litigation delay at the same time as a strike) on whether there is a covered delay in full power operation. The parties are bound by any Final Determination on Covered Events, and the sponsor may rely on that in any future claim for payment of covered costs.

Covered Cost Determination

The next step in the process under § 950.23 is for the sponsor to submit a claim for payment of covered costs when the sponsor is within 120 days of its expected date of full power operation, but for the covered delay. The sponsor's claim, referred to as the Certification of Covered Costs, establishes the sponsor's basis for the claim, including supporting documentation such as detailed information about the expected duration of the covered delay and associated covered costs. To the extent the sponsor cannot determine the total amount of covered costs in the requisite time period prior to the expected date of full power operation, either because all costs are not then known or new covered events occur after the time of filing the Certification, then the sponsor may file a Supplementary Certification of Covered Costs.

The Claims Administrator reviews the information in the Certificate of Covered Costs, and determines whether the costs should be paid based upon an evaluation of the duration of the delay in achieving full power operation caused by the covered event(s), adjusting for any delay in full power operation that is not the result of a covered event and therefore excluded from coverage. This evaluation and determination by the Claims Administrator is referred to as the Claim Determination. The Department pays those claims that are covered by the contract, pays an adjusted amount if determined appropriate, or rejects the claim. If the sponsor does not agree with the Claims Administrator's Claim Determination, then the procedures in subpart D are invoked to resolve the dispute.

To facilitate the process, § 950.25 specifies the method the Claims Administrator uses to calculate covered costs, and § 950.26 describes the adjustments to covered costs the Claims Administrator may make in that process.

Once a Claim Determination is rendered, and assuming there is no dispute, then the Department pays the covered costs in accordance with the Claim Determination and other conditions of payment as specified in § 950.27, such as a finding that the claim is not fraudulent, collusive, in bad faith, or otherwise designed to circumvent the purposes of the Act and the regulations. Other conditions include the limitation that payments may not exceed the aggregate amounts permissible under the Act; that is, no more than $500 million each for the initial two reactors and $250 million each for the subsequent four reactors.

Section 950.28 addresses the payment method for covered costs. Assuming all conditions are met, periodic payments are made when the sponsor has incurred and is obligated to pay the costs covered under the contract.

Subpart D—Dispute Resolution Process

In the NOI, the Department noted that as with any commercial insurance contract, a sponsor may disagree with the Department as to an interpretation of a provision in the Standby Support Contract. After further noting that the Act does not require any particular dispute resolution mechanism or procedure, the Department requested comment on how disputes between sponsors and the Department should be resolved, and what dispute resolution provisions should be included in the applicable regulations or contracts.

Industry commenters recommended the use of third party binding arbitration to settle claims about covered events and covered delay. The choice of binding arbitration as the preferred method of dispute resolution was to provide a forum that was fast, efficient and not subject to protracted litigation. The commenters recommended private arbitrators to administer the processing of these claims and to act as neutral evaluators.

Covered Events and Covered Costs Dispute Resolution

The Department generally agrees with the commenters' view that claims should be resolved as effectively and efficiently as possible. The dispute resolution methods that are set forth in subpart D address these concerns. Subpart D provides a two step dispute resolution process for resolving claims that first calls for mediation and then a Summary Trial with Binding Decision.

Specifically, subpart D addresses two types of disputes: those involving covered events in §§ 950.31 and 950.32 and those involving covered costs in §§ 950.33 and 950.34. For completeness, subpart D, §§ 950.36 and 950.37, also provides the same two step dispute resolution process for other contract matters that may be in dispute and would benefit from resolution in an efficient and effective manner.

If a sponsor initially disagrees with the Claims Administrator's determination on what constitutes a covered event or covered delay, it may file a rebuttal to that decision (Sponsor's Rebuttal). Within 15 days of the submission of the Sponsor's Rebuttal, subpart D requires the parties, i.e., the sponsor and the claims administrator, to attempt to resolve the claim dispute through mediation. The subpart further requires the mediation neutral(s) to be mutually selected by the parties and the cost of the process to be equally shared. Mediation is a flexible negotiation-based process whereby a third party neutral assists the parties in their dispute resolution efforts. If the parties reach settlement during the mediation process that settlement constitutes a Final Claim Determination. If, however, the parties cannot reach a settlement, they would proceed to the second available dispute resolution process for resolving the claim—the Summary Trial with Binding Decision.

This process has been used in the government contracts arena for many years. Scheduling of summary trials before the Department of Energy's Board of Contract Appeals (Board) is expedited, discovery is limited, and the parties try the matter informally, with relaxed rules of evidence, either before a single administrative judge or a panel of administrative judges. A summary or ''bench'' decision will be issued at the conclusion of the trial or as set forth in these regulations no later than 10 days post hearing. The parties agree in advance that the Board's decision is final and not appealable.

The Department has decided to use the Board rather than a third-party commercial arbitrator for dispute resolution because the services provided by the Board and a commercial arbitrator are essentially the same, but the Board does not charge for the use of its services. Consequently, any costs are minimal for the parties. In contrast, commercial arbitrators charge significant fees for conducting arbitration.

Subpart E—Audit Investigations and Other Provisions

As with any program in which the government is providing grants or other subsidies to the public, the Department may audit the costs associated with the Standby Support Program. Accordingly, in § 950.41, the Department reserves the right to examine any pertinent documents and records of a sponsor. The Department may also direct the sponsor to submit to an audit by a public accountant or equivalent acceptable to the Secretary. Such an audit provision is patterned after the Department's authority in 10 CFR part 800, *Loans for Bid or Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance.*

In section 950.42, the Department addresses the public disclosure of information received from a sponsor. Industry representative at the public workshop expressed concern that much information in the part 52 application process and under the Standby Support Program contained proprietary information that should not be disclosed to the public. In contrast, the advocacy group commented that all information under the Standby Support Program should be made public. The Department generally believes that such information should be made public, unless the sponsor demonstrates that the information, if made public, would divulge trade secrets or other proprietary information. Such an approach is consistent with the Freedom of Information of Act's approach to such information at 5 U.S.C. 552 and the Department's rules at 10 CFR part 1004.

IV. Regulatory Review Requirements

A. Review Under Executive Order 12866

The Department has determined that today's regulatory action is an ''economically significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, the Department submitted this interim final to the Office of Information and Regulatory Affairs of the Office of Management and Budget, which has completed its review under E.O. 12866.

This discussion assesses the potential costs and benefits of this rule. This regulation affects only those entities that voluntarily elect to apply for standby support and are selected to receive such standby support assistance. It imposes no direct costs on non-participants. The economic impact of this regulatory action is uncertain because the nature and size of the projects to be assisted will not be known until specific project applicants come forward and because it is not possible to predict the scope, frequency or timing of the events that would be subject to payment of standby support. The Department notes that the

costs are the amount of monies needed in the Program Account for the Federal government to extend Standby Support. The Department has not completed an estimate of the cost of this risk insurance for the interim final rule rule, but a preliminary analysis indicates that the rule may exceed $100 million in any one year, and will therefore be treated as an economically significant rulemaking. For purposes of review under E.O. 12866, the final rule will provide a best estimate of the cost to fund the full Standby Support Program.

To promote the construction of new nuclear power plants, the Secretary of Energy Advisory Board formed the Nuclear Energy Task Force (NETF) in July 2004 to ''assess the issues and determine the key factors that must be addressed if the Federal government and industry are to commit to the financing, construction, and deployment of new nuclear power generation plants to meet the nation's electric power demands in the 21st Century.'' NETF determined that the ITAAC process and the possibility of a hearing on satisfaction of the ITAAC may create regulatory disruption after substantial funds have been expended. Achieving the purpose of the revised regulatory process will be thwarted if the Commission does not keep the ITAAC process focused narrowly on those issues that must be subject to post-construction verification. NETF concluded that this new regulatory process which has not been tested in practice, poses a significant risk factor to generating companies. Similarly, the Department funded a report which defined critical risks and investment issues. (*Business Case for New Nuclear Power Plants: Bringing Public and Private Resources Together for Nuclear Energy,* Scully Capital, July 2002, available at *https://www.ne.doe.gov.home/bc/businesscase.html*). Its conclusions were similar to NETF's recommendations in that one of the critical risks with the construction of new nuclear power plants is the regulatory risk associated with the ITAAC process.

The costs associated with a delay caused by the regulatory process or litigation could be significant and there is no well-established method of assessing the likelihood of such events until the new regulatory process is tested. As a result there is no market mechanism available to mitigate this risk factor. The Standby Support Program is meant to address this market failure. The overriding purpose of the Standby Support Program is to facilitate the construction and full power operation of new advanced nuclear facilities so that project sponsors can invest in electric generation facilities that the Administration and Congress believe are necessary to promote a more diverse and secure supply of energy for the Nation.

Given that the cost to the government will be dependent on the state of the licensing process, Congress has mandated quarterly reports to Congress and the Secretary of the Department from the Commission summarizing the status of licensing actions associated with the advanced nuclear facility that voluntarily applies and is selected for a Standby Support Contract.

The Department anticipates that the Standby Support Program will facilitate the construction of new nuclear facilities by decreasing the financial risks related to the combined license process. The program establishes a maximum of $500 million in insurance as the limit for each of the first two reactors covered and $250 million for each of the subsequent four reactors.

Under the Federal Credit Reform Act of 1990 (FCRA), the amount of budget authority necessary to support a Federal credit instrument depends upon the subsidy cost (i.e., the net present value of the estimated cash flow of payments by the government to cover the expected value of the principal or interest on any debt obligation of the owner of an advanced nuclear facility during covered delay). This subsidy cost in Standby Support Program equates to the ''cost of a loan guarantee'' under section 502(5)(C) of FCRA. Under the Standby Support Program and FCRA, the Federal government is not authorized to extend credit assistance unless it has sufficient funds in the Program Account either in the form of budget authority or fees charged by the program to offset any potential losses. The Department anticipates that all of the funds in the Program Account needed for the Standby Support Program will be contributed by private industry through a risk premium.

With respect to the Grant Account, section (b)(2)(C)(ii) states that that account should contain the total cash amount that would be needed to cover the cost of the incremental difference between the contractual price of power and the fair market value of power, as explained in § 950.14. Given that FCRA is not mentioned with respect to the Grant Account, the Grant Account is not funded as a present value of expected payments like the Program Account, but rather, is required to be funded with the upper limit of possible payments. For example, if a sponsor elects to have a maximum of $500 million to cover the incremental cost of purchasing power from the open market because of a delay covered by a Standby Support Contract occurred, then the Grant Account is required to be funded with $500 million, before the Department can enter into a Standby Support Contract with the sponsor covering the Grant Account. The Grant Account and Program Account, jointly, address the risks addressed by the studies mentioned above as well as respond to the Congress' requirements in section 638.

While the exact economic effects of the Standby Support cannot be determined, an estimate can be made from recent developments. The benefit estimate entails the investment by the private sector in nuclear power plants. The monetary value of reduced air pollution or monetarily subscribing a value to energy security is not included. To examine the benefits, the Westinghouse AP1000 reactor is used as an example of ''advanced nuclear reactor.'' In December 2005 the Commission approved the design of Westinghouse's AP1000 reactor that has a capacity of 1,117 megawatts. Plant costs can be referred in overnight capital costs terms. Overnight capital costs assume that the plant can be built ''overnight'', and do not include interest and financial costs. Initial overnight capital cost estimates are approximately $1,400 per kilowatt for the first couple of plants and decreasing to $1,000 per kilowatt for the nth plant. There are 1,000 kilowatts in a megawatt. Thus six plants represent an investment of $6.7 billion to $9.4 billion.

The Department has concluded that the Standby Support Program will promote the construction of new advanced nuclear facilities. The Standby Support Program will help decrease a critical regulatory risk factor that currently constrains the private sector from engaging in the construction of new advanced nuclear facilities. Electricity from nuclear energy promotes clean air by the lack of emissions, and national security by reducing dependence on foreign sources of energy, while being economically efficient. These benefits are anticipated to far surpass the direct costs to the Federal government and to the entities that elect to participate in the program.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: Eliminate drafting errors and needless ambiguity, write

regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: Clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department has completed the required review and determined that, to the extent permitted by law; this final rule meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions.

Today's regulatory action has been determined not to be a ''policy that has federalism implications,'' that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no ''federalism summary impact statement'' was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' the Department may not issue a discretionary rule that has ''tribal implications'' and imposes substantial direct compliance costs on Indian tribal governments. The Department has determined that this final rule does not have such effects and concluded that Executive Order 13175 does not apply to this rule.

E. Reviews Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). Given that no general notice of proposed rulemaking is required, no regulatory flexibility analysis is required.

F. Review Under the Paperwork Reduction Act

Section 950.10(b) contains information collection requirements pertaining to eligibility; § 950.12(a) contains information collection requirements pertaining to fulfillment of conditions precedent to a Standby Support Contract; and § 950.23 contains information collection requirements pertaining to submission of claims for payment of covered costs under a Standby Support Contract. As indicated in the DATES section of this notice of interim final rulemaking, these provisions will not become effective until the Office of Management and Budget (OMB) has approved them pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* Shortly after publication of today's rule, the Department will issue a notice seeking public comment under the Paperwork Reduction Act on the information collection requirements in these sections of today's rule. After considering any public comments received in response to that notice, the Department will submit the proposed collection of information to OMB for approval pursuant to 44 U.S.C. 3507. An agency may not conduct, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. After OMB approves the information collection requirements, the Department will publish a notice in the **Federal Register** that announces the effective date and displays the OMB control number for these sections of the rule.

G. Review Under the National Environmental Policy Act

The Department has concluded that promulgation of these regulations fall into the class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth in the Department regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The Department has determined that the rule published today does not contain any Federal mandates affecting states, tribal, or local governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. The Department has determined that the rule published today does not have a significant adverse effect on the supply, distribution, or use of energy and thus the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family

Policymaking Assessment'' for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, The Department has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). The Department has reviewed today's final rule under the OMB and Department of Energy guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, the Department will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 801(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this interim final rule.

List of Subjects in 10 CFR Part 950

Government contracts, Nuclear safety.

Issued in Washington, DC, on May 6, 2006.

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Assistant Secretary, Office of Nuclear Energy.

■ For the reasons set forth in the preamble, the Department of Energy is amending Chapter III of title 10 of the Code of Federal Regulations by adding a new part 950 to read as follows:

PART 950—STANDBY SUPPORT FOR CERTAIN NUCLEAR PLANT DELAYS

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Authority: 42 U.S.C. 2201, 42 U.S.C. 7101 *et seq.*, and 42 U.S.C. 16014.

Subpart A—General Provisions

§ 950.1 Purpose.

The purpose of this part is to facilitate the construction and full power operation of new advanced nuclear facilities by providing risk insurance for certain delays attributed to the Nuclear Regulatory Commission regulatory process or to litigation.

§ 950.2 Scope and applicability.

This part sets forth the policies and procedures for the award and administration of Standby Support Contracts between the Department and sponsors of new advanced nuclear facilities.

§ 950.3 Definitions.

For the purposes of this part:

Act means the Energy Policy Act of 2005.

Advanced nuclear facility means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Nuclear Regulatory Commission (and such design or a substantially similar design of comparable capacity was not approved on or before that date).

Available indemnification means $500 million with respect to the initial two reactors and $250 million with respect to the subsequent four reactors.

Claims Administrator means the official in the Department of Energy responsible for the administration of the Standby Support Contracts, including the responsibility to approve or disapprove claims submitted by a sponsor for payment of covered costs under the Standby Support Contract.

Combined license means a combined construction and operating license (COL) for an advanced nuclear facility issued by the Commission.

Commencement of construction means the point in time when a sponsor initiates the pouring of safety-related concrete for the reactor building.

Commission means the Nuclear Regulatory Commission (NRC).

Conditional Agreement means a contractual agreement between the Department and a sponsor under which the Department will execute a Standby Support Contract with the sponsor if and only if the sponsor is one of the first six sponsors to satisfy the conditions precedent to execution of a Standby Support Contract, and if funding and other applicable contractual, statutory and regulatory requirements are satisfied.

Construction means the construction activities related to the advanced nuclear facility encompassed in the time period after commencement of construction and before the initiation of fuel load for the advanced nuclear facility.

Covered cost means:

(1) Principal or interest on any debt obligation financing an advanced nuclear facility (but excluding charges due to a borrower's failure to meet a debt obligation unrelated to the delay); and

(2) Incremental costs that are incurred as a result of covered delay.

Covered delay means a delay in the attainment of full power operation of an advanced nuclear facility caused by a covered event, as defined by this section.

Covered event means an event that may result in a covered delay due to:

(1) The failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses and acceptance criteria established under the combined license;

(2) The conduct of pre-operational hearings by the Commission for the advanced nuclear facility; or

(3) Litigation that delays the commencement of full power operations of the advanced nuclear facility.

Department means the United States Department of Energy.

Full power operation means the point at which the sponsor first synchronizes the advanced nuclear facility to the electrical grid.

Grant account means the account established by the Secretary that receives appropriations or non-Federal funds in an amount sufficient to cover the amount of incremental costs for which indemnification is available under a Standby Support Contract.

Incremental costs means the incremental difference between:

(1) The fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for a covered delay; and

(2) The contractual price of power from the advanced nuclear facility subject to the delay.

Initial two reactors means the first two reactors covered by Standby Support Contracts that receive a combined license and commence construction.

Litigation means adjudication in Federal, State, or tribal courts, including appeals of Commission decisions related to the combined license process to such courts, but excluding administrative litigation that occurs at the Commission related to the combined license process.

Loan cost means the net present value of the estimated cash flows of:

(1) Payments by the government to cover defaults and delinquencies, interest subsidies, or other payments; and

(2) Payments to the government including origination and other fees, penalties and recoveries, as outlined under the Federal Credit Reform Act of 1990.

Pre-operational hearing means a hearing held pursuant to the Commission's regulation in 10 CFR 52.103.

Program account means the account established by the Secretary that receives appropriations or loan guarantee fees in an amount sufficient to cover the loan costs.

Program Administrator means the Department official authorized by the Secretary to represent the Department in the administration and management of the Standby Support Program, including negotiating with and entering into a Conditional Agreement or a Standby Support Contract with a sponsor.

Related party means the sponsor's parent company, a subsidiary of the sponsor, or a subsidiary of the parent company of the sponsor.

Secretary means the Secretary of Energy or a designee.

Sponsor means a person whose application for a combined licensed for an advanced nuclear facility has been docketed by the Commission.

Standby Support Contract means the contract that, when entered into by a sponsor and the Program Administrator pursuant to section 638 of the Energy Policy Act of 2005 after satisfaction of the conditions in § 950.12 and any other applicable contractual, statutory and regulatory requirements, establishes the obligation of the Department to compensate covered costs in the event of a covered delay subject to the terms and conditions specified in the Standby Support Contract.

Standby Support Program means the program established by section 638 of the Act as administered by the Department of Energy.

Subsequent four reactors means the next four reactors covered by Standby Support Contracts, after the initial two reactors, which receive a combined license and commence construction.

System-level construction schedule means an electronic critical path method schedule identifying the dates and durations of plant systems installation (but excluding details of components or parts installation), sequences and interrelationships, and milestone dates from commencement of construction through full power operation, using software acceptable to the Department.

Subpart B—Standby Support Contract Process

§ 950.10 Conditional agreement.

(a) *Purpose.* The Department and a sponsor may enter into a Conditional Agreement. The Department will enter into a Standby Support Contract with the first six sponsors to satisfy the specified conditions precedent for a Standby Support Contract if and only if all funding and other contractual, statutory and regulatory requirements have been satisfied.

(b) *Eligibility.* A sponsor is eligible to enter into a Conditional Agreement with the Program Administrator after the sponsor has submitted to the Department the following information but before the sponsor receives approval of the combined license application from the Commission:

(1) An electronic copy of the combined license application docketed by the Commission pursuant to 10 CFR part 52, and if applicable, an electronic copy of the design certification or early site permit, or environmental report referenced or included with the sponsor's combined license application;

(2) A summary schedule identifying the projected dates of construction, testing, and full power operation;

(3) A detailed business plan that includes intended financing for the project including the credit structure and all sources and uses of funds for the project, the most recent private credit rating or other similar credit analysis for project related covered financing, and the projected cash flows for all debt obligations of the advanced nuclear facility which would be covered under the Standby Support Contract;

(4) The sponsor's estimate of the amount and timing of the Standby Support payments for debt service under covered delays; and

(5) The estimated dollar amount to be allocated to the sponsor's covered costs for principal or interest on the debt obligation of the advanced nuclear facility and for incremental costs, including whether these amounts would be different if the advanced nuclear facility is one of the initial two reactors or one of the subsequent four reactors.

(c) The Program Administrator shall enter into a Conditional Agreement with a sponsor upon a determination by the Department that the sponsor is eligible for a Conditional Agreement, the information provided by the sponsor under paragraph (b) of this section is accurate and complete, and the Conditional Agreement is consistent with applicable laws and regulations.

§ 950.11 Terms and conditions of the Conditional Agreement.

(a) *General.* Each Conditional Agreement shall include a provision specifying that the Program Administrator and the sponsor will enter into a Standby Support Contract provided that the sponsor is one of the first six sponsors to fulfill the conditions precedent specified in § 950.12, subject to certain funding requirements and limitations specified in § 950.12 and any other applicable contractual, statutory and regulatory requirements.

(b) *Allocation of coverage.* Each Conditional Agreement shall include a provision specifying the amount of coverage to be allocated under the Standby Support Contract to cover principal or interest costs and to cover incremental costs, including a provision on whether the allocation shall be different if the advanced nuclear facility is one of the initial two reactors or one of the subsequent four reactors, subject to paragraphs (c) and (d) of this section.

(c) *Funding.* Each Conditional Agreement shall contain a provision that the Program Account or Grant Account shall be funded in advance of

execution of the Standby Support Contract and in the following manner, subject to the conditions of paragraphs (d) and (e) of this section. Under no circumstances will the amount of the coverage for payments of principal and interest under a Standby Support Contract exceed 80 percent of the total of the financing guaranteed under that Contract.

(1) The Program Account shall receive funds appropriated to the Department or a combination of appropriated funds and loan guarantee fees that are in an amount equal to the loan costs associated with the amount of principal or interest covered by the available indemnification. The parties shall specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Program Account to be contributed by appropriated funds to the Department, by the sponsor or by a non-federal source.

(2) The Grant Account shall receive funds appropriated to the Department, or a combination of appropriated funds and funds from the sponsor or other non-federal source, in an amount equal to the incremental costs. The parties shall specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Grant Account to be contributed by appropriated funds to the Department, by the sponsor, or by a non-federal source.

(d) *Reconciliation.* Each Conditional Agreement shall include a provision that the sponsor shall provide no later than ninety (90) days prior to execution of a Standby Support Contract sufficient information for the Program Administrator to recalculate the loan costs and the incremental costs associated with the advanced nuclear facility, taking into account whether the sponsor's advanced nuclear facility is one of the initial two reactors or the subsequent four reactors.

(e) *Limitations.* Each Conditional Agreement shall contain a provision that limits the Department's contribution of Federal funding to the Program Account or the Grant Account to only those amounts, if any, that are appropriated to the Department in advance of the Standby Support Contract for the purpose of funding the Program Account or Grant Account. In the event the amount of appropriated funds to the Department for deposit in the Program Account or Grant Account is not sufficient to result in an amount equal to the full amount of the loan costs or incremental costs under the Conditional Agreement, the sponsor shall no later than sixty (60) days prior to execution of the Standby Support Contract:

(1) Notify the Department that it shall not execute a Standby Support Contract; or

(2) Notify the Department that it shall provide additional contributions to the Program Account or Grant Account necessary to fund the total amount of loan costs or incremental costs as specified in the Conditional Agreement. The sponsor shall not have the option to provide additional funds to the Program Account or Grant Account that would fund less than the full amount necessary to fund that account.

(f) *Termination of Conditional Agreements.* Each Conditional Agreement shall include a provision that the Conditional Agreement remains in effect until such time as:

(1) The sponsor enters into a Standby Support Contract with the Program Administrator;

(2) The sponsor has commenced construction on an advanced nuclear facility and has not entered into a Standby Support Contract with the Program Administrator within thirty (30) days after commencement of construction;

(3) The sponsor notifies the Program Administrator in writing that it wishes to terminate the Conditional Agreement, thereby extinguishing any rights or obligations it may have under the Conditional Agreement;

(4) The Program Administrator has entered into Standby Support Contracts that cover three different reactor designs, and the Conditional Agreement is for an advanced nuclear facility of a different reactor design than those covered under existing Standby Support Contracts; or

(5) The Program Administrator has entered into six Standby Support Contracts.

§ 950.12 Standby Support Contract conditions.

(a) *Conditions precedent.* If the Program Administrator has not entered into six Standby Support Contracts, the Program Administrator shall enter into a Standby Support Contract with the sponsor, consistent with applicable statutes and regulations and subject to the conditions set forth in paragraphs (b) and (c) of this section, upon a determination by the Department that all the conditions precedent to a Standby Support Contract have been fulfilled, including that the sponsor has:

(1) A Conditional Agreement with the Department, consistent with this subpart;

(2) A combined license issued by the Commission;

(3) Documentation that it possesses all Federal, State, or local permits required by law to commence construction;

(4) Documentation that it has commenced construction of the advanced nuclear facility;

(5) Documented coverage of required insurance for the project;

(6) Paid any required fees into the Program Account and the Grant Account, as set forth in the Conditional Agreement and paragraph (b) of this section;

(7) Provided to the Program Administrator, no later than ninety (90) days prior to execution of the contract, the sponsor's detailed schedule for completing the inspections, tests, analyses and acceptance criteria in the combined license and informing the Commission that the acceptance criteria have been met; and the sponsor's proposed schedule for review of such inspections, tests, analyses and acceptance criteria by the Commission, consistent with § 950.14(a) and which the Department will evaluate and approve; and

(8) Provided to the Program Administrator, no later than ninety (90) days prior to execution of the contract, a detailed systems-level construction schedule that includes a schedule identifying projected dates of construction, testing and full power operation of the advanced nuclear facility and which the Department will evaluate and approve.

(9) Provided to the Program Administrator, no later than ninety (90) days prior to the execution of the contract, a detailed and up-to-date plan of financing for the project including the credit structure and all sources and uses of funds for the project, and the projected cash flows for all debt obligations of the advanced nuclear facility.

(b) *Funding.* No later than thirty (30) days prior to execution of the contract, and consistent with section 638(b)(2)(C), funds in an amount sufficient to fully cover the loan costs or incremental costs as specified in the Conditional Agreement have been made available and shall be deposited in the Program Account or the Grant Account respectively.

(c) *Limitations.* The Department shall not enter into a Standby Support Contract, if:

(1) *Program Account.* There are insufficient funds deposited in the Program Account to cover the loan costs of the advanced nuclear facility under the Standby Support Contract as specified in the Conditional Agreement and paragraph (b) of this section; or

(2) *Grant Account.* The Department has not deposited in the Grant Account sufficient funds to cover the incremental costs of the advanced nuclear facility under the Standby Support Contract as specified in the Conditional Agreement and paragraph (b) of this section.

§ 950.13 Standby Support Contract: General provisions.

(a) *Purpose.* Each Standby Support Contract shall include a provision setting forth an agreement between the parties in which the Department shall provide compensation for covered costs incurred by a sponsor for covered events that result in a covered delay of full power operation of an advanced nuclear facility.

(b) *Covered facility.* Each Standby Support Contract shall include a provision of coverage only for an advanced nuclear facility which is not a federal entity. Each Standby Support Contract shall also include a provision to specify the advanced nuclear facility to be covered, along with the reactor design, and the location of the advanced nuclear facility.

(c) *Sponsor contribution.* Each Standby Support Contract shall include a provision to specify the amount that a sponsor has contributed to funding each type of account.

(d) *Maximum aggregate compensation.* Each Standby Support Contract shall include a provision to specify that the Program Administrator shall not pay compensation under the contract in an aggregate amount that exceeds the amount of coverage up to $500 million each for the initial two reactors or up to $250 million each for the subsequent four reactors. The Department may set a minimum amount of coverage.

(e) *Term.* Each Standby Support Contract shall include a provision to specify the date at which the contract commences as well as the term of the contract. The contract shall enter into force on the date it has been signed by both the sponsor and the Program Administrator. Subject to the cancellation provisions set forth in paragraph (f) of this section, the contract shall terminate when all claims have been paid up to the full amounts to be covered under the Standby Support Contract, or all disputes involving claims under the contract have been resolved in accordance with subpart D of this part.

(f) *Cancellation provisions.* Each Standby Support Contract shall provide for cancellation in the following circumstances:

(1) If the sponsor abandons construction, and the abandonment is not caused by a covered event or force majeure, the Program Administrator may cancel the Standby Support Contract by giving written notice thereof to the sponsor and the parties have no further rights or obligations under the contract.

(2) If the sponsor does not require continuing coverage under the contract, the sponsor may cancel the Standby Support Contract by giving written notice thereof to the Program Administrator and the parties have no further rights or obligations under the contract.

(3) For such other cause as agreed to by the parties.

(g) *Termination by sponsor.* Each Standby Support Contract shall include a provision that prohibits a sponsor or any related party from executing another Standby Support Contract, if the sponsor elects to terminate its Standby Support Contract.

(h) *Assignment.* Each Standby Support Contract shall include a provision on assignment of a sponsor's rights and obligations under the contract. The Program Administrator shall permit assignment of rights under the contract with the Department's prior approval. The sponsor may not assign its rights under the contract without the prior written approval of the Program Administrator and any attempt to do so is null and void.

(i) *Claims administration.* Each Standby Support Contract shall include a provision to specify a mechanism for administering claims pursuant to the procedures set forth in subpart C of this part.

(j) *Dispute resolution.* Consistent with the Administrative Dispute Resolution Act, each Standby Support Contract shall include a provision to specify a mechanism for resolving disputes pursuant to the procedures set forth in subpart D of this part.

(k) *Re-estimation.* Consistent with the Federal Credit Reform Act (FCRA), the sponsor shall provide all needed documentation as required in § 950.12 to allow the Department to annually re-estimate the loan cost needed in the financing account as that term is used in 2 U.S.C. 661a(7) and funded by the Program Account.

§ 950.14 Standby Support Contract: Covered events, exclusions, covered delay and covered cost provisions.

(a) *Covered events.* Subject to the exclusions set forth in paragraph (b) of this section, each Standby Support Contract shall include a provision setting forth the type of events that are covered events under the contract. The type of events shall include:

(1) The Commission's failure to review the sponsor's inspections, tests, analyses and acceptance criteria in accordance with the Commission's rules, guidance, audit procedures, or formal opinions, in the case where the Commission has in place any rules, guidance, audit procedures or formal opinions setting schedules for its review of inspections, tests, analyses, and acceptance criteria under a combined license or the sponsor's combined license;

(2) The Commission's failure to review the sponsor's inspections, tests, analyses, and acceptance criteria on the schedule for such review proposed by the sponsor, subject to the Department's review and approval of such schedule, including review of any informal guidance or opinion of the Commission that has been provided to the sponsor or the Department, in the case where the Commission has not provided any rules, guidance, audit procedures or formal Commission opinions setting schedules for review of inspections, tests, analyses and acceptance criteria under a combined license, or under the sponsor's combined license;

(3) The conduct of a pre-operational hearing in accordance with 10 CFR 52.103; and

(4) Litigation in State, Federal or tribal courts, including appeals of Commission decisions related to an application for a combined license to such courts, and excluding administrative litigation that occurs at the Commission related to the combined license.

(b) *Exclusions.* Each Standby Support Contract shall include a provision setting forth the type of events that are excluded as covered costs under the contract, and for which any associated delay in the attainment of full power operations is not a covered delay. The types of excluded events are:

(1) The failure of the sponsor to take any action required by law, regulation, or ordinance, including but not limited to:

(i) The sponsor's failure to comply with environmental laws or regulations such as those related to pollution abatement or human health and the environment;

(ii) The sponsor's re-performance of any inspections, tests, analyses or re-demonstration that acceptance criteria have been met due to Commission non-acceptance of the sponsor's submitted results of inspections, tests, analyses, and demonstration of acceptance criteria;

(iii) Delays attributable to the sponsor's actions to redress any deficiencies in inspections, tests,

analyses or acceptance criteria as a result of a Commission disapproval of fuel loading; or

(2) Events within the control of the sponsor, including but not limited to delays attributable to:

(i) Project planning and construction problems;

(ii) Labor-management disputes;

(iii) The sponsor's failure to perform inspections, tests, analyses and to demonstrate acceptance criteria are met or failure to inform the Commission of the successful completion of inspections, tests, analyses and demonstration of meeting acceptance criteria in accordance with its schedule;

(iv) The lack of adequate funding for construction and testing of the advanced nuclear facility;

(v) A sponsor's decision not to continue construction or attain full power operation unless such action is required by a court order.

(3) Normal business risks, including but not limited to:

(i) Delays attributable to force majeure events such as a strike or the failure of power or other utility services supplied to the location, or natural events such as severe weather, earthquake, landslide, mudslide, volcanic eruption, other earth movement, or flood;

(ii) Government action meaning the seizure or destruction of property by order of governmental authority;

(iii) War or military action;

(iv) Acts or decisions, including the failure to act or decide, of any person, group, organization, or government body (excluding those acts or decisions or failure to act or decide by the Commission that are covered events);

(v) Supplier or subcontractor delays in performance;

(vi) Litigation, whether initiated by the sponsor or another party, that is not a covered event under paragraph (a) of this section;

(vii) Failure to timely obtain regulatory permits or approvals that are not covered events under paragraph (a) of this section; or (viii) Unrealistic and overly ambitious schedules set by the sponsor.

(c) *Covered delay.* Each Standby Support Contract shall include a provision for the payment of covered costs, in accordance with the procedures in subpart C of this part for the payment of covered costs, if a covered event(s) is determined to be the cause of delay in attainment of full power operation, provided that:

(1) Under Standby Support Contracts for the subsequent four reactors, covered delay may occur only after the initial 180-day period of delay, and

(2) The sponsor has used due diligence to mitigate, shorten, and end, the covered delay and associated costs covered by the Standby Support Contract and demonstrated this to the Program Administrator.

(d) *Covered costs.* Each Standby Support Contract shall include a provision to specify the type of costs for which the Department shall provide payment to a sponsor for covered delay in accordance with the procedures set forth in subparts C and D of this part. The types of costs shall be limited to either or both, dependent upon the terms of the contract:

(1) The principal or interest on which the loan costs for the Program Account was calculated; and

(2) The incremental costs on which funding for the Grant Account was calculated.

Subpart C—Claims Administration Process

§ 950.20 General provisions.

The parties shall include provisions in the Standby Support Contract to specify the procedures and conditions set forth in this subpart for the submission of claims and the payment of covered costs under the Standby Support Contract. A sponsor is required to establish that there is a covered event, a covered delay and a covered loss.

§ 950.21 Notification of covered event.

(a) A sponsor shall submit in writing to the Claims Administrator a notification that a covered event has occurred that has delayed the schedule for construction or testing and that may cause covered delay. The sponsor shall submit to the Claims Administrator within thirty (30) days of the end of the covered event and contain the following information:

(1) A description and explanation of the covered event, including supporting documentation of the event;

(2) The duration of the delay in the schedule for construction, testing and full power operation, and the schedule for inspections, tests, analyses and acceptance criteria, if applicable;

(3) The sponsor's projection of the duration of covered delay;

(4) A revised schedule for construction, testing and full power operation, including the dates of system level construction or testing that had been conducted prior to the event; and

(5) A revised inspections, tests, analyses, and acceptance criteria schedule, if applicable, including the dates of Commission review of inspections, tests, analyses, and acceptance criteria that had been conducted prior to the event.

(b) An authorized representative of the sponsor shall sign the notification of a covered event, certify the notification is made in good faith, and represent that the supporting information is accurate and complete to the sponsor's knowledge and belief.

§ 950.22 Covered event determination.

(a) *Completeness review.* Upon notification of a covered event from the sponsor, the Claims Administrator shall review the notification for completeness within thirty (30) days of receipt. If the notification is not complete, the Claims Administrator shall return the notification within thirty (30) days of receipt and specify the incomplete information for submission by the sponsor to the Claims Administrator in time for a determination by the Claims Administrator in accordance with paragraph (c) of this section.

(b) *Covered Event Determination.* The Claims Administrator shall review the notification and supporting information to determine whether there is agreement by the Claims Administrator with the sponsor's representation of the event as a covered event (Covered Event Determination) based on a review of the contract conditions for covered events and excluded events.

(c) *Timing.* The Claims Administrator shall notify the sponsor within sixty (60) days of receipt of the notification whether the Administrator agrees with the sponsor's representation, disagrees with the representation, or requires further information. If the sponsor disagrees with the Covered Event Determination, the parties shall resolve the dispute in accordance with the procedures set forth in subpart D of this part.

§ 950.23 Claims process for payment of covered costs.

(a) *General.* No more than 120 days of when a sponsor was scheduled to attain full power operation and expects it will incur covered costs, the sponsor may make a claim upon the Department for the payment of its covered costs under the Standby Support Contract. The sponsor shall file a Certification of Covered Costs and thereafter such Supplementary Certifications of Covered Costs as may be necessary to receive payment under the Standby Support Contract for covered costs.

(b) *Certification of Covered Costs.* The Certification of Covered Costs shall include the following:

(1) A Claim Report, including the information specified in paragraph (c) of this section;

(2) A certification by the sponsor that:

(i) The covered costs listed on the Claim Report filed pursuant to this

section are losses to be incurred by the sponsor;

(ii) The claims for the covered costs were processed in accordance with appropriate business practices and the procedures specified in this subpart; and

(iii) The sponsor has used due diligence to mitigate, shorten, and end, the covered delay and associated costs covered by the Standby Support Contract.

(c) *Claim Report.* For purposes of this part, a ''Claim Report'' is a report of information about a sponsor's underlying claims that, in the aggregate, constitute the sponsor's covered costs. The Claim Report shall include, but is not limited to:

(1) Detailed information substantiating the duration of the covered delay;

(2) Detailed information about the covered costs associated with covered delay, including as applicable:

(i) The amount of payment for principal or interest during the covered delay, including the relevant dates of payment, amounts of payment and any other information deemed relevant by the Department, and the name of the holder of the debt, if the debt obligation is held by a Federal agency; or

(ii) The underlying payment during the covered delay related to the incremental cost of purchasing power to meet contractual agreements, including any documentation deemed relevant by the Department to calculate the fair market price of power.

(d) *Supplementary Certification of Covered Cost.* If the total amount of the covered costs due to a sponsor under the Standby Support Contract has not been determined at the time the Certification of Covered Costs has been filed, the sponsor shall file monthly, or on a schedule otherwise determined by the Claims Administrator, Supplementary Certifications of Covered Costs updating the amount of the covered costs owed to the sponsor. Supplementary Certifications of Covered Costs shall include a Claim Report and a certification as described in this section.

(e) *Supplementary information.* In addition to the information required in paragraphs (b) and (c) of this section, the Claims Administrator may request such additional supporting documentation as required to ascertain the appropriate covered costs sustained by a sponsor.

§ 950.24 Claims determination for covered costs.

(a) No later than thirty (30) days from the sponsor's submission of a Certification of Covered Costs, the Claims Administrator shall issue a Claim Determination identifying those claimed costs deemed to be reasonable and appropriate based on an evaluation of:

(1) The duration of covered delay, taking into account contributory or concurrent delays resulting from events excluded from coverage;

(2) The covered costs associated with covered delay, including an assessment of the sponsor's due diligence in mitigating or ending covered costs, as set forth in § 950.23;

(3) Any adjustments to the covered costs, as set forth in § 950.26; and

(4) Other information as necessary and appropriate.

(b) The Claim Determination shall state the Claims Administrator's determination that the claim shall be paid in full, paid in an adjusted amount as deemed appropriate by the Claims Administrator, or rejected in full.

(c) Should the Claims Administrator conclude that the sponsor has not supplied the required information in the Certification of Covered Costs or any supporting documentation sufficient to allow reasonable verification of the duration of the covered delay or covered costs, the Claims Administrator shall so inform the sponsor and specify the nature of additional documentation requested, in time for the sponsor to supply supplemental documentation and for the Claims Administrator to issue the Claim Determination.

(d) Should the Claims Administrator find that any claimed covered costs are not appropriate or otherwise should be considered excluded costs under the Standby Support Contract, the Claims Administrator shall identify such costs and state the reason(s) for that decision in writing. If the parties cannot agree on the covered costs, they shall resolve the dispute in accordance with the requirements in subpart D of this part.

§ 950.25 Calculation of covered costs.

(a) The Claims Administrator shall calculate the appropriate amount of the covered costs claimed in the Certification of Covered Costs as follows:

(1) *Costs covered by Program Account Loan guarantee.* The principal or interest on any debt obligation financing the advanced nuclear facility for the duration of covered delay to the extent the debt obligation was included in the calculation of the loan cost; and

(2) *Costs covered by Grant Account.* The incremental costs calculated for the duration of the covered delay. In calculating the incremental cost of power, the Claims Administrator shall consider:

(i) *Fair market price.* The fair market price may be determined by the lower of the two options: the actual cost of the short-term supply contract for replacement power, purchased by the sponsor, during the period of delay, or for each day of replacement power by its day-ahead weighted average index price in $/MWh at the hub geographically nearest to the advanced nuclear facility as posted on the previous day by the Intercontinental Exchange (ICE) or an alternate electronic marketplace deemed reliable by the Department. The daily MWh assumed to be covered is no more than its nameplate capacity multiplied by 24 hours; multiplied by the capacity-weighted U.S. average capacity factor in the previous calendar year, including in the calculation any and all commercial nuclear power units that operated in the United States for any part of the previous calendar year; and multiplied by the average of the ratios of the net generation to the grid for calculating payments to the Nuclear Waste Fund to the nameplate capacity for each nuclear unit included. In addition, the Claims Administrator may consider ''fair market price'' from other published indices or prices at regional trading hubs and bilateral contracts for similar delivered firm power products and the costs incurred, including acquisition costs, to move the power to the contract-specified point of delivery, as well as the provisions of the covered contract regarding replacement power costs for delivery default; and

(ii) *Contractual price of power.* The contractual price of power shall be determined as the daily weighted average price in equivalent $/MWh under a contractual supply agreement(s) for delivery of firm power that the sponsor entered into prior to any covered event. The daily MWh assumed to be covered is no more than the advanced nuclear facility's nameplate capacity multiplied by 24 hours; multiplied by the capacity-weighted U.S. average capacity factor in the previous calendar year, including in the calculation any and all commercial nuclear power units that operated in the United States for any part of the previous calendar year; and multiplied by the average of the ratios of the net generation to the grid for calculating payments to the Nuclear Waste Fund to the nameplate capacity for each nuclear unit included.

§ 950.26 Adjustments to claim for payment of covered costs.

(a) *Aggregate amount of covered costs.* The sponsor's aggregate amount of

covered costs shall be reduced by any amounts that are determined to be either excluded or not covered.

(b) *Amount of Department share of covered costs.* The Department share of covered costs shall be adjusted as follows:

(1) *No excess recoveries.* The share of covered costs paid by the Department to a sponsor shall not be greater than the limitations set forth in § 950.27(d).

(2) *Reduction of amount payable.* The share of covered costs paid by the Department shall be reduced by the appropriate amount consistent with the following:

(i) *Excluded claims.* The Department shall ensure that no payment shall be made for costs resulting from events that are not covered under the contract as specified in § 950.14; and

(ii) *Sponsor due diligence.* Each sponsor shall ensure and demonstrate that it uses due diligence to mitigate, shorten, and to end the covered delay and associated costs covered by the Standby Support Contract.

§ 950.27 Conditions for payment of covered costs.

(a) *General.* The Department shall pay the covered costs associated with a Standby Support Contract in accordance with the Claim Determination issued by the Claims Administrator under § 950.24 or the Final Claim Determination under § 950.34, provided that:

(1) Neither the sponsor's claim for covered costs nor any other document submitted to support the underlying claim is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(2) The losses submitted for payment are within the scope of coverage issued by the Department under the terms and conditions of the Standby Support Contract as specified in subpart B of this part; and

(3) The procedures specified in this subpart have been followed and all conditions for payment have been met.

(b) *Adjustments to payments.* In the event of fraud or miscalculation, the Department may subsequently adjust, including an adjustment obligating the sponsor to repay any payment made under paragraph (a) of this section.

(c) *Suspension of payment for covered costs.* If the Department paid or is paying covered costs under paragraph (a) of this section, and subsequently makes a determination that a sponsor has failed to meet any of the requirements for payment specified in paragraph (a) of this section for a particular covered cost, the Department may suspend payment of covered costs pending investigation and audit of the sponsor's covered costs.

(d) *Amount payable.* The Department's share of compensation for the initial two reactors is 100 percent of the covered costs of covered delay but not more than the coverage in the contract or $500 million per contract, whichever is less; and for the subsequent four reactors, not more than 50 percent of the covered costs of the covered delay but not more than the coverage in the contract or $250 million per contract, whichever is less. The Department's share of compensation for the subsequent four reactors is further limited in that the payment is for covered costs of a covered delay that occurs after the initial 180-day period of covered delay.

§ 950.28 Payment of covered costs.

(a) *General.* The Department shall pay to a sponsor the appropriate covered costs due the sponsor, provided that there are no disputes between the sponsor and the Department. Payment shall be made in such installments and on such conditions as the Department determines appropriate. Any overpayments by the Department of the covered costs shall be offset from future payments to the sponsor or returned by the sponsor to the Department within forty-five (45) days. If there is a dispute, then the Department shall pay the undisputed costs and defer payment of the disputed portion upon resolution of the dispute in accordance with the procedures in subpart D of this part. If the covered costs include principal or interest owed on a loan made or guaranteed by a Federal agency, the Department shall instead pay that Federal agency the covered costs, rather than the sponsor.

(b) *Timing of payment.* The sponsor may receive payment of covered costs when:

(1) The Department has approved payment of the covered cost as specified in this subpart; and

(2) The sponsor has incurred and is obligated to pay the costs for which payment is requested.

(c) *Payment process.* The covered costs shall be paid to the sponsor designated on the Certification of Covered Costs required by § 950.23. A sponsor that requests payment of the covered costs must receive payment through electronic funds transfer.

Subpart D—Dispute Resolution Process

§ 950.30 General.

The parties, i.e., the sponsor and the Department, shall include provisions in the Standby Support Contract that specify the procedures set forth in this subpart for the resolution of disputes under a Standby Support Contract. §§ 950.31 and 950.32 address disputes involving covered events; §§ 950.33 and 950.34 address disputes involving covered costs; and §§ 950.36 and 950.37 address disputes involving other contract matters.

§ 950.31 Covered event dispute resolution.

(a) If a sponsor disagrees with the Covered Event Determination rendered in accordance with § 950.22 and cannot resolve the dispute informally with the Claims Administrator, then the disagreement is subject to resolution as follows:

(1) A sponsor shall, within thirty (30) days of receipt of the Covered Event Determination, deliver to the Claims Administrator written notice of a sponsor's rebuttal which sets forth reasons for its disagreement, including any expert opinion obtained by the sponsor.

(2) After submission of the sponsor's rebuttal to the Claims Administrator, the parties shall have fifteen (15) days during which time they must informally and in good faith participate in mediation to attempt to resolve the disagreement before instituting the process under paragraph (b) of this section. If the parties reach agreement through mediation, the agreement shall constitute a Final Determination on Covered Events.

(3) The parties shall jointly select the neutral(s). The parties shall share equally the cost of the mediation.

(b) If the parties cannot resolve the disagreement through mediation under the timeframe established under paragraph (a)(2) of this section and the sponsor elects to continue pursuing the claim, the sponsor shall within ten (10) days submit any remaining issues in controversy to the Department of Energy Board of Contract Appeals (Board) or its successor, for binding resolution by an Administrative Judge of the Board utilizing the Board's Summary Trial with Binding Decision process. The parties shall abide by the procedures of the Board for Summary Trial with Binding Decision. The parties agree that the decision of the Board constitutes a Final Determination on Covered Events.

§ 950.32 Final Determination on covered events.

(a) If the parties reach a Final Determination on Covered Events through mediation, or Summary Trial with Binding Decision as set forth in this subpart, the Final Determination on Covered Events is a final settlement of the issue, made by the sponsor and the Program Administrator. The sponsor, and the Department, may rely on, and neither may challenge, the Final Determination on Covered Events in any future Certification of Covered Costs related to the covered event that was the subject of that Initial Determination.

(b) The parties agree that no appeal shall be taken or further review sought, and that the Final Determination on Covered Events is final, conclusive, non-appealable and may not be set aside, except for fraud.

§ 950.33 Covered costs dispute resolution.

(a) If a sponsor disagrees with the Claim Determination rendered in accordance with § 950.24 and cannot resolve the dispute informally with the Claims Administrator, then the parties agree that any dispute must be resolved as follows:

(1) A sponsor shall, within thirty (30) days of receipt of the Claim Determination, deliver to the Claims Administrator in writing notice of and reasons for its disagreement (Sponsor's Rebuttal), including any expert opinion obtained by the sponsor.

(2) After submission of the sponsor's rebuttal to the Claims Administrator, the parties have fifteen (15) days to informally and in good faith participate in mediation to resolve the disagreement before instituting the process under paragraph (b) of this section. If the parties reach agreement through mediation, the agreement shall constitute a Final Claim Determination.

(3) The parties shall jointly select the mediator(s). The parties shall share equally the cost of the mediator(s).

(b) If the parties cannot resolve the disagreement through mediation under the timeframe established under paragraph (a)(2) of this section, any remaining issues in controversy shall be submitted by the sponsor within ten (10) days to the Department of Energy Board of Contract Appeals (Board) or its successor, for binding arbitration by an Administrative Judge of the Board utilizing the Board's Summary Trial with Binding Decision process. The parties shall abide by the procedures of the Board for Summary Trial with Binding Decision. The parties agree that the decision of the Board shall constitute a Final Claim Determination.

§ 950.34 Final claim determination.

(a) If the parties reach a Final Claim Determination through mediation, or Summary Trial with Binding Decision as set forth in this subpart, the Final Claim Determination is a final settlement of the issue, made by the sponsor and the Program Administrator.

(b) The parties agree that no appeal shall be taken or further review sought and that the Final Claim Determination is final, conclusive, non-appealable, and may not be set aside, except for fraud.

§ 950.35 Payment of final claim determination.

Once a Final Claim Determination is reached by the methods set forth in this subpart, the parties intend that such a Final Claim Determination shall constitute a final settlement of the claim and the sponsor may immediately present to the Department a Final Claim Determination for payment.

§ 950.36 Other contract matters in dispute.

(a) If the parties disagree over terms or conditions of the Standby Support Contract other than disagreements related to covered events or covered costs, then the parties shall engage in informal dispute resolution as follows:

(1) The parties shall engage in good faith efforts to resolve the dispute after written notification by one party to the other that there is a contract matter in dispute.

(2) If the parties cannot reach a resolution of the matter in disagreement within thirty (30) days of the written notification of the matter in dispute, then the parties shall have fifteen (15) days during which time they must informally and in good faith participate in mediation to attempt to resolve the disagreement before instituting the process under paragraph (b) of this section. If the parties reach agreement through mediation, the agreement shall constitute a Final Agreement on the matter in dispute.

(3) The parties shall jointly select the neutral(s). The parties shall share equally the cost of the mediation.

(b) If the parties cannot resolve the disagreement through mediation under the timeframe established in paragraph (a)(2) of this section and either party elects to continue pursuing the disagreement, that party shall within ten (10) days submit any remaining issues in controversy to the Department of Energy Board of Contract Appeals (Board) or its successor, for binding resolution by an Administrative Judge of the Board utilizing the Board's Summary Trial with Binding Decision process. The parties shall abide by the procedures of the Board for Summary Trial with Binding Decision. The parties agree that the decision of the Board constitutes a Final Decision on the matter in dispute.

§ 950.37 Final agreement or final decision.

(a) If the parties reach a Final Agreement on a contract matter in dispute through mediation, or a Final Decision on a contract matter in dispute through a Summary Trial with Binding Decision as set forth in this subpart, the Final Agreement or Final Decision is a final settlement of the contract matter in dispute, made by the sponsor and the Program Administrator.

(b) The parties agree that no appeal shall be taken or further review sought, and that the Final Agreement or Final Decision is final, conclusive, non-appealable and may not be set aside, except for fraud.

Subpart E—Audit and Investigations and Other Provisions

§ 950.40 General.

The parties shall include a provision in the Standby Support Contract that specifies the procedures in this subpart for the monitoring, auditing and disclosure of information under a Standby Support Contract.

§ 950.41 Monitoring/Auditing.

The Department has the right to audit any and all costs associated with the Standby Support Contracts. Auditors who are employees of the United States government, who are designated by the Secretary of Energy or by the Comptroller General of the United States, shall have access to, and the right to examine, at the sponsor's site or elsewhere, any pertinent documents and records of a sponsor at reasonable times under reasonable circumstances. The Secretary may direct the sponsor to submit to an audit by a public accountant or equivalent acceptable to the Secretary.

§ 950.42 Disclosure.

Information received from a sponsor by the Department may be available to the public subject to the provision of 5 U.S.C. 552, 18 U.S.C. 1905 and 10 CFR part 1004; provided that:

(a) Subject to the requirements of law, information such as trade secrets, commercial and financial information that a sponsor submits to the Department in writing shall not be disclosed without prior notice to the sponsor in accordance with Department regulations concerning the public disclosure of information. Any submitter asserting that the information is privileged or confidential should

appropriately identify and mark such information.

(b) Upon a showing satisfactory to the Program Administrator that any information or portion thereof obtained under this regulation would, if made public, divulge trade secrets or other proprietary information, the Department may not disclose such information.

[FR Doc. 06–4398 Filed 5–12–06; 8:45 am]

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Fair credit reporting:

Consumer information reporting; accuracy and integrity enhancement guidelines; comments due by 5-22-06; published 3-22-06 [FR 06-02758]

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Boeing; comments due by 5-22-06; published 4-5-06 [FR E6-04924]

Cessna; comments due by 5-22-06; published 3-16-06 [FR 06-02544]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 5-22-06; published 4-21-06 [FR E6-05987]

McDonnell Douglas; comments due by 5-26-06; published 4-11-06 [FR 06-03441]

Mitsubishi Heavy Industries; comments due by 5-25-06; published 4-24-06 [FR E6-06054]

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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 ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 592/P.L. 109–219

Glendo Unit of the Missouri River Basin Project Contract Extension Act of 2005 (May 5, 2006; 120 Stat. 334)

S.J. Res. 28/P.L. 109–220

Approving the location of the commemorative work in the

District of Columbia honoring former President Dwight D. Eisenhower. (May 5, 2006; 120 Stat. 335)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869–060–00001–4)	5.00	[4]Jan. 1, 2006
2	(869–060–00002–0)	5.00	Jan. 1, 2006
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210–299	(869–060–00012–7)	62.00	Jan. 1, 2006
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17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

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