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

Rules and Regulations

Federal Register
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Friday, November 7, 1997

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–97–05]

Tobacco Inspection: Subpart C—Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is revising the regulations under the Official Standard Grades for Burley Tobacco to remove from the definition of ''Rework'' the reference to a lot of tobacco exceeding an average bale weight of 100 pounds. This action is being taken because average bale weight is not a significant factor for determining the quality of tobacco, and classifying tobacco as ''No Grade'' solely because the average bale weight exceeds 100 pounds precludes producers from receiving an accurate description of their product at the marketplace.

EFFECTIVE DATE: November 10, 1997.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, (202) 205–0567.

SUPPLEMENTARY INFORMATION: Notice was given (62 FR 35452, Tuesday, July 1, 1997) that the Department proposed to revise the Official Standard Grades for Burley Tobacco, U.S. Type 31 and Foreign Type 93, to delete the reference to a lot of tobacco exceeding an average bale weight of 100 pounds from the definition of ''Rework.'' That provision had been added to the regulations in 1995 in response to a request from the tobacco industry. The basis of that request was that those bales within a lot exceeding 100 pounds had a higher potential for deterioration affecting the quality and value of the tobacco.

During the grading process, the USDA inspector looks at the total weight of the lot listed on the inspection certificate and divides by the number of bales to ascertain the average bale weight. When a lot is identified as exceeding the average bale weight, it is classified as needing to be reworked and given the grademark ''NO-G'' meaning No Grade. The No Grade designation is also used to classify lots that are nested, offtype, semicured, damaged 20 percent or more, abnormally dirty, extremely wet or watered, contain foreign matter, or have an odor foreign to the type. A lot of tobacco that otherwise meets the specifications of a standard grade, but exceeds the 100 pound average bale weight criterion, is classified in a category of less desirable tobacco. This one factor precludes the producer from receiving an accurate description of their product at the marketplace.

After reviewing the average bale weight provision for two marketing seasons, the agency believes that it reduces the accuracy of applying the grade standards.

Interested parties were given an opportunity to comment on the proposed rule. A total of 16 separate comments were received. Those comments in favor of the proposal consisted of six separate comments and seven other comments signed by more than one individual (344 individuals signed these comments). The favorable comments stated that they were either opposed to AMS enforcing the 100 pound average bale weight provision or that they did not believe that the grading service should be involved in restrictions of weight of an individual bale of burley tobacco.

Three responses were in opposition to the proposal and stated they were in favor of AMS continuing to regulate bale weight, citing the desirability of uniform packaging and expressing concerns that bales of excessive weight increase the risk of damage to the tobacco, injuries to workers, and shipping problems. With regard to uniform packaging, the existing regulation provided for an average bale weight and did not assure uniformity between and among individual bales. With regard to the other concerns raised by the three commenters, the provisions for rework made final in this rule are the same as those provisions that originally existed for rework prior to the last two seasons. Again, the 100 pound average bale provision did not assure uniformity nor did it necessarily eliminate any of the concerns raised by the comments. After consideration of all available information, we are eliminating the 100 pound average bale weight provisions and making this rule final as proposed.

After consideration of comments on the proposal and other relevant information, the Department hereby adopts the regulations as proposed.

This final rule has been determined not significant for the purpose of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this final rule.

Additionally, in conformance with the provision of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of ''small business'' which are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are approximately 160 tobacco warehouses and approximately 250,000 producers.

The Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This revision will amend the regulations to delete from the definition of ''Rework'' the reference to a lot of tobacco exceeding an average bale weight of 100 pounds. This action is being taken because average bale weight is not a significant factor for determining the quality of tobacco. Classifying tobacco as ''No Grade'' solely because the average bale weight exceeds 100 pounds precludes producers from receiving an accurate description of their product at the marketplace. This final rule will not substantially affect the normal movement of the commodity in the

marketplace. Compliance with this rule will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive positions of small entities relative to the large entities and will no way affect normal competition in the marketplace.

In addition, under 5 U.S.C. 553, good cause has been found to make this rule effective less than 30 days after publication because it is necessary that the regulation be effective at the beginning of the marketing season which begins in November. Therefore, in order to treat all marketing areas on an equal basis, this final rule is made effective the day following the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, 7 CFR part 29 is amended as follows:

PART 29—TOBACCO INSPECTION

1. The authority citation for 7 CFR part 29, subpart C, continues to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

Subpart C—Standards

2. In § 29.3053, paragraph (b) is revised to read as follows:

§ 29.3053 Rework.

* * * * *

(b) Tobacco not properly tied in hands, not packed in bales approximately 1 x 2 x 3 feet, not oriented, not packed straight, bales not opened for inspection when chosen by a grader, or otherwise not properly prepared for market.

Dated: November 4, 1997.

Thomas A. O'Brien,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97–29498 Filed 11–6–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV97–920–3 FIR]

Kiwifruit Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1997–98 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal period covers the period August 1 through July 31. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule was reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the assessment rate of $0.0225 per tray or tray equivalents of assessable kiwifruit for the Committee for the 1997–98 and subsequent fiscal periods.

The kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Section 920.41 authorizes the Committee to borrow funds. The members of the Committee are producers of California kiwifruit and one non-industry member. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended,

and the Department approved, an assessment rate that would continue in effect from season to season indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 25, 1997, and unanimously recommended 1997–98 expenditures of $161,286 and an assessment rate of $0.0225 per tray or tray equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $178,598. The assessment rate of $0.0225 per tray or tray equivalent is $0.0050 higher than last year's established rate. The 1996–97 kiwifruit crop was short 3.3 million trays or tray equivalents of the quantity projected in the crop estimate. The Committee met in February 1997 and approved the borrowing of funds to cover expenses for the remainder of the 1996–97 season. The Committee borrowed $11,052 as of May 31, 1997, and estimated that an additional $22,401 might be needed to cover expenses through the end of the fiscal period. Because the Committee's reserve has been depleted, the Committee voted to increase its assessment rate to cover the budgeted expenses, to reimburse the borrowed funds, and to establish an adequate reserve. The order provides authority for a maximum reserve equal to approximately one fiscal period's expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels and alternative assessment rates. An assessment rate of $0.0200 was considered but not recommended because it would not generate the income necessary to administer the program with an adequate reserve. The major expenditure levels recommended by the Committee for the 1997–98 year include $102,200 for administrative staff and field salaries, $13,825 for travel, food, and lodging; and $12,200 for accident and health insurance. Budgeted expenses for these items in 1996–97 were $108,500, $20,398, and $13,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of California kiwifruit, and additional pertinent factors. Kiwifruit shipments for the year are estimated at 10 million trays or tray equivalents of kiwifruit which should provide $225,000 in assessment income. Income derived from handler assessments, along with interest income, will be adequate to cover budgeted expenses, reimbursement of borrowed funds, and to fund an adequate reserve. Future reserve funds will be kept within the maximum permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1997–98 budget was approved by the Department on August 18, 1997; and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 450 producers of kiwifruit in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. One of the 60 handlers subject to regulation has annual kiwifruit sales of at least $5,000,000; and the remaining 59 handlers have sales less than $5,000,000, excluding receipts from any other sources. Ten of the 450 producers subject to regulation have annual sales of at least $500,000; and the remaining 440 producers have sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of California kiwifruit producers and handlers may be classified as small entities.

This rule continues the assessment rate of $0.0225 per tray or tray equivalents of assessable kiwifruit for the 1997–98 and subsequent fiscal periods. The Committee unanimously recommended 1997–98 expenditures of $161,286 and an assessment rate of $0.0225 per tray or tray equivalent of kiwifruit. The 1996–97 kiwifruit crop was short 3.3 million trays or tray equivalents of the estimated crop. The Committee met in February 1997 and approved borrowing funds to cover expenses for the remainder of the 1996–97 season. The Committee has borrowed $11,052 as of May 31, 1997, and estimates that an additional $22,401 may be needed to cover expenses through the end of the fiscal period. As the Committee's reserve is depleted and funds have been borrowed to meet the remaining 1996–97 expenses, the Committee voted to increase its assessment rate to cover the budgeted expenses, to reimburse the borrowed funds, and to establish an adequate reserve.

The Committee discussed alternatives to this rule, including alternative expenditure levels and alternative assessment rates. An assessment rate of $0.0200 was considered but not recommended because it would not generate the income necessary to administer the program with an adequate reserve. The Committee also considered reducing the compliance staff by two personnel, but determined that one part-time position would be eliminated. The major expenditure levels recommended by the Committee for the 1997–98 year include $102,200 for administrative staff and field salaries, $13,825 for travel, food, and lodging; and $12,200 for accident and health insurance. Budgeted expenses for these items in 1996–97 were $108,500, $20,398, and $13,000, respectively.

Kiwifruit shipments for the year are estimated at 10 million trays or tray equivalents which should provide $225,000 in assessment income. Income derived from handler assessments, along with interest income, will be adequate to cover the budgeted expenses and the shortage of funds resulting from the 1996–97 crop shortage. As the Committee's reserve is depleted, the Committee voted to increase its

assessment rate to cover the budgeted expenses, to reimburse the borrowed funds, and to establish an adequate reserve. Reserve funds will be kept within the maximum permitted by the order.

A review of historical information and preliminary information pertaining to the crop year indicates that the grower price for the 1997–98 season is estimated to be approximately $1.62 per tray or tray equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 1997–98 crop year as a percentage of total grower revenue will be approximately 1.4 percent.

This rule continues in effect the assessment obligation imposed on handlers. While the assessment rate this fiscal period is higher than that of last year, the additional costs upon handlers are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 25, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

An interim final rule concerning this action was published in the **Federal Register** on August 26, 1997 (62 FR 45146). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period was provided. No comments were received.

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

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 62 FR 45146 on August 26, 1997, is adopted as a final rule without change.

Dated: November 3, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–29479 Filed 11–6–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV97–922–2 FIR]

Reduced Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which decreased the assessment rates established for the Washington Apricot Marketing Committee, Washington Cherry Marketing Committee, and Washington-Oregon Fresh Prune Committee (Committees) under Marketing Orders Nos. 922, 923, and 924 for the 1997–98, and subsequent fiscal periods. Authorization to assess apricot, cherry, and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the program. The 1997–98 fiscal periods for these marketing orders began April 1 and end March 31. The assessment rates will continue in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Jadean L. Williams, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreements and Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in the designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes beginning April 1, 1997, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the

petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the assessment rates established for the Committees for the 1997–98 and subsequent fiscal periods of $2.00 per ton for Washington apricots, and $0.75 per ton for Washington sweet cherries and Washington-Oregon fresh prunes.

The orders provide authority for each of the Committees, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees' needs and with the costs for goods and services in their local area and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committees recommended, and the Department approved, assessment rates that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other information available to the Secretary.

The Washington Apricot Marketing Committee met on May 13, 1997, and unanimously recommended 1997–98 expenditures of $9,917 and an assessment rate of $2.00 per ton of apricots. In comparison, last year's budgeted expenditures were $9,385. The assessment rate of $2.00 is $1.00 less than the rate previously in effect. At the former rate of $3.00 per ton and an estimated 1997 fresh apricot production of 5,300 tons, the projected reserve on March 31, 1998, would exceed the maximum level authorized by the order of one fiscal period's operational expenses. The Committee discussed assessment rates of $1.00 and $1.50, but decided that an assessment rate of less than $2.00 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of apricots grown in designated counties in Washington. Applying the $2.00 per ton rate of assessment to the Committee's 5,300 ton shipment estimate should provide $10,600 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Washington Cherry Marketing Committee met on May 12, 1997, and unanimously recommended 1997–98 expenditures of $57,545 and an assessment rate of $0.75 per ton of cherries. In comparison, last year's budgeted expenditures were $56,665. The assessment rate of $0.75 is $0.25 less than the rate previously in effect. At the former rate of $1.00 per ton and an estimated 1997 sweet cherry production of 54,000 tons, the projected reserve on March 31, 1998, would exceed the maximum level authorized by the order of one fiscal period's operational expenses. The Committee discussed an assessment rate of $0.50, but decided that an assessment rate of less than $0.75 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of sweet cherries grown in designated counties in Washington. With cherry shipments for the year estimated at 54,000 tons, the assessment rate of $0.75 should provide $40,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

The Oregon-Washington Fresh Prune Marketing Committee met on May 28, 1997, and unanimously recommended 1997–98 expenditures of $7,233 and an assessment rate of $0.75 per ton of prunes. In comparison, last year's budgeted expenditures were $6,645. The assessment rate of $0.75 is $0.25 less than the rate previously in effect. At the former rate of $1.00 per ton and an estimated 1997 fresh prune production of 6,000 tons, the projected reserve on March 31, 1998, would exceed the maximum level authorized by the order of one fiscal period's operational expenses. The Committee discussed an assessment rate of $0.50, but decided that an assessment rate of less than $0.75 would not generate the income necessary to administer the program with an adequate reserve.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes grown in designated counties in Washington, and Umatilla County, Oregon. With fresh prune shipments for the year estimated at 6,000 tons, the $0.75 per ton assessment rate should provide $4,500 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Major expenses recommended by the Committees for the 1997–98 year include manager's salary, office rent and maintenance, Committee travel, and compliance officer.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking will be undertaken as necessary. The Committees' 1997–98 budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 190 Washington apricot producers, 1,100 Washington sweet cherry producers,

and 350 Washington-Oregon fresh prune producers in the respective production areas. In addition, there are approximately 55 Washington apricot handlers, 55 Washington sweet cherry handlers, and 30 Washington-Oregon fresh prune handlers subject to regulation under the respective marketing orders. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule continues in effect decreased assessment rates established for the Committees and collected from handlers for the 1997–98 and subsequent fiscal periods. The Committees unanimously recommended 1997–98 expenditures of $9,917 for apricots, $57,545 for cherries, and $7,233 for prunes and an assessment rate of $2.00 per ton for apricots, $0.75 per ton for cherries, and $0.75 per ton for prunes. The assessment rate of $2.00 for apricots is $1.00 less than the rate previously in effect. The assessment rates of $0.75 for cherries and prunes are $0.25 less than the rates previously in effect. At the former assessment rates, the Committees' reserves were projected to exceed the amount authorized in the orders of approximately one fiscal period's operational expenses. Therefore, the Committees voted to lower their respective assessment rates and use more of their reserves to cover expenses.

The Committees discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs with adequate reserves. Major expenses recommended by the Committees for the 1997–98 year include manager's salary, office rent and maintenance, Committee travel, and compliance officer.

Apricot shipments for 1997 are estimated at 5,300 tons, which should provide $10,600 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Sweet cherry shipments for 1997 are estimated at 54,000 tons, which should provide $40,500 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Fresh prune shipments for 1997 are estimated at 6,000 tons, which should provide $4,500 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the producer price for the 1997–98 season will range between $600 and $1,400 per ton for Washington apricots, between $1,500 and $2,200 per ton for Washington sweet cherries, and between $200 and $500 per ton for Washington-Oregon fresh prunes. Therefore, the estimated assessment revenue for the 1997–98 fiscal period as a percentage of total grower revenue will range between 0.14 and 0.33 percent for Washington apricots, between 0.03 and 0.05 percent for Washington sweet cherries, and between 0.15 and 0.38 for Washington-Oregon fresh prunes.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune industries and all interested persons were invited to attend and participate in the Committees' deliberations on all issues. Like all meetings of these Committees, the May 12, 13, and 28 meetings were public meetings and all entities, both large and small, were able to express views on the issues.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Washington apricot, Washington sweet cherry, or Washington-Oregon fresh prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

The interim final rule published in the **Federal Register** (62 FR 41805) on August 4, 1997, requested comments to be received by September 3, 1997. A copy of the interim final rule was also made available on the Internet by the U.S. Government Printing Office. No comments were received.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

Accordingly, the interim final rule amending 7 CFR parts 922, 923, and 924 which was published at 62 FR 41805 on August 4, 1997, is adopted as a final rule without change.

Dated: November 3, 1997.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–29478 Filed 11–6–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 95, 96, 97, 98, and 130

[Docket No. 94–106–10]

RIN O579–AA71

Importation of Animals and Animal Products; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service will host a public meeting to discuss the agency's plans for implementing a final rule and policy statement on the importation of animals and animal products that were published in the **Federal Register** on October 28, 1997.

DATES: The public meeting will be held on November 21, 1997, from 9:00 a.m. to noon.

ADDRESSES: The public meeting will be held at the USDA Center at Riverside, Conference Room D, 4700 River Road, Riverdale, MD. Parking is available next to the building for a $2.00 fee (have quarters or $1.00 bills). The nearest Metro station is the College Park station on the Green Line, and it is within walking distance.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231, (301) 734–8590.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1997, the Animal and Plant Health Inspection Service (APHIS) published a final rule in the **Federal Register** (62 FR 56000–56026, Docket No. 94–106–9) that establishes procedures and a regulatory framework for recognizing regions, rather than only countries, for the purpose of importing animals and animal products into the United States. The final rule also establishes procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions' disease status. The final rule is scheduled to become effective on November 28, 1997. A notice published in the same issue of the **Federal Register** (62 FR 56027–56033, Docket No. 94–106–8) sets forth our policy on regionalization. The policy statement and regulations are in accordance with international trade agreements entered into by the United States.

The public meeting on November 21, 1997, in Riverdale, MD, will provide an opportunity for APHIS to discuss its plans for implementing the final rule and policy on regionalization. All interested persons are invited to attend.

Done in Washington, DC, this 5th day of November 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–29644 Filed 11–6–97; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital Maintenance

CFR Correction

In Title 12 of the Code of Federal Regulations, parts 300 to 499, revised as of Jan. 1, 1997, page 174, Part 325, Appendix A, section II. C is corrected by adding paragraphs 1 through 4 after the first paragraph under Category 3 as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

C. * * *

Category 3-50 Percent Risk Weight. * *

(1) The purchaser is an individual(s) who intends to occupy the residence and is not a partnership, joint venture, trust, corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing one or more of the homes for speculative purposes;

(2) The builder must incur at least the first ten percent of the direct costs (i.e., actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80 percent of the sales price of the presold home;

(3) The purchaser has made a substantial ''earnest money deposit'' of no less than three percent of the sales price of the home and the deposit must be subject to forfeiture if the purchaser terminates the sales contract; and

(4) The earnest money deposit must be held in escrow by the bank financing the builder or by an independent party in a fiduciary capacity and the escrow agreement must provide that, in the event of default arising from the cancellation of the sales contract by the buyer, the escrow funds must first be used to defray any costs incurred by the bank.

* * * * *

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–87–AD; Amendment 39–10193; AD 97–23–05]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R3000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Avions Pierre Robin Model R3000 airplanes. This AD requires replacing the attachment bolt between the pitch control cables and control column lever with a bolt of improved design. This AD is the result of mandatory continued airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to prevent the pitch control cables on the control column from becoming jammed due to failure of the attachment bolt, which could result in a reduction in the directional controllability of the airplane.

DATES: Effective December 1, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 1, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–87–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 03 80 44 20 50; facsimile: 03 80 35 60 80. This information may also be examined at the Federal Aviation Administration

(FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–87–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to Issuance of the Proposed AD

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Avion Pierre Robin Model R3000 airplanes. The DGAC reports an incident where the operator of one of these airplanes discovered unusual wear of the pitch control cables to the control column. Further examination revealed that the attachment bolt between the pitch control cables and control column lever had failed. This condition, if not corrected in a timely manner, could cause the pitch control cables on the control column to jam and result in a reduction in the directional controllability of the airplane.

Relevant Service Information

Avions Pierre Robin has issued Service Bulletin No.146, Revision 1, dated September 26, 1996, which specifies procedures for replacing the attachment bolt between the pitch control cables and control column lever, part number (P/N) 95.13.19.000, with a bolt of improved design, P/N 27.36.03.140.

The DGAC classified this service bulletin as mandatory and issued French AD 96–167(A)R1, dated December 4, 1996, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Pierre Robin Model R3000 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires replacing the attachment bolt between the pitch control cables and control column lever, part number (P/N) 95.13.19.000, with a bolt of improved design, P/N 27.36.03.140. Accomplishment of the replacement required by this AD is in accordance with the previously referenced service bulletin.

Cost Impact

None of the Avions Pierre Robin airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

Should an affected airplane be imported and placed on the U.S. Register, accomplishment of the required actions would take approximately 3 workhours at an average labor charge of $60 per workhour. Parts to accomplish the replacement cost $20. Based on these figures, the total cost impact of this AD would be $200 per airplane that would become registered in the United States.

The Effective Date of This AD

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–87–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows

97–23–05 Avions Pierre Robin: Amendment 39–10193; Docket No. 97–CE–87–AD.

Applicability: Model R3000 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent the pitch control cables on the control column from becoming jammed due to failure of the attachment bolt, which could result in a reduction in the directional controllability of the airplane, accomplish the following:

(a) Replace the attachment bolt between the pitch control cables and control column lever, part number (P/N) 95.13.19.000 (or FAA-approved equivalent part number), with a bolt of improved design, P/N 27.36.03.140 (or FAA-approved equivalent part number), in accordance with Avions Pierre Robin Service Bulletin No. 146, Revision 1, dated September 26, 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) The replacement required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 146, Revision 1, dated September 26, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 96–167(A)R1, dated December 4, 1996.

(e) This amendment (39–10193) becomes effective on December 1, 1997.

Issued in Kansas City, Missouri, on October 29, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29232 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standards for Flammability of Children's Sleepwear: Sizes 0 Through 6X and 7 Through 14; Stay of Enforcement; Extension

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of Stay of Enforcement.

SUMMARY: This document announces the Commission's decision to extend the stay of enforcement of sleepwear requirements involving garments currently used or likely to be used as sleepwear if these garments are skin-tight or nearly skin-tight, similar in design, material, and fit to underwear, and are labeled as ''underwear.''

DATES: The stay which first became effective on January 13, 1993 (published at 58 FR 4178, January 13, 1993), and was extended at 59 FR 53584, October 25, 1994, and 61 FR 47412, September 9, 1996, will continue in effect until June 9, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia A. Fairall, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, extension 1369.

SUPPLEMENTARY INFORMATION: On January 13, 1993, the Commission published a document announcing that for certain garments it would stay enforcement of its Standard for the Flammability of Children's Sleepwear: Sizes 0–6x (16 CFR part 1615) and the Standard for the Flammability of Children's Sleepwear Sizes 7–14 (16 CFR part 1616). The Commission stated that it would not enforce the sleepwear flammability standards against garments used by children for sleeping that are: (1) Skin-tight or nearly skin-tight; (2) manufactured from fabrics such as rib knit, interlock knit, or waffle knit; (3) relatively free of ornamentation; and (4) labeled and marketed as ''underwear.''

The stay was part of the Commission's effort to amend its sleepwear regulations to exempt certain tight-fitting garments and infant garments from the sleepwear standards. The stay was published on the same day as an advance notice of proposed rulemaking beginning the proceeding to exempt these garments. See 58 FR 4111. The Commission has since published a proposed rule (59 FR 53616) and a final rule (61 FR 47634) exempting certain tight-fitting and infant garments from the sleepwear flammability standards.

While the Commission was considering amending the standard and to allow time for the industry to adjust to the exemption, the Commission extended the stay of enforcement when it issued the proposed rule (59 FR 53584) and the final rule (61 FR 47412). The Commission is extending the stay 3 months, from March 9, 1998 to June 9, 1998 for the garments described above. The Commission is taking this action because the March 9 date falls in the middle of a retail cycle. Without the extension, retailers and manufacturers believe that in the same selling season they would need to offer and make garments that are acceptable under the stay for the first half of the season and garments that meet the tight fitting requirements for the second half. This could be burdensome for some companies and make it more difficult to insure compliance of manufactured/marketed garments. The Commission does not believe that extending the stay 3 months will adversely affect the industry or consumer safety.

Garments covered by the stay must meet applicable requirements of the Standard for the Flammability of

Clothing Textiles, 16 CFR part 1610, and the Standard for the Flammability of Vinyl Plastic Film, 16 CFR part 1611.

After the stay expires, children's sleepwear must either pass the flammability tests described in the regulations at 16 CFR parts 1615 and 1616 or meet the definition of ''tight-fitting garments'' described in 16 CFR 1615.1(o) and 1616.1(m), or be in infant sizes 9 months or smaller.

Dated: October 31, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–29306 Filed 11–6–97; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–88]

19 CFR Parts 101 and 122

Customs Service Field Organization; Establishment of Sanford Port of Entry

AGENCY: Customs Service, Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document delays the effective date for implementation of a final rule document published in the **Federal Register** July 11, 1997, as T.D. 97–64, which would establish a new port of entry at Orlando-Sanford Airport in Sanford, Florida effective November 10, 1997. Since publication of the final rule document, the Airport Operator has brought to Customs attention that the date chosen by Customs significantly impairs its agreements with air carriers that were signed prior to Customs announcement of its decision. In addition, the Airport Operator claims that cargo and warehousing space currently available at the airport must be expanded to accommodate projected needs. Because of these factors, Customs is delaying the effective date to May 1, 1998 for the port of entry designation. The user-fee status of the airport will continue until the new effective date.

DATES: Effective date of November 10, 1997, of the amendments of §§ 101.3(b)(1) and 122.15(b), Customs Regulations, published in the **Federal Register** (62 FR 37131) on July 11, 1997, is delayed until May 1, 1998. Comments must be received on or before December 8, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the U.S. Customs Service, Office of Regulations and Rulings—ATTN: Regulations Branch, The Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, The Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Suite 3000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry Denning, Office of Field Operations, Resource Management Division (202) 927–0196.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1997, Customs published in the **Federal Register** (62 FR 37131) T.D. 97–64 which amended § 101.3(b), Customs Regulations (19 CFR 101.3), to establish a new port of entry at Orlando-Sanford Airport in Sanford, Florida, and § 122.15(b), Customs Regulations (19 CFR 122.15(b)), to remove the Sanford Regional Airport from the list of user-fee airports.

That action was taken by Customs based on analysis of a report prepared for the Central Florida Regional Airport Board that manages the airport at Sanford. The report showed that the Sanford Regional Airport was becoming the fastest growing airport for international passenger clearance services in Florida. In response to this growth, the report indicated that the Airport Board had decided to make substantial and long term investment in new international arrival facilities to serve this growing Central Florida market. Applying the criteria used by Customs since 1973 for the establishment of ports of entry (*see* Treasury Decision (T.D.) 82–37 (47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328)), to the figures projected by the Central Florida Regional Airport Board, Customs believed that sufficient justification existed for redesignating the airport facility from its user-fee status to that of a port of entry. Customs announced this decision on July 11, 1997, and designated November 10, 1997 as the effective date.

Since publication of the final rule document, it has come to Customs attention that agreements currently in force between the Orlando-Sanford Airport and the air carriers it serves effectively requires the Airport to absorb additional Customs fees through the end of April 1998. Moreover, the facilities for cargo processing and warehousing at Orlando-Sanford Airport need to be expanded and that construction will not be completed until late Spring of 1998.

Delayed Effective Date

For the reasons set forth in the above discussion, Customs has determined that the effective date for the establishment of the new port of entry at Sanford, Florida shall be delayed for approximately 6 months—until May 1, 1998—to afford the airport facility time to complete projected facilities. Until that time, the airport may continue to operate as a user-fee facility.

Public Comment Requirements

Customs establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Because the establishment, expansion or consolidation of a port of entry relates to agency management and organization, a regulatory change involving such an action is not subject to the notice and public procedure requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553).

In addition, pursuant to 5 U.S.C. 553(b)(B), Customs finds for good cause in this instance that notice and public procedure are impracticable, unnecessary and contrary to public interest. It would be impracticable for Customs to issue a proposal in this instance as the rulemaking process could not be completed timely.

If a proposal were to be issued, it would be unlikely that a final decision could be published before November 10, causing possible unforeseen consequences for the airport operator and other members of the public. Also the temporary postponement of the effective date of a rule is a technical change for which it is unnecessary to provide notice and comment. The substantive decision to create a port of entry at Sanford has already been made; the only question is when that port of entry will open.

Notwithstanding the above, Customs generally provides the public with an opportunity to comment on the establishment of ports of entry. Even though notice and public comment are not required in this instance pursuant to 5 U.S.C. 553(a)(2) because this is a matter relating to agency management, and pursuant to 5 U.S.C. 553(b)(B) for good cause, Customs is requesting the public to submit comments regarding the delayed effective date. If comments submitted within the next 30 days demonstrate that there exist sufficient grounds for not delaying the effective date of the establishment of a port of entry in Sanford until May 1, 1998, Customs will issue another document.

Comments submitted will be available for public inspection in accordance with

the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Suite 3000, The Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Washington, D.C.

Amendments to the Regulations

For the reasons stated above, the effective date of final rule document FR Doc. 97–18206, published in the **Federal Register** on July 11, 1997 is delayed until May 1, 1998.

The Regulatory Flexibility Act, and Executive Order 12866

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Approved: October 9, 1997.

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 97–29599 Filed 11–5–97; 2:01 pm]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8738]

RIN 1545–AV43

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that clarify the circumstances under which an employer may permit a cafeteria plan participant to revoke an existing election and make a new election during a period of coverage. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section of this issue of the **Federal Register**.

DATES: These regulations are effective on December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon Cohen, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 125. These temporary regulations provide guidance relating to the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage.

Explanation of Provisions

A ''cafeteria plan'' under section 125 allows an employee to choose between cash and certain nontaxable benefits, such as accident or health coverage. Section 125 generally permits the employee to choose the nontaxable benefit (rather than the available cash) without the employee having to include the available cash in gross income. The temporary regulations:

- Permit a cafeteria plan to allow an employee, during a plan year, to change his or her health coverage election to conform with the new special enrollment rights provided under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and
- Permit a cafeteria plan to allow a change in coverage election for a variety of other changes in status.

These regulations are designed to provide clear, administrable guidelines for determining when changes can be made in cafeteria plan elections during a plan year.

These regulations are effective for plan years beginning after December 31, 1998. However, taxpayers may rely on the guidance in the temporary regulations (or on the existing proposed regulations) for prior periods.

Summary

Section 125 generally provides that an employee in a cafeteria plan will not have an amount included in gross income solely because the employee may choose among two or more benefits consisting of cash and ''qualified benefits.'' A qualified benefit generally is any benefit that is excludable from gross income because of an express provision of the Code, including coverage under an employer-provided accident or health plan under sections 105 and 106, group-term life insurance under section 79, elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k), dependent care assistance under section 129, and adoption assistance under section 137.[1] Under §§ 1.125–1 and 1.125–2 of the existing proposed regulations,[2] an employee is permitted to make an election between cash and qualified benefits before the beginning of the period of coverage (which generally is the plan year of the cafeteria plan); changes in the election during the plan year are permitted only in limited circumstances.

The temporary regulations clarify the circumstances under which a cafeteria plan may permit an employee to change his or her cafeteria plan election with respect to accident or health coverage or group-term life insurance coverage during the plan year. Proposed regulations are also being published that cross-reference these temporary regulations, and that replace the change in family status provisions in Q&A–6 of proposed § 1.125–2 with respect to accident or health plans and group-term life insurance.

HIPAA Special Enrollment Rules

The temporary regulations conform the cafeteria plan rules to the new special enrollment rights provided under HIPAA (which generally require group health plans to permit individuals to be enrolled for coverage following the loss of other health coverage, or if a person becomes the spouse or dependent of an employee through birth, marriage, adoption, or placement for adoption).[3] Under the regulations, if an employee has a right to enroll in an employer's group health plan or to add coverage for a family member under HIPAA, the employee can make a conforming election under the cafeteria plan. This allows required contributions for such health coverage to be paid on a pre-tax basis.

Changes in Status

The temporary regulations include rules for other events, called ''changes in status,'' under which a cafeteria plan may allow an employee to change his or

[1] The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under seciton 127; and fringe benefits under section 132.

[2] Published as proposed rules at 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

[3] See section 9801(f). Similar provisions are set forth in section 701(f) of the Employee Retirement Income Security Act of 1974 (ERISA), and section 2701(f) of the Public Health Service Act. Regulations under these provisions are set forth in Treas. Reg. § 54.9801–6T; 29 C.F.R. § 2590.701–6; and 45 C.F.R. § 146.117.

her election during the plan year. The events that constitute changes in status under the regulations are changes in legal marital status, number of dependents, employment status, work schedule, and residence or worksite, and cases where the dependent satisfies or ceases to satisfy the requirements for unmarried dependents.

The regulations permit a cafeteria plan to allow a change of election during the plan year if a change in status occurs that affects eligibility for coverage and the election change corresponds with the effect on eligibility. For example, if under the terms of an accident or health plan a child of an employee loses eligibility for coverage upon graduation from college, the cafeteria plan may allow the employee to cease payment for the child's coverage when the child graduates and coverage ceases.

Certain of these changes in status (marriage, birth, adoption, and placement for adoption) overlap with the special enrollment events under HIPAA. The regulations include examples that clarify the relationship between HIPAA's special enrollment rights and these change in status rules. In addition, if a change in status occurs that entitles an employee or family member to ''COBRA'' continuation coverage (or coverage under a similar State program) with respect to the employer's plan, the regulations permit payments for the continuation coverage to be made on a pre-tax basis under a cafeteria plan.

Other Events

The regulations allow a corresponding cafeteria plan change if a plan receives a court order, such as a qualified medical child support order under section 609 of ERISA. In addition, if an employee, spouse, or dependent becomes entitled to Medicare or Medicaid, a cafeteria plan can permit a corresponding election change.

Elective Contributions Under a Qualified Cash or Deferred Arrangement

The temporary regulations, in provisions similar to those of the existing proposed regulations (proposed § 1.125–2(f)), make clear that the rules of section 401(k) and (m), rather than the rules in these temporary regulations (which apply to other qualified benefits), govern changes in elections under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or with respect to employee after-tax contributions subject to section 401(m).

Scope of Temporary Regulations and Reliance on Proposed Regulations

The temporary regulations do not address certain provisions concerning cafeteria plan election changes that are included in the existing proposed regulations. Guidance on these provisions is reserved at paragraphs (f)–(i) of the temporary regulations.

For example, future guidance under the significant cost change provision (reserved at paragraph (g) of the temporary regulations), rather than the change in status rules, would determine whether an employee who switches from full-time to part-time employment and who remains eligible under the employer's health plan could make an election change if the part-time employee is required to pay significantly higher amounts for the coverage. The temporary regulations also reserve guidance with respect to provisions set forth in the existing proposed regulations that permit an election change in the case of a significant change in coverage (which includes a significant change in the health coverage of the employee or spouse attributable to the spouse's employment).[4] Other matters not addressed in the temporary regulations include the application of the cafeteria plan election change rules to qualified benefits other than accident or health coverage and group-term life insurance coverage (for example, dependent care assistance programs), and special rules concerning changes in elections by employees taking leave under the Family and Medical Leave Act of 1993 (Pub. L. 103–3).[5] Pending further guidance, taxpayers can continue to rely on the existing proposed regulations [6] concerning these and other matters not addressed in the temporary regulations.[7]

The temporary regulations are effective for plan years beginning after December 31, 1998. Prior to that date, however, taxpayers can rely on the guidance provided in the temporary regulations (as well as on the guidance provided in the existing proposed regulations that relates to matters addressed in the temporary regulations) in order to comply with the provisions of section 125.

[4] See the second-to-last sentence in Q&A–6(c) of proposed § 1.125–2.

[5] See § 1.125.3, published as a proposed rule at 60 FR 66229 (December 21, 1995).

[6] See also § 1.125–2T, published at 51 FR 4312 (January 29, 1986), which describes benefits that may be offered under a cafeteria plan.

[7] See the preambles to proposed §§ 1.125–1 and 1.125–2 and Q&A–8 of proposed § 1.125–3.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Catherine Fuller and Sharon Cohen, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

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

Par. 2. § 1.125–4T is added to read as follows:

§ 1.125–4T Permitted election changes (temporary).

(a) *Election changes.* A cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in paragraphs (b) through (i) of this section. See paragraph (j) of this section for special provisions relating to qualified cash or deferred arrangements.

(b) *Special enrollment rights.* A cafeteria plan may permit an employee to revoke an election for accident or health coverage during a period of coverage and make a new election that corresponds with the special enrollment rights provided in section 9801(f), whether or not the change in election is permitted under paragraph (c) of this section.

(c) *Changes in status for accident or health coverage and group-term life.* (1) *In general.* A cafeteria plan may permit an employee to revoke an election for accident or health coverage or group-term life insurance coverage during a period of coverage and make a new election for the remaining portion of the period if, under the facts and circumstances —

(i) A change in status occurs; and

(ii) The election change satisfies the consistency requirement in paragraph (c)(3) of this section (consistency rule for accident or health coverage) or (c)(4) of this section (consistency rule for group-term life insurance coverage).

(2) *Change in status events.* The following events are changes in status for purposes of this paragraph (c):

(i) *Legal marital status.* Events that change an employee's legal marital status, including marriage, death of spouse, divorce, legal separation, or annulment;

(ii) *Number of dependents.* Events that change an employee's number of dependents (as defined in section 152), including birth, adoption, placement for adoption (as defined in regulations under section 9801), or death of a dependent;

(iii) *Employment status.* A termination or commencement of employment by the employee, spouse, or dependent;

(iv) *Work schedule.* A reduction or increase in hours of employment by the employee, spouse, or dependent, including a switch between part-time and full-time, a strike or lockout, or commencement or return from an unpaid leave of absence;

(v) *Dependent satisfies or ceases to satisfy the requirements for unmarried dependents.* An event that causes an employee's dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance as provided in the accident or health plan under which the employee receives coverage; and

(vi) *Residence or Worksite.* A change in the place of residence or work of the employee, spouse, or dependent.

(3) *Consistency rule for accident or health coverage.* (i) *General rule.* (A) An employee's revocation of a cafeteria plan election during a period of coverage and new election for the remaining portion of the period (referred to below as an ''election change'') is consistent with a change in status if, and only if—

(1) The change in status results in the employee, spouse, or dependent gaining or losing eligibility for accident or health coverage under either the cafeteria plan or an accident or health plan of the spouse's or dependent's employer; and

(2) The election change corresponds with that gain or loss of coverage.

(B) A change in status results in an employee, spouse, or dependent gaining (or losing) eligibility for coverage under a plan only if the individual becomes eligible (or ineligible) to participate in the plan. A cafeteria plan may treat an individual as gaining (or losing) eligibility for coverage if the individual becomes eligible (or ineligible) for a particular benefit package option under a plan (e.g., a change in status results in an individual becoming eligible for a managed care option or an indemnity option). If, as a result of a change in status, the individual gains eligibility for elective coverage under a plan of the spouse's or dependent's employer, the consistency rule of this paragraph (c)(3)(i) is satisfied only if the individual elects the coverage under the spouse's or dependent's employer. See the *Examples* in paragraph (k) of this section for illustrations of the consistency rule.

(ii) *Exception for COBRA.* Notwithstanding paragraph (c)(3)(i) of this section, if the employee, spouse, or dependent becomes eligible for continuation coverage under the employer's group health plan as provided in section 4980B or any similar State law, the employee may elect to increase payments under the employer's cafeteria plan in order to pay for the continuation coverage.

(4) *Consistency rule for group-term life insurance coverage.* Except as provided in this paragraph (c)(4), the provisions of paragraph (c)(3)(i) of this section apply to group-term life insurance coverage. In the case of marriage, birth, adoption, or placement for adoption, a cafeteria plan can allow an election change to increase (but not to reduce) the amount of the employee's life insurance coverage. In the case of divorce, legal separation, annulment, or death of a spouse or dependent, a cafeteria plan may allow an election change to reduce (but not to increase) the amount of the employee's life insurance coverage.

(d) *Judgment, decree, or order.* This paragraph (d) applies to a judgment, decree, or order (''order'') resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order defined in section 609 of the Employee Retirement Income Security Act of 1974) that requires accident or health coverage for an employee's child. Notwithstanding the provisions of paragraph (c) of this section, a cafeteria plan may—

(1) Change the employee's election to provide coverage for the child if the order requires coverage under the employee's plan; or

(2) Permit the employee to make an election change to cancel coverage for the child if the order requires the former spouse to provide coverage.

(e) *Entitlement to Medicare or Medicaid.* If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (i.e., enrolled) under Part A or Part B of Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), a cafeteria plan may permit the employee to make an election change to cancel coverage of that employee, spouse or dependent under the accident or health plan.

(f) *Changes in status for other qualified benefits.* [Reserved].

(g) *Significant coverage or cost changes.* [Reserved].

(1) *Employer's plan.* [Reserved].

(2) *Plan of spouse's or dependent's employer.* [Reserved].

(h) *Cessation of required contributions.* [Reserved].

(i) *Special requirements concerning the Family and Medical Leave Act.* [Reserved].

(j) *Elective contributions under a qualified cash or deferred arrangement.* The provisions of this section do not apply with respect to elective contributions under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or employee contributions subject to section 401(m). Thus, a cafeteria plan may permit an employee to modify or revoke elections in accordance with sections 401(k) and 401(m) and the regulations thereunder.

(k) *Examples.* The following examples illustrate the rules of this section. In each case involving an accident or health plan, assume that the plan is subject to section 9801(f) (providing for special enrollment rights under certain group health plans).

Example 1. (i) Employer M provides health coverage for its employees under which employees may elect either employee-only coverage or family coverage. M also maintains a calendar year cafeteria plan under which qualified benefits, including health coverage, are funded through salary reduction. M's employee, A, elects employee-only health coverage before the beginning of the calendar year. During the year, A adopts

a child, C. Within 30 days thereafter, A wants to revoke A's election for employee-only health coverage and obtain family health coverage, as of the date of C's adoption. A satisfies the conditions for special enrollment of an employee with a new dependent under section 9801(f)(2), so that A may enroll in family coverage under M's accident or health plan in order to provide coverage for C, effective as of the date of C's adoption.

(ii) In this *Example 1,* M's cafeteria plan may permit A to change the employee's salary reduction election to family coverage for salary not yet currently available. The increased salary reduction could reflect the cost of family coverage from the date of adoption. (The adoption of C is also a change in status, and the election of family coverage is consistent with that change in status. Thus, under the change in status provisions of paragraph (c) of this section, M's cafeteria plan could permit A to elect family coverage prospectively in order to cover C for the remaining portion of the coverage period.)

Example 2. (i) The employer plans and permissible coverage are the same as in *Example 1.* Before the beginning of the calendar year, Employee A elects employee-only health coverage under M's cafeteria plan. A marries B during the plan year. B's employer, N, offers health coverage to N's employees, and, prior to the marriage, B had elected employee-only coverage. A wants to revoke the election for employee-only coverage, and is considering electing family health coverage under M's plan or obtaining family health coverage under N's plan.

(ii) In this *Example 2,* A's marriage to B is a change in status. Two possible election changes by A would be consistent with the change in status: to cover A and B by electing family health coverage under M's plan, or to cancel coverage under M's plan (with B electing family health coverage under N's plan in order to cover A and B). Thus, M's cafeteria plan may permit A to make either change in election. (M's cafeteria plan could also permit A to change A's salary reduction election to reflect the change to family coverage under M's group health plan in accordance with paragraph (b) of this section because the marriage would also create special enrollment rights under section 9801(f), pursuant to which an election of family coverage under M's plan would be required to be effective no later than the first day of the first calendar month beginning after the completed request for enrollment is received by the plan.)

Example 3. (i) Employee G, a single parent, elects family health coverage under a calendar year cafeteria plan maintained by Employer O. G and G's 21-year old child, H, are covered under O's health plan. During the year, H graduates from college. Under the terms of the health plan, dependents over the age of 19 must be full-time students to receive coverage. G wants to revoke G's election for family health coverage and obtain employee-only coverage under O's cafeteria plan.

(ii) In this *Example 3,* H's loss of eligibility for coverage under the terms of the health plan is a change in status. A revocation of G's election for family coverage and new election of employee-only coverage is consistent with the change in status. Thus, O's cafeteria plan may permit G to elect employee-only coverage.

Example 4. (i) Employee J is married to K and they have one child, S. A calendar year cafeteria plan maintained by Employer P allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. Under the plan, before the beginning of the calendar year, J elects family health coverage for J, K, and S. J and K divorce during the year and, under the terms of P's accident or health plan, K loses eligibility for P's health coverage. S does not lose eligibility for health coverage under P's plan upon the divorce. J now wants to revoke J's election under the cafeteria plan and elect no coverage.

(ii) In this *Example 4,* the divorce is a change in status. A change in the cafeteria plan election to cancel health coverage for K is consistent with that change in status. However, the divorce does not affect J's or S's eligibility for health coverage. Therefore, an election change to cancel J's or S's health coverage is not consistent with the change in status. The cafeteria plan, however, may permit J to elect employee-plus-one-dependent health coverage.

Example 5. (i) The facts are the same as *Example 4,* except that, before the beginning of the year, Employee J elected employee-only health coverage (rather than family coverage). Pursuant to J s divorce agreement with K, P s health plan receives a qualified medical child support order (as defined in section 609 of the Employee Retirement Income Security Act) during the plan year. The order requires P s health plan to cover S.

(ii) In this *Example 5,* P's cafeteria plan may change J's election from employee-only health coverage to employee-plus-one-dependent coverage in order to cover S.

Example 6. (i) Before the beginning of the coverage period, Employee L elects to participate in a cafeteria plan maintained by L's Employer, Q. However, in order to change the election during the coverage period so as to cancel coverage, and by prior understanding with Q, L terminates employment and resumes employment one week later.

(ii) In this *Example 6,* under the facts and circumstances, in which a principal purpose of the termination of employment was to alter the election and reinstatement of employment was understood at the time of termination, L does not have a change in status. However, L's termination of employment would constitute a change in status, permitting a cancellation of coverage during the period of unemployment, if L s original cafeteria plan election was reinstated upon resumption of employment (for example, because of a cafeteria plan provision requiring an employee who resumes employment within 30 days, without any other intervening event that would permit a change in election, to return to the election in effect prior to termination of employment).

Example 7. (i) Employer R maintains a calendar year cafeteria plan under which full-time employees may elect coverage under one of three benefit package options provided under an accident or health plan: an indemnity option or either of two HMO options for employees that work in the respective service areas of the two HMOs. Employee T, who works in the service area of HMO #1, elects the HMO #1 option. During the year, T is transferred to another work location which is outside the HMO #1 service area and inside the HMO #2 service area.

(ii) In this *Example 7,* the transfer is a change in status and, under the consistency rule, the cafeteria plan may permit T to make an election change to either the indemnity option or HMO #2, or to cancel accident or health coverage.

Example 8. (i) A calendar year cafeteria plan maintained by Employer S allows employees to elect coverage under an accident or health plan providing indemnity coverage and under a flexible spending arrangement (FSA). Prior to the beginning of the calendar year, Employee U elects employee-only indemnity coverage, and coverage under the FSA for up to $600 of reimbursements for the year to be funded by salary reduction contributions of $600 during the year. U's spouse, V, has employee-only coverage under an accident or health plan maintained by V's employer. During the year, V terminates employment and loses coverage under that plan. U now wants to elect family coverage under S's accident or health plan and increase U's FSA election.

(ii) In this *Example 8,* V's termination of employment is a change in status. The cafeteria plan may permit U to elect family coverage under S's accident or health plan, and to increase U's FSA coverage.

Example 9. (i) Employer T provides group-term life insurance coverage as described under section 79. Under T's plan, an employee may elect life insurance coverage in an amount up to the lesser of his or her salary or $50,000. T also maintains a calendar year cafeteria plan under which qualified benefits, including the group-term life insurance coverage, are funded through salary reduction. Before the beginning of the calendar year, Employee W elects $10,000 of life insurance coverage, with W s spouse, X, as the beneficiary. During the year, a child is placed for adoption with W and X. W wants to increase W's election for life insurance coverage to $50,000 (without changing the designation of X as the beneficiary).

(ii) In this *Example 9,* the placement of a child for adoption with W is a change in status. The increase in coverage is consistent with the change in status. Thus, W's cafeteria plan may permit W to increase W's life insurance coverage.

(1) *Effective Date.* This section is effective for plan years beginning after December 31, 1998.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Dated: October 10, 1997.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 97–29087 Filed 11–6–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–113–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania regulatory program (hereinafter referred to as the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Pennsylvania proposed revisions and additions to its rules pertain to: surface and underground mining definitions, incidental coal extraction, permit approval, permit renewal, coal exploration, bonding, permit applications, operation and reclamation plans, environmental protection standards, anthracite bank removal and reclamation standards, refuse removal standards, coal preparation facilities, underground mining erosion and sedimentation control standards, impoundments, subsidence control, and coal refuse disposal permit applications and performance standards. The amendment is intended to revise the Pennsylvania program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, PA 17101. Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program, including the Secretary's findings, and the disposition of comments, and the conditions of approval can be found in the July 31, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 938.11, 938.12, 938,15, and 938.16.

II. Submission of the Proposed Amendment

By letter dated January 23, 1996 (Administrative Record No. PA–838.00), Pennsylvania submitted a proposed amendment to its program pursuant to SMCRA in response to the required program amendments at 30 CFR 938.16 (g) through (ii), with the exception of (h). Pennsylvania proposed to revise sections 86–90 of its Coal Mining Regulations (Regulatory Reform III).

OSM announced receipt of the proposed amendment in the February 28, 1996 **Federal Register** (61 FR 7446), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on March 29, 1996.

During its review of the amendment, OSM identified concerns relating to the following sections of Pennsylvania's regulations:

Section	Topic
86.5(i)3	Administrative Review.
86.5(m)	Notification.
No PA Counterpart	Public Comment Period, Inspections, Administrative Review.
86.55(j)	Permit Renewal Applications.
87.108(c), 89.24(c), 90.108(c).	Siltation Structures.
88.105(b), 88.106(a), 88.201(b), 88.202(a), 88.305(b), 88.306(a).	Water Monitoring.
88.321, 90.133	Noncoal Waste Disposal.
87.125(a)	Preblast Survey.
87.127(i)	Vibration Limit.
No PA Counterpart	Blast Monitoring.
87.124(b)	Blasting Schedule.
No PA Counterpart	Blast Design.
87.127(f)	Flyrock
87.129(4)	Blasting.

OSM notified Pennsylvania of these concerns by letter dated February 21, 1997. By letter dated March 28, 1997, Pennsylvania responded to OSM's concerns by submitting additional explanatory information and by proposing to make certain revisions to its regulations during its submission of Regulatory Reform IV. Because the additional information was explanatory in nature and did not constitute a major revision of the original submission, OSM did not reopen the comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Pennsylvania's Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

State regulation	Subject	Federal counterpart
86.1	Definition—''MSHA''	30 CFR 701.5.
86.1	Definitions—''Cumulative Measurement Period,'' ''Cumulative Production,'' ''Cumulative Revenue,'' ''Mining Area,'' ''Other Minerals.''.	30 CFR 702.5.
86.5(a)–(e)	Extraction of Coal	30 CFR 702.11 (a), (b), (d).
86.5(f)	Public Availability of Information	30 CFR 702.13.
86.5(g)	Application Requirements	30 CFR 702.12.
86.5(h) (excluding (h)(2))	Exemption Requirements	30 CFR 702.11(c), 702.14.
86.5(i)(1), (2)	Exemption Determination	30 CFR 702.11(e)(1), (2).
86.5(j)(1)–(3)	Conditions of Exemption	30 CFR 702.15(a)–(c).
86.5(j)(4)	Reports	30 CFR 702.5(a)(2), 702.18.
86.5(k)	Stockpiling	30 CFR 702.16.

State regulation	Subject	Federal counterpart
86.5(l)	Compliance Review	30 CFR 702.17(a).
86.5(n)	Revocation	30 CFR 702.17(c)(3).
86.5(o)	Enforcement	30 CFR 702.17(c)(2).
86.55(g)(6)	Permit Renewal	30 CFR 774.15(c)(iv).
86.133(g)	Coal Exploration	30 CFR 815.15(g).
86.156(b)	Bonds	30 CFR 800.16(e)(1).
86.175(b)(3)	Bond Release	30 CFR 800.40(c)(2).
86.182(e)	Bond Forfeiture	30 CFR 800.50(b)(2).
86.182(f)(1)	Bond Forfeiture	30 CFR 800.50(d)(1).
87.46(b)(3)(i)	Surface Mines—Surface Water	30 CFR 780.21(b)(2).
87.69(b)(4)	Hydrologic Balance	30 CFR 780.21(i), (j).
87.127(e)(2)	Explosives—Surface Blasting	30 CFR 816.67(b)(1).
87.127(j)	Explosives—Surface Blasting	30 CFR 816.67(d)(3).
87.127(n)	Explosives—Surface Blasting	30 CFR 816.67(d)(2)(i).
87.127(p)	Explosives—Surface Blasting	30 CFR 816.67(d)(4).
87.131(n)	Disposal of Excess Spoil	30 CFR 816.71(h)(2).
87.135(a)	Protection of Underground Mining	30 CFR 816.79.
87.138(c)	Protection of Fish, Wildlife and Related Environmental Values	30 CFR 816.97(c).
88.24(b)(4)(i)	Anthracite Coal Mining	30 CFR 780.22(b)(2)(ii), (iii).
88.24(b)(4)(ii)	Anthracite Coal Mining	30 CFR 780.22(d).
88.26(b)(2)(i)	Anthracite—Surface Water	30 CFR 780.21(b)(2).
88.49(b)(2)	Anthracite—Hydrologic Balance	30 CFR 780.21(i).
88.54	Anthracite-Protection of Underground Mining	30 CFR 816.79.
88.61(b)(1)	Anthracite-Prime Farmlands	30 CFR 785.17(c)(1).
88.284	Anthracite-Sealing of Drilled Holes and Exploratory Openings	30 CFR 816.14.
88.491(d)(2)(A)	Anthracite—Surface Water	30 CFR 780.21(b)(2).
88.491(j)	Anthracite—Permit Applications	30 CFR 780.15(c).
88.492(d)(2)(iii)	Anthracite-Ground and Surface Water Monitoring Plans	30 CFR 780.21(i)(1), (j)(2).
89.34(a)(1)(iii), (2)(i), (2)(ii)	Hydrology-Underground Mining And Coal Preparation Facilities	30 CFR 784.14(h), (b)(2), (i).
89.82(d)	Performance Standards	30 CFR 817.97(c).
89.172(b)	Coal Preparation	30 CFR 785.21(c).
90.14(b)(3)(i)	Coal Refuse—Surface Water	30 CFR 780.21(b)(2).
90.35(b)(3)	Ground and Surface Water Monitoring Plans	30 CFR 780.21(i)(1), (j)(2).
90.150(c)	Protection of Fish, Wildlife and Related Environmental Values	30 CFR 816.97(c).

Because the above proposed revisions re identical in meaning to the corresponding Federal regulations, the Director finds that Pennsylvania's proposed rules are no less effective than the Federal rules.

B. Revisions to Pennsylvania's Regulations That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. 86.1/87.1—Definitions

Pennsylvania is proposing to amend the definition of ''surface mining activities'' to include the construction of a road or similar disturbance for any purpose related to a surface mining activity, including that of a moving or walking dragline or other equipment, or for the assembly or disassembly or staging of equipment. The Director finds that definition proposed by Pennsylvania is no less effective than the Federal definition at 30 CFR 700.5. The proposed revision also satisfies the required amendment at 30 CFR 938.16(g) which required Pennsylvania to amend its definition to make it clear that the construction of any road, or similar disturbance, shall be deemed a surface mining activity and will be regulated.

2. 86.5(h)(2)—Extraction of Coal

Pennsylvania is proposing to require in this subsection that no request for an exemption will be approved unless the applicant can show that the coal to be produced will be from the geological stratum above the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use. The corresponding Federal regulation, at 30 CFR 702.14(a)(2), contains the same requirement, except that it allows the exemption to be approved if the coal to be produced is in the geological stratum lying above or below the deepest stratum from which other minerals are extracted. Because Pennsylvania limits the exemption allowance to where the coal is produced above the deepest stratum from which other minerals are extracted, it is more restrictive, and therefore more stringent, than its Federal counterpart. In accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), therefore, subsection 86.5(h)(2) is not inconsistent with SMCRA.

3. 86.5(I)(3)—Exemption Determinations

Pennsylvania is proposing to permit a person who is adversely affected by the determination of exemption to file an appeal as provided by Chapter 21 of the regulations. The proposed regulation is substantively identical to the Federal regulations at 30 CFR 702.11(f)(1). However, the Federal regulations at 30 CFR 702.11(f)(2) specify that such appeals shall not suspend the effect of that determination. In its letter dated March 28, 1997, Pennsylvania stated that appeals to the Environmental Hearing Board (EHB) under the provisions of Chapter 21 do not stay the effect of the Department of Environmental Protection's (Department) actions. If an appellant wishes to stay the effect of such an action, the appellant must petition the EHB which, in turn, must issue a supersedeas. The Director finds the proposed Pennsylvania regulation no less effective than the Federal regulations, since Pennsylvania law provides, generally, that an appeal does not, by itself, suspend the effect of the decision appealed from.

4. 86.5(m)—Notification

Pennsylvania is proposing to require that if the Department believes that a specific mining area was not exempt at the end of the previous reporting period, or is not exempt or cannot satisfy the exemption criteria at the end of the

current reporting period, it will notify the operator that the exemption may be revoked and explain the reasons. The exemption will be revoked unless the operator demonstrates within 30 days that the area in question should continue to be exempt. The operator and interested parties will be notified immediately of the revocation. The Federal regulations at 30 CFR 702.17(b) and (c)(1) have the same requirements. However, the Federal regulations also specify that if a decision is made not to revoke an exemption, the regulatory authority shall immediately notify the operator and intervenors. The Director finds that the proposed Pennsylvania regulation is less effective than the Federal regulations because it lacks this notification requirement. He is, therefore, requiring that Pennsylvania amend its program to include the notification requirement to operators and intervenors of a Department's decision not to revoke an exemption.

5. 86.55(i),(j)—Permit Renewals

Pennsylvania is proposing at subsection (i) to allow a permittee to provide a written notice to the Department in lieu of a complete application if, after the permit expiration date, the remaining surface mining activities will consist solely of reclamation. The Department may renew the permit conditioned upon only reclamation activities occurring. A new permit is required if the permittee resumes coal extraction, preparation, or refuse disposal. At subsection (j), Pennsylvania is proposing to require that a permittee submit a renewal application if he has provided written notice in accordance with the terms of subsection (i) and determines prior to the permit expiration date that coal extraction, preparation, or refuse disposal will occur or treatment facilities will be required after the permit expiration date. The Federal regulations at 30 CFR 773.11(a) allow a permittee to forego permit renewal where only reclamation activities remain to be performed, but require that permit obligations continue until reclamation is complete. Subsection (i), as proposed, contains a similar provision, in that it provides that the permit will be renewed even where only reclamation obligations remain, but requires only a notice of renewal in such instances, rather than a complete renewal application, with public notice. Therefore, subsection (i) is no less effective than 30 CFR 773.11(a). However, the Federal regulations at 30 CFR 774.15(b)(1) require that an application for permit renewal be submitted at least 120 days before expiration of the existing permit term. Pennsylvania's proposed revision at subsection (j) does not contain this provision. Therefore, the Director finds that it is less effective than the Federal regulations, and he is requiring that Pennsylvania amend its regulation to include the 120 day submittal requirement.

6. 86.134(8)—Coal Exploration

Pennsylvania proposes to require that each coal exploration hole, borehole, well, or other underground opening created or encountered by exploration must meet the requirements of its program relating to preventing discharges from underground mines, and closing of underground mine openings. The Federal counterpart regulation, at 30 CFR 815.15(g), contains these same requirements, except that it applies only to holes, etc., which are created during coal exploration, and not to holes encountered during coal exploration. As such, Pennsylvania's proposal is more inclusive, and therefore more stringent, than its Federal counterpart. In accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), therefore, subsection 86.134(8) is not inconsistent with SMCRA.

7. 86.182(f)(2)—Bond Forfeiture

Pennsylvania is proposing to require that if the bond amount forfeited by the permittee is more than the amount necessary to complete the reclamation, the excess funds shall be used by the Department for certain prescribed purposes specified in subsection 18(a) of the Pennsylvania Surface Mining Act. The Federal regulations at 30 CFR 800.50(d)(2) require the regulatory authority to return any unused funds to the party from whom they were collected. However, Pennsylvania considers the excess funds to be a penal bond and reserves the right to apply the funds to approved purposes. The Director finds that the proposed Pennsylvania revision is, in effect, more stringent than the Federal regulations. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), subsection 86.182(f)(2) is not inconsistent with SMCRA.

8. 86.193(h)—Civil Penalties

Pennsylvania is proposing to delete the provision that the Department may, when appropriate, assess a penalty against corporate officers, directors, or agents as an alternative to, or in combination with, other penalty actions. This provision currently appears in Pennsylvania's regulations at 86.195(a). The Director finds that the proposed deletion will not render the Pennsylvania program less effective than the Federal regulations at 30 CFR 846.12(a). However, the Director notes that Pennsylvania must still amend subsections 86.195(a) and (b), or otherwise amend its program, as directed at 30 CFR 938.16(eee).

9. 87.45(a)(4), 88.25(a)(4), 88.491(c)(1)(iv), 89.34(a)(1)(i), 90.131(1)—Surface Coal Mines, Anthracite (General Provisions), Anthracite (Coal Preparation Facilities), Underground Coal Mines, Coal Refuse Disposal: Groundwater

Pennsylvania is proposing to require that a permit applicant supply certain baseline information pertaining to groundwater, including water quality descriptions of total dissolved solids or specific conductance corrected to 25 degrees centigrade, pH, total iron, total manganese, alkalinity, acidity, and sulfates. The counterpart Federal regulations, at 30 CFR 780.21/784.14(b)(1), also require water quality descriptions, but do not specifically require descriptions of alkalinity, acidity or sulfates. As such, the Pennsylvania proposals are more stringent than their Federal counterparts. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), these Pennsylvania proposed amendments are not inconsistent with SMCRA.

10. 87.46(b)(c)(ix)—Surface Water Information: Surface Coal Mines/88.26(b)(2)(ix)—Surface Water Information: Anthracite Surface Mines/88.491(d)(2)(ii)(I), (J)—Surface Water Information: Anthracite Underground Mines/90.14(b)(3)(ix)—Surface Water Information—Coal Refuse Disposal

Pennsylvania is proposing to require that a permit application include surface water information that specifies total aluminum in milligrams per liter. The Federal regulations at 30 CFR 780.21/784.14(b)(2) do not include this provision but rather require minimum water quality descriptions which Pennsylvania's program already requires. Also, Pennsylvania is requiring other surface water information, as appropriate. The Federal regulations at 30 CFR 780.21/784.14(b)(2) also do not include this provision. As such, the Pennsylvania proposals are more stringent than their Federal counterparts. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), these Pennsylvania proposed

amendments are not inconsistent with SMCRA.

11. 87.54(b)/87.65(b)—Maps, Cross Sections and Related Information: Surface Mines/88.31/88.44(b)—Maps and Plans: Anthracite Surface Mines/ 88.492(j)(3)—Maps and Plans: Anthracite Underground Mines/ 90.21(b), 90.46(3)—Maps and Plans: Coal Refuse Disposal

Pennsylvania is proposing to require that qualified professional geologists also be registered in order to prepare and certify maps, plans, and cross sections. The corresponding Federal regulations, at 30 CFR 779.25(b) (for 87.54(b) and 88.31(b)), 780.14(c) (for 87.65(b) and 88.44(b)), and 784.23(c) (for 88.492(j)(3)), require only that the geologist be a professional. However, Pennsylvania may require, additionally, that the geologist be a registered professional. As such, the Pennsylvania proposals are more stringent than their Federal counterparts. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), these Pennsylvania proposed amendments are not inconsistent with SMCRA.

12. 87.69(b)(5)—Hydrologic Balance: Surface Mines/88.49(b)(3)—Hydrologic Balance: Anthracite Surface Mines/ 88.492—Reclamation and Operation Plan: Anthracite

Pennsylvania is proposing to require that the determination of probable hydrologic consequences (PHC) address the parameters measured in accordance with subsections 87.45, 87.46, 88.25, 88.26, and 88.491. The Federal regulations at 30 CFR 780.21(f)(2) require the PHC to be based upon baseline hydrologic information contained in the permit application. This baseline information is collected for the same ground and surface water parameters which are required to be measured pursuant to subsection 87.45, 87.46, 88.25 and 88.26. Therefore, the Director finds that the proposed Pennsylvania regulations are no less effective than the Federal regulations at 30 CFR 780.21(f).

13. 87.73—Dams, Ponds, Embankments, and Impoundments: Surface Mines/ 90.111(7), 90.113(i), 90.120—Impoundments: Coal Refuse Disposal

At subsection 87.73(c)(1), Pennsylvania is proposing to revise its requirements for detailed design plans for dams, ponds, embankments and impoundments. Engineers, when necessary, will obtain assistance from experts in related fields when preparing design plans for impoundments meeting or exceeding MSHA size classification or other specified criteria. For those impoundments not meeting the size classification or other criteria, the plan shall be prepared by a qualified engineer or land surveyor. The Federal regulations at 30 CFR 780.25(a) (2) and (3) have the same requirements. Therefore, the Director finds that the proposed Pennsylvania regulation is no less effective than the Federal regulations. The proposed revision also satisfies the required amendment at 30 CFR 938.16(s) which required Pennsylvania to clarify that all impoundments with a storage volume of 20 acre-feet or more must be designed by or under the direction of, and certified by, a qualified registered professional engineer with assistance from experts in related fields.

At subsections 87.73(c)(4), 90.111(7) and 90.113(i), and at section 90.120, Pennsylvania is proposing to prohibit the permanent retention of an impounding structure constructed of coal refuse or used to impound coal refuse unless it develops into a fill meeting the coal refuse disposal requirements of section 90.122. The Federal regulations at 30 CFR 816.84(b)(1) also prohibit permanent impoundments on coal refuse or coal refuse impounding structures, but contain no exceptions for the development of a fill. However, subsection 90.122(j) of Pennsylvania's regulations does prohibit the retention of permanent impoundments on a completed fill. By cross-referencing subsection 90.122(j), these provisions contain the necessary prohibition of permanent impoundments. Therefore, the Director finds that the proposed Pennsylvania regulations are no less effective than the Federal regulations at 30 CFR 816.84(b)(1).

14. 87.102(a)—Effluent Standards: Surface Mines/88.92(a)—Effluent Standards: Anthracite Surface Mines/ 88.187(a)—Effluent Standards: Anthracite Bank Removal/88.292(a)—Effluent Standards: Anthracite Refuse Disposal/89.52(c)—Effluent Standards: Underground Mining and Coal Preparation Facilities/90.102(a)—Effluent Standards: Coal Refuse Disposal

Pennsylvania is proposing to revise the instantaneous maximum level for manganese to 5.0 mg/l for its Group ''B'' effluent limitations, and to add instantaneous maximum discharge levels for manganese (5.0 mg/l) and suspended solids (90 mg/l) to its Group ''A'' effluent limitations. (Group ''A'' effluent limitations apply to pit water discharges in all types of weather, and to all other discharges in dry weather or during very low precipitation events. Group ''B'' effluent limitations apply to discharges, other than pit water, during precipitation events of up to 10 years and 24 hours.) The Director notes that the Clean Water Act effluent limitations applicable to coal mining operations, at 40 CFR Part 434, do not contain instantaneous maximum limits for manganese or suspended solids. Therefore, Pennsylvania's proposals are in addition to the requirements of the Clean Water ACt regulations. Also, the Director notes that the Environmental Protection Agency, in its letter of concurrence with this program amendment, stated that the addition of these instantaneous maximum limits will ''provide inspectors an enforceable compliance measure without the necessity of obtaining time consuming composite samples.'' (Administrative Record No. 838.08). There are no Federal counterparts in SMCRA or the Federal regulations promulgated thereunder to these proposed revisions. However, 30 CFR 816/817.42 require that discharges of water from surface mining operations be made in compliance with, among other things, the effluent limitations contained in 40 CFR Part 434. Because the Environmental Protection Agency has concurred in the approval of this amendment, the Director finds that the proposed Pennsylvania revisions are consistent with the Federal regulations at 30 CFR 816/817.42.

15. 87.108(c)—Sedimentation Ponds: Surface Coal Mines/89.24(c)—Sedimentation Ponds: Underground Mines and Coal Preparation Facilities/ 90.108(c)—Sedimentation Ponds: Coal Refuse Disposal

Pennsylvania is proposing to require that sedimentation ponds be maintained until the disturbed area has been stabilized and revegetated and removal is approved by the Department. The ponds may not be removed sooner than 2 years after the last augmented seeding, unless the Department finds that the disturbed area has been sufficiently revegetated and stabilized. Pennsylvania is also proposing to delete the references to ''other treatment facilities.'' This deletion is presumably proposed because the Pennsylvania regulations, at sections 87.108, 89.24 and 90.108, require all drainage to be passed through sedimentation ponds, rather than through ''other treatment facilities.'' Therefore, the deletion is approved to the extent that ''other treatment facilities'' are not permitted to be used to treat surface drainage. However, the Federal regulations at 30

CFR 816/817.46(b)(5) prohibit the removal of siltation structures sooner than 2 years after the last augmented seeding.

Because Pennsylvania's proposal includes an exception to this requirement, the Director finds that the proposed Pennsylvania revision is less effective than the Federal regulations. He is also requiring that Pennsylvania amend its regulation to require, without exception, that sedimentation ponds, where used, and other treatment facilities, if used, cannot be removed sooner than 2 years after the last augmented seeding.

16. 87.112—Hydrologic Balance: Surface Mines/88.102—Hydrologic Balance: Anthracite Surface Mines/88.197—Hydrologic Balance: Anthracite Bank Removal/88.302—Hydrologic Balance: Anthracite Refuse Disposal/89.101 and 112—Impoundments: Underground Mines/90.112—Hydrologic Balance: Coal Refuse Disposal

At subsections 87.112(b), 88.102(b), 88.197(b), 88.302(b), 89.112, and 90.112(b), Pennsylvania is proposing to require a minimum static safety factor of 1.3 for dams, ponds, embankments, and impoundments. At subsections 87.112(b)(1) and 89.101(a), Pennsylvania is proposing to require that impoundments that meet or exceed MSHA size classification of 30 CFR 77.216(a) be designed and certified by a qualified registered professional engineer with assistance, as necessary, from experts in related fields. Impoundments not meeting or exceeding MSHA size classification are to be designed and certified by a qualified registered professional engineer or land surveyor. Each impoundment shall be certified that it has been constructed and is being maintained as designed in accordance with the approved plan and performance standards. At subsection 90.112(b)(1), Pennsylvania is proposing to require that each impoundment be certified that it has been constructed or is being maintained as designed in accordance with applicable performance standards. The Federal regulations at 30 CFR 780.25/784.16(a)(2), and (3) specify the design, certification, and stability requirements for impoundments. The Federal regulations at 816/817.49(a)(4)(ii) contain the 1.3 static safety factor requirement for impoundments not meeting the size or other criteria of 30 CFR 77.216(a). The Director finds that the proposed Pennsylvania revisions are substantively identical to these requirements in the Federal regulations. The proposed revision also satisfies two required amendments. At 30 CFR 938.16(t), Pennsylvania was required to ensure that all impoundments which meet or exceed the MSHA size classification are designed and certified by or under the direction of a qualified registered professional engineer. At 30 CFR 938.16(u), Pennsylvania was required to ensure that all impoundments be certified that they have been constructed and are being maintained as designed in accordance with the approved plan and performance standards.

At subsections 87.112(d) and 89.101(b), Pennsylvania is proposing to require that impoundments that meet or exceed the MSHA size classification or other criteria of 30 CFR 77.216(a) be inspected and certified by a qualified registered professional engineer. Impoundments not meeting or exceeding the MSHA size classification or criteria are to be inspected during construction and certified after construction and annually thereafter by a qualified registered professional engineer or land surveyor until removal of the structure or release of the performance bond. The engineer or surveyor must be experienced in the construction of impoundments. The Federal regulations at 30 CFR 816/817.49(a)(11) contain these same inspection requirements for impoundments. Therefore, the Director finds that the proposed Pennsylvania revisions are substantively identical to these requirements in the Federal regulations.

At subsections 87.112(f), 89.101(d), and 90.112(f), Pennsylvania is proposing to clarify that it will consider MSHA's review for impoundments. It will, however, review impoundments as required under subsection (a). The Director finds that the proposed Pennsylvania revision is substantively identical to the Federal regulations at 30 CFR 780.25/784.16(c)(2), pertaining to reclamation plans for impoundments. The proposed revision also satisfies the required amendment at 30 CFR 938.16(v) which allows Pennsylvania to consider MSHA's action on plans for impoundments but requires it to make its own findings with respect thereto.

17. 87.116—Hydrologic Balance: Groundwater Monitoring—Surface Mines/87.117—Hydrologic Balance: Surface Water Monitoring—Surface Mines/88.105—Hydrologic Balance: Groundwater Monitoring—Anthracite Mines/88.106—Hydrologic Balance: Surface Water Monitoring—Anthracite Surface Mines/88.201—Hydrologic Balance: Groundwater Monitoring—Anthracite Bank Removal/88.202—Hydrologic Balance: Surface Water Monitoring—Anthracite Bank Removal/88.305—Hydrologic Balance: Groundwater Monitoring—Anthracite Refuse Disposal/88.306—Hydrologic Balance: Surface Water Monitoring—Anthracite Refuse Disposal/90.115—Hydrologic Balance: Groundwater Information—Coal Refuse Disposal Performance Standards/90.116—Hydrologic Balance: Surface Water Monitoring—Coal Refuse Disposal Performance Standards

At subsections 87.116(b), 88.105(b), 88.201(b), 88.305(b), 90.115(b), 87.117(a), 88.106(a), 88.202(a), 88.306(a), and 90.116(a), Pennsylvania is proposing to identify the minimum monitoring requirements for groundwater and surface water. These monitoring requirements include: total dissolved solids or specific conductance corrected to 25 degrees C, pH, acidity, alkalinity, total iron, total manganese, sulfates, and water levels. The information is to be reported to the Department every 3 months for each location. At 87.116(d), 88.105(d), 88.201(d), 88.305(d), 90.115(d), 87.117(b), 88.106(b), 88.202(b), 88.306(b), and 90.116(b), the Department is authorized to require monitoring and reporting more frequently than every 3 months and to monitor additional parameters beyond the minimum specified in this section. The Director finds that Pennsylvania's revisions contain the same requirements, and are therefore substantively identical to, the Federal regulations at 30 CFR 780.21 (i) and (j), pertaining to ground and surface water monitoring, except that the Federal regulations do not require the monitoring of acidity, alkalinity, or sulfates. As such, the Pennsylvania proposals are more stringent than their Federal counterparts. Therefore, in accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), these Pennsylvania proposed amendments are not inconsistent with SMCRA.

18. 87.127—Use of Explosives: Blasting

At subsection (h), Pennsylvania is proposing to require that maximum

peak particle velocity may not exceed the values approved in the blast plan. It also includes frequency of vibration as a factor that the Department may consider in reducing the maximum peak particle velocity allowed. The Director finds that the proposed revision is no less effective than the Federal regulations at 30 CFR 816.67(d)(1) and (d)(5) pertaining to ground vibrations. The proposed revision also satisfies the required amendment at 30 CFR 938.16(y) which required Pennsylvania to ensure that all structures in the vicinity of the blasting area be protected from damage by establishing maximum allowable limits on the ground vibration.

At subsection (i)(2), Pennsylvania is proposing to exempt from maximum peak particle velocity limitations those structures located on the permit area when the owner and lessee, if leased to another party, of the structure have each signed a waiver releasing the vibration limit. The Federal regulations at 30 CFR 816.67(e)(1) and (2) exempt those structures outside the permit area owned by the permittee and not leased, or owned and leased with a written wavier by the leasee. The Federal peak particle velocity limitations do not apply, however, to structures inside the permit area. In its letter dated March 28, 1997, Pennsylvania states that while OSM's general provisions pertaining to the prevention of the adverse effects of explosives apply only to damage outside the permit area, Pennsylvania allows a waiver of vibration limits inside the permit area only, where the Federal peak particle velocity limitations do not apply anyway. Pennsylvania does not permit waivers outside the permit area and, as such, provides additional protection against damage. Therefore, the Director finds that the proposed revision is not inconsistent with SMCRA.

At subsection (k), Pennsylvania is proposing to require that a seismograph record become part of the blast record within 30 days after it obtained. It shall be analyzed by a qualified independent party. The Director notes that the proposed revisions adds requirements not contained in the Federal regulations at 30 CFR 816.67(d)(2) which require seismograph records for each blast. However, these additional provisions are consistent with the Federal requirement to keep a seismographic record and, therefore, can be approved.

19. 87.129(4)—Use of Explosives: Blasting Records

Pennsylvania is proposing to require that the blast record include the direction and distance, in feet, to the nearest public building and other structures. The Federal regulations at 30 CFR 816.68(d) require only that the blast record include the direction and distance, in feet, from the nearest blasting hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area. However, as noted in Finding 18, above, Pennsylvania applies its air blast and ground vibration standards to buildings within the permit area as well as outside the permit area. As such, Pennsylvania's program is more stringent than the Federal regulations. In order to be consistent with its own requirements, Pennsylvania has amended its blast record provisions to include the direction and distance to the nearest building, regardless of whether the building is located within or outside of the permit area. In accordance with section 505(b) of SMCRA (30 U.S.C. 1255(b)) and 30 CFR 730.11(b), this proposed amendment is not inconsistent with SMCRA.

20. 87.136—Disposal of Noncoal Wastes: Surface Mines/88.321—Disposal of Noncoal Wastes: Anthracite Refuse Disposal/89.63—Disposal of Noncoal Wastes: Underground Mining and Coal Preparation Facilities/90.133—Disposal of Noncoal Wastes: Coal Refuse Disposal

Pennsylvania is proposing to require that noncoal wastes be disposed of or temporarily stored in accordance with the Solid Waste Management Act and related regulations. This requirement is no less effective than the Federal regulations at 30 CFR 816/817.89(b), which provides for final disposal of noncoal wastes in a State approved solid waste disposal area. However, sections 88.321 and 90.133 state that waste materials with low ignition points may not be deposited on or near a coal refuse disposal pile. The Federal regulation at 30 CFR 816.89(c) does not permit any noncoal waste to be deposited in a refuse pile or impounding structure. Pennsylvania's prohibition applies only to its listed materials and other waste materials with low ignition points. Therefore, the Director finds that the proposed Pennsylvania revisions to sections 88.321 and 90.133 are less effective than the Federal regulation. He is also requiring that Pennsylvania amend its program to prohibit any noncoal waste from being deposited in a refuse pile or impounding structure.

21. 88.105(c)—Groundwater Monitoring: Anthracite Mines/88.201(c)—Groundwater Monitoring: Anthracite Bank Removal/88.305(c)—Groundwater Monitoring: Anthracite Refuse Disposal

Pennsylvania is proposing to permit the Department to require the operator to conduct additional hydrologic tests to demonstrate compliance with the groundwater monitoring sections of the regulations. The Federal regulations at 30 CFR 780.21(b)(3) require this additional testing where the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies. Therefore, subsections 88.105(c), 88.201(c) and 88.305(c) are less effective in that they merely allow, but do not require, additional testing as appropriate, and the Director is requiring Pennsylvania to amend its program to require such additional hydrologic testing whenever the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies.

22. 88.381(c)(7)—Coal Preparation Facilities

Pennsylvania is proposing to require that an application include monitoring plans and that surface and ground water information, as well as monitoring plans, be presented in accordance with its regulations pertaining to ground and surface water information. There is no direct Federal counterpart to this proposed amendment. However, the Director finds that the proposed Pennsylvania revision is consistent with the Federal regulation at 30 CFR 785.21, which requires that an operator obtain a permit to operate a coal preparation plant outside the permit area for a specific mine, and that the permit demonstrate that the applicant will comply with the performance standards at 30 CFR Part 827, which standards include the requirement to comply with the Federal regulations at 30 CFR 816.41, pertaining to protection of the hydrologic balance.

23. 89.142(a)(6)(vii)—Maps: Underground Mines and Coal Preparation Facilities

Pennsylvania is proposing to require that maps identify major electric transmission lines by name or numerical reference. While there is no direct Federal counterpart to this requirement, the Director finds that the

proposed Pennsylvania revision is consistent with the Federal regulations at 30 CFR 783.24(e), pertaining to permit application maps, which requires that such maps show the location of major electric transmission lines and pipelines.

24. 89.143(b)(3)(i)(B)—Performance Standards: Underground Mines and Coal Preparation Facilities

Pennsylvania is proposing to require that a pillar lying partially within the support area be considered part of the support area and be consistent with the other support pillars in size and pattern. While this provision has no direct Federal counterpart, the Director finds that it is consistent with the Federal regulations at 30 CFR 784.20(b)(5), pertaining to subsidence control plans, which allows operators the option of leaving pillars of coal in order to prevent or minimize subsidence.

25. 90.39(e)—Impoundments: Coal Refuse Disposal

Pennsylvania is proposing to require that permit application plans provide for the removal of impoundments constructed of or used to impound coal refuse as part of site reclamation. The Director finds that the proposed Pennsylvania revision is no less effective than the Federal regulations at 30 CFR 816/817.84(b)(1) which prohibit the permanent retention of such structures.

26. 90.122—Coal Refuse Disposal

Pennsylvania is proposing, at subsection (j), to delete all exceptions to the prohibition against retaining permanent impoundments or depressions in a completed coal refuse disposal fill. The Director finds that this deletion renders subsection 90.122(j) no less effective than the Federal regulations at 30 CFR 816.84(b)(1), which prohibits the retention of permanent impounding structures constructed of coal mine waste or intended to impound coal mine waste.

27. 90.130—Coal Refuse Dams: Coal Refuse Disposal

Pennsylvania is proposing to delete the provision prohibiting the permanent retention of coal refuse dams as part of the approved postmining landuse. However, because the structures must comply with subsection 90.122(j), which contains the prohibition, the Director finds that the proposed Pennsylvania revision is no less effective than the Federal regulation at 30 CFR 816.84(b)(1).

C. Revisions to Pennsylvania's Regulations With No Corresponding Federal Regulations

1. 77.3(b)—Relationship to Coal Mining

Pennsylvania is proposing to add the provision that the incidental extraction of coal under subsection (a) will conform to section 86.5 pertaining to extraction of coal incidental to noncoal surface mining. There is no Federal counterpart to this provision. However, the Director finds that the proposed regulation is not inconsistent with the requirements of SMCRA and the Federal regulations, which do contain counterparts to the requirements of section 86.5.

2. 86.37(b)—Permits

Pennsylvania is proposing to prohibit an incremental phase approval of a permit if the Department has already issued an incremental phases approval for the area to another permittee, except for an area used for access or haul roads. There is no Federal counterpart to this provision. However, incremental phase approvals of permits are already included in Pennsylvania's approved program, in this same subsection. Therefore, the Director finds that the proposed revision does not render the Pennsylvania program inconsistent with the requirements of SMCRA or the Federal regulations.

3. 86.55(c)—Permit Renewals

Pennsylvania is proposing to require that if a permittee provides a written notice under section (i) pertaining to permits conditioned upon only reclamation activity being performed, the notice shall be filed with the Department at least 180 days before the expiration date of the permit. There is no direct Federal counterpart to this provision. However, the Director finds that the proposed revision is consistent with the Federal regulations at 30 CFR 773.11(a), which allows permittees to forego obtaining permit renewals where only reclamation activities remain to be performed.

4. 87.92(g)—Signs and Markers: Surface Mines/88.82(c)—Signs and Markers: Anthracite Mines/88.182(b)—Signs and Markers: Anthracite Bank Removal/88.282(c)—Signs and Markers: Anthracite Refuse Removal/89.51(h)—Signs and Markers: Underground Mining and Coal Preparation Plans/90.92(g)—Signs and Markers: Coal Refuse Disposal

Pennsylvania is proposing to require that ground and surface water monitoring locations and sampling points used to obtain background information be clearly marked and identified. The requirement may be waived if the monitoring locations or sampling points are obvious or if marking would be objectionable for aesthetic reasons. The Federal regulations at 30 CFR 816/817.11 do not contain this requirement. However, the Director finds that the proposed revisions, which are in addition to the requirements of the Federal regulations, are not inconsistent with SMCRA, in accordance with SMCRA section 505(b) (30 U.S.C. 1255(b)), and 30 CFR 730.11(b).

5. 87.93(d)—Casing and Sealing of Drilled Holes: Surface Mines/88.83(d)—Sealing of Drilled Holes: Anthracite Mines/88.283(d)—Sealing of Drilled Holes—Anthracite Refuse Removal/89.141(d)(4)(ii)—Subsidence Control: Underground Mines

Pennsylvania is proposing to require that gas and oil wells be sealed in accordance with the *Oil and Gas Act (58 P.S.sections 601.101–601.605).* The Federal regulations at 30 CFR 816/817.13 do not contain this requirement. However, the Director finds that the proposed revisions are in addition to those requirements, and are therefore not inconsistent with SMCRA, in accordance with SMCRA section 505(b) (30 U.S.C. 1255(b)), and 30 CFR 730.11(b).

6. 89.144(a)—Public Notice: Underground Mines and Coal Preparation Facilities

Pennsylvania is proposing to require that coal operators provide the Department with a copy of the required notice of intention to mine and return receipt or, if applicable, evidence that the notice was not accepted or deliverable. The Federal regulations contain no direct counterpart requirement. However, the Director finds that the proposed revision is consistent with the Federal regulations at 30 CFR 817.122, which requires notification to all owners of surface property overlying the proposed underground mining operation of the intent to mine.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program. The U.S. Department of Labor, Mine Safety and Health Administration (District 1) and the U.S. Department of the Interior, Fish and Wildlife Service concurred without comment. The U.S. Department of Labor, Mine Safety and Health Administration (District 2) commented that while Pennsylvania's proposed regulations do not permit impounding structures constructed of coal refuse or used to impound coal refuse to be retained permanently, 30 CFR Parts 75 and 77 do not have the same prohibition. The Director notes that Pennsylvania's revisions comply with and are no less effective than the Federal regulations at 30 CFR 816/817.84(b)(1).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq*.) or the Clean Air Act (42 U.S.C. 7401 *et seq*.).

On January 25, 1996, OSM solicited EPA's concurrence with the proposed amendment. On March 14, 1996, EPA gave its written concurrence (Administrative Record No. PA–838.08).

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. None were received.

V. Director's Decision

Based on the above findings, the Director approves with certain exceptions and additional requirements, the proposed amendment as submitted by Pennsylvania on January 23, 1996. He is also requiring that Pennsylvania amend its program to make the following changes. At 86.5(m), Pennsylvania must provide for notification of the operator and any intervenors of a decision not to revoke an exemption. At 86.55(j), Pennsylvania must require that any applications for permit renewal be submitted at least 120 days before the permit expiration date. At 87.108(c), 89.24(c), and 90.108(c), Pennsylvania must require, without exception, that sedimentation ponds cannot be removed sooner than two years after the last augmented seeding. If sedimentation ponds are not always deemed to be the best technology currently available, any ''other treatment facilities'' used must also remain in place for at least two years after the last augmented seeding. At 88.105(c), 88.201(c), and 88.305(c), Pennsylvania must require additional hydrologic testing whenever the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies. At 88.321 and 90.133, Pennsylvania must require that no noncoal waste be deposited in a coal refuse pile or impounding structure. Pennsylvania must also provide counterparts to the Federal regulations at 30 CFR 702.15(d),(e),(f), and 702.17(c)(2), and (c)(3). The Federal regulations require that authorized representatives have the right to enter operations conducting incidental coal extraction and that administrative reviews of the State's determinations be provided.

The Director is removing the following required amendments at 30 CFR 938.16 because they have been satisfied by revisions contained in this submission.

Required Amendment Removed/State Regulation That Satisfies Requirement	
30 CFR 938.16(g)	86/87.1.
30 CFR 938.16(l)	86.156(b).
30 CFR 938.16(q)	86.182(e).
30 CFR 938.16(s)	87.73(c)(1).
30 CFR 938.16(t)	87.112(b)(1), 89.101(a).
30 CFR 938.16(u)	87.112(b)(1), 90.112(b)(1).
30 CFR 938.16(v)	87.112(f), 89.101(d), 90.112(f).
30 CFR 938.16(x)	87.127(e)(2).
30 CFR 938.16(y)	87.127(h).
30 CFR 938.16(z)	87.127(j).
30 CFR 938.16(aa)	87.127(n).
30 CFR 938.16(bb)	87.131(n).
30 CFR 938.16(cc)	87.135(a).
30 CFR 938.16(dd) ...	87.138(c), 89.82(d), 90.150(c).
30 CFR 938.16(ee)	88.24(b)(4)(i).
30 CFR 938.16(ff)	88.61(b)(1).
30 CFR 938.16(gg)	88.491(j).
30 CFR 938.16(ii)	89.34(a)(2)(ii).
30 CFR 938.16(jj)	86.172(b).
30 CFR 938.16(ddd)	86.133(g).

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 938.16 that, within 60 days of the publication of this final rule, Pennsylvania must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Pennsylvania's established administrative or legislative procedures.

The Federal regulations at 30 CFR Part 938, codifying decisions concerning the Pennsylvania program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decisions

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732,15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments

submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined 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 State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 15, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	*	* *
January 23, 1995.	November 7, 1997.	Chapters 86 through 90.

3. Section 938.16 is amended by removing and reserving paragraphs (g), (l), (q), (s), (t), (u), (v), (x), (y), (z), (aa), (bb), (cc), (dd), (ee), (ff), (gg), (ii), (jj), and (ddd); and by adding paragraphs (ppp) through (uuu) to read as follows:

§ 938.16 Required regulatory program amendments.

* * * * *

(ppp) By January 6, 1998, Pennsylvania shall submit a proposed amendment to section 86.5(m), or otherwise amend its program, to provide for notification of the operator and any intervenors of a decision not to revoke an exemption.

(qqq) By January 6, 1998, Pennsylvania shall submit a proposed amendment to subsection 86.55(j), or otherwise amend its program, to require that any applications for permit renewal be submitted at least 120 days before the permit expiration date.

(rrr) By January 6, 1998, Pennsylvania shall submit a proposed amendment to subsections 87.108(c), 89.24(c), and 90.108(c), or otherwise amend its program, to require, without exception, that sedimentation ponds cannot be removed sooner than two years after the last augmented seeding.

(sss) By January 6, 1998, Pennsylvania shall submit proposed amendments to subsections 88.105(c), 88.201(c) and 88.305(c), or otherwise amend its program, to require additional hydrologic testing whenever the PHC determination indicates that adverse impacts may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of surface or ground water supplies.

(ttt) By January 6, 1998, Pennsylvania shall submit a proposed amendment to sections 88.321 and 90.133, or otherwise amend its program, to require that no noncoal waste be deposited in a coal refuse pile or impounding structure.

(uuu) By January 6, 1998, Pennsylvania shall submit a proposed amendment to provide counterparts to the Federal regulations at 30 CFR 702.15 (d), (e), (f) and 702.17 (c)(2) and (c)(3) to require that authorized representatives have the right to enter operations conducting incidental coal extraction and that administrative reviews of the State's determinations be conducted.

[FR Doc. 97–29475 Filed 11–6–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–047]

RIN 2115–AE46

Special Local Regulations; City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Temporary special local regulations are being adopted for the Augusta Port Authority's Head of the South Rowing Regatta. The event will be held from 7 a.m. to 6 p.m. Eastern Standard Time (EST) on November 7 and 8, 1997, on the Savannah River at Augusta, GA.

DATES: This rule becomes effective from 6:30 a.m. to 6:30 p.m. EST on November 7 and 8, 1997.

FOR FURTHER INFORMATION CONTACT: LTJG M.J. DaPonte, Project Manager, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 26, 1997, the Coast Guard published a notice of proposed rulemaking entitled Head of the South Rowing Regatta, in the **Federal Register** (62 FR 50544). The Coast Guard received no comments during the notice of proposed rulemaking. A public hearing was not requested, and none was held.

Background and Purpose

These regulations are needed to provide for the safety of life during the Head of the South Rowing Regatta. The regulations are intended to promote safe navigation on the Savannah River

immediately before, during, and after the race by controlling the traffic entering, exiting, and traveling within the regulated area.

In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective in less than 30 days after **Federal Register** publication. Delaying its effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public. The permit request to hold this event was received by the Coast Guard in late September, leaving insufficient time for a full comment period and delayed effective date. The anticipated number of participants and spectator vessels poses a safety concern which is addressed in these special local regulations. There will be approximately 6000 participants racing singles, doubles, four, and eight person rowing shells on a fixed course. The event will take place on the Savannah River at Augusta, GA between mile marker 200.20 and marker 197.0.

In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective in less than 30 days after **Federal Register** publication. Delaying its effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public. The permit request to hold this event was received by the Coast Guard in late September, leaving insufficient time for a full comment period and delayed effective date.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than 3 nautical miles on the Savannah River between mile markers 200.2 and 197.0, entry into which is prohibited for only twelve hours on each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000. For the reasons stated above in the Regulatory Evaluation, the believes this rule not have a significant effect upon a substantial number of small entities. Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, because these regulations will only be in effect for two days in a limited area of the Savannah River that is seldom used for commerce.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has analyzed in accordance with the principals and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action, and has determined pursuant to Section 2.B.2.e(34)(h) of Commandant Instruction M16475.1B, that it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist has been prepared and are available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations:

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T–07–047 is added to read as follows:

§ 100.35T–07–047 Head of the South Rowing Regatta; Savannah River, Augusta, GA.

(a) *Definitions:*

(1) *Regulated area.* A regulated area is established on that portion of the Savannah River at Augusta, GA, between mile markers 200.2 and 197.0. The regulated area encompasses the width of the Savannah River between these two points.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, SC.

(b) *Special Local Regulations.* Entry into the regulated area by other than event participations is prohibited, unless otherwise authorized by the Coast Guard Commander. After termination of the Head of the South Rowing Regatta on November 7–8, 1997, all vessels may resume normal operations.

(c) *Effective Date.* This section is effective from 6:30 a.m. to 6:30 p.m. EST on November 7 and 8, 1997.

Dated: October 27, 1997.

Norman T. Saunders,

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

[FR Doc. 97–29509 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 97–071]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between July 1, 1997 and September 30, 1997, which was not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** may not have been possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between July 1, 1997 and September 30, 1997, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Christopher S. Keane at (202) 267–6004 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COT) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damages. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register.** Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period July 1, 1997 and September 30, 1997, unless otherwise indicated.

Date: October 31, 1997.

Michael L. Emge,

Commander, U.S. Coast Guard, Executive Security, Marine Safety Council.

QUARTERLY REPORT

District docket	Location	Type	Effective date
01–97–008	Massachusetts Bay, MA	Safety Zone	7/20/97
01–97–046	West Haven, CT	Safety Zone	7/3/97
01–97–049	Subfest Fireworks, Groton, CT	Safety Zone	7/5/97
01–97–050	Point Lookout, NY	Safety Zone	7/6/97
01–97–060	Jones Beach, Wantagh, NY	Safety Zone	7/4/97
01–97–061	Madison, CT	Safety Zone	7/5/97
01–97–062	South Beach, Staten Island, NY	Safety Zone	7/12/97
01–97–065	Hudson River, Kingston, NY	Safety Zone	7/13/97
01–97–066	Upper Bay, New York Harbor	Safety Zone	7/19.97
01–97–067	Wantagh, NY	Safety Zone	7/9/97
01–97–068	Wantagh, NY	Safety Zone	7/10/97
01–97–069	Smith Beach, Mastic Beach, NY	Safety Zone	7/17/97
01–97–072	Hudson River, New York	Safety Zone	8/8/97
01–97–073	Boston, MA	Security Zone	7/22/97
01–97–074	Old Saybrook, CT	Safety Zone	8/3/97
01–97–075	Greenwich, CT	Safety Zone	8/3/97
01–97–076	Brooklyn, NY	Safety Zone	8/22/97
01–97–077	East River, NY	Safety Zone	8/30/97
01–97–078	Staten Island, NY	Safety Zone	9/6/97
01–97–079	Narragansett Bay, Narragannsett, RI	Special Local	7/26/97
01–97–084	Rockaway, NY	Safety Zone	8/6/97
01–97–087	New York Super Boat Race, New York	Safety Zone	7/7/97
01–97–088	Stamford, CT	Safety Zone	8/21/97
01–97–089	Block Island, RI	Safety Zone	8/17/97
01–97–093	Portland, ME	Safety Zone	9/3/97
01–97–094	Portland, ME	Safety Zone	8/30/97
01–97–095	Upper Bay, NY	Safety Zone	9/7/97
01–97–099	Indian Point, NY	Security Zone	9/6/97
01–97–100	Battery Park, NY	Security Zone	9/11/97
01–97–103	East River, NY	Security Zone	9/21/97
01–97–112	Northport Village, NY	Safety Zone	7/16/97
01–97–113	Boston, MA	Safety Zone	8/6/97
05–97–054	Hampton Roads, VA	Safety Zone	7/7/97
05–97–056	Delaware Bay, Delaware River	Safety Zone	7/6/97
05–97–059	Camp Lejeune, NC	Safety Zone	7/12/97
05–97–061	Delaware Bay, Delaware River	Safety Zone	7/22/97
05–97–062	Elizabeth River, VA	Safety Zone	7/28/97
05–97–066	Delaware Bay, Delaware River	Safety Zone	8/8/97
05–97–070	Camp Lejeune, NC	Safety Zone	9/4/97
05–97–073	Elizabeth River, VA	Safety Zone	9/22/97
07–97–042	Bahia De Mayageuz, Puerto Rico	Safety Zone	9/14/97
08–97–017	Ohio River, M. 461 to M. 462	Reg Nav Area	7/2/97

QUARTERLY REPORT—Continued

District docket	Location	Type	Effective date
08–97–023	Oakmont, PA	Special Local	7/26/97
08–97–036	Kaskaskia River, M. 28 to M. 29	Special Local	9/6/97
09–97–017	Tonawanda, NY	Safety Zone	7/4/97
09–97–022	Tonawanda, NY	Safety Zone	7/27/97
09–97–024	Lake Michigan	Safety Zone	7/19/97
09–97–025	Lake Michigan	Security Zone	7/21/97
09–97–026	Lake Michigan	Security Zone	7/23/97
09–97–027	Lake Michigan and Chicago River	Security Zone	8/1/97
13–97–020	Portland, OR	Safety Zone	8/15/97
13–97–021	Tacoma, WA	Safety Zone	8/15/97
13–97–024	Willamette River, Portland, OR	Safety Zone	9/8/97
13–97–025	Bremerton, WA	Safety Zone	8/30/97
17–97–001	Beaufort Sea	Safety Zone	8/13/97

QUARTERLY REPORT

COTP docket	Location	Type	Effective date
Honolulu 97–001	Honolulu, HI	Safety Zone	7/2/97
Honolulu 97–004	Waimanalo Bay, Waimanalo, HI	Safety Zone	9/7/97
Houston-Galveston 97–006	Clear Lake, Houston, TX	Safety Zone	7/4/97
Houston-Galveston MSU 97–005	Galveston, TX	Safety Zone	7/15/97
Huntington 97–003	Ohio River, M. 175.5 to M. 176.5	Safety Zone	8/24/97
Huntington 97–005	Ohio River, M. 163 to M. 164	Safety Zone	9/14/97
LA/LB 97–008	Purisima Point, CA	Safety Zone	9/29/97
Mobile 97–012	Gulf of Mexico, FL	Safety Zone	7/9/97
Mobile 97–17	Destin, FL	Safety Zone	8/30/97
New Orleans 97–014	Mississippi River, M. 94 to M. 95	Safety Zone	7/4/97
New Orleans 97–015	Lake Pontchartrain, Kenner, LA	Safety Zone	7/4/97
New Orleans 97–016	LWR Mississippi River, M. 92 to M. 83.5	Safety Zone	7/25/97
New Orleans 97–017	LWR Mississippi River, M. 94 to M. 95	Safety Zone	7/26/97
Port Arthur 97–002	Neches River, Beaumont, TX	Safety Zone	7/4/97
San Diego Bay 97–002	Copper Canyon, Lake Havasu, Colorado River	Safety Zone	7/3/97
San Diego Bay 97–003	San Diego Bay, CA	Safety Zone	7/25/97
San Francisco Bay 97–009	San Francisco Bay, CA	Safety Zone	7/13/97
San Francisco Bay 97–010	Sacramento River, CA	Safety Zone	9/7/97
San Juan 97–034	San Juan, Puerto Rico	Safety Zone	7/7/97
San Juan 97–036	San Juan, Puerto Rico	Safety Zone	7/23/97
San Juan 97–037	San Juan, Puerto Rico	Safety Zone	7/24/97
San Juan 97–038	Mona Island, Puerto Rico	Safety Zone	7/26/97
San Juan 97–044	San Juan, Puerto Rico	Safety Zone	9/4/97
San Juan 97–049	San Juan, Puerto Rico	Safety Zone	9/28/97
Western Alaska 97–003	Resurrection Bay, Seward, AK	Safety Zone	7/24/97
Western Alaska 97–005	Beaufort Sea	Safety Zone	8/13/97

[FR Doc. 97–29511 Filed 11–6–97; 8:45 am]
BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Ancillary Service Endorsements for Perishable Contents

AGENCY: Postal Service.

ACTION: Final rule; request for comments.

SUMMARY: This final rule extends the use of the endorsement ''Change Service Requested'' to Priority Mail pieces containing perishable articles (excluding live animals) under two conditions: the mail participates in Address Change Service (ACS) and the pieces bear the proper ACS codes, and the pieces bear the appropriate endorsement for change service and the endorsement ''Perishable.'' This final rule also precludes use of the endorsement ''Change Service Requested'' with matter mailed at First-Class rates that contains live animals.

DATES: This final rule is effective on November 7, 1997. Comments must be received on or before December 8, 1997.

ADDRESSES: Mail or deliver written comments to the Manager, Address Management, National Customer Support Center, 6060 Primacy Pkwy STE 201, Memphis TN 38188–0001. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Audrey Conley, (901) 681–4474.

SUPPLEMENTARY INFORMATION: Under Domestic Mail Manual (DMM) F010.5.1, electronic Address Change Service (ACS) mailers may opt to receive a notice of new address or reason for nondelivery by placing the endorsement ''Change Service Requested'' on prescribed subclasses of First-Class Mail. Consistent with DMM F010.5.1, undeliverable as addressed (UAA) pieces bearing this endorsement are disposed of by the Postal Service. Under present standards, the ''Change Service Requested'' endorsement is available

only for First-Class Mail letters and sealed parcels and stamped and postcard subclass mail for which electronic ACS service has been elected. DMM F010.5.1 expressly provides that this endorsement option is not available in conjunction with Priority Mail.

Since the implementation of the ''Change Service Requested'' option on July 1, 1997, the Postal Service has received requests from mailers of perishable articles, such as fruits, to have the ''Change Service Requested'' endorsement apply to Priority Mail pieces. Some mailers of such items indicate that they would prefer that UAA pieces whose contents include perishables be destroyed, rather than returned or forwarded, because such items may spoil before reaching the addressee at a new address or the sender if returned. This measure would, moreover, improve customer satisfaction for these mailers, in that they would acquire the information that they need to send a fresh replacement to an addressee at a new address, if appropriate, in lieu of having spoiled contents forwarded to the addressee or returned to sender. This measure also benefits the Postal Service by eliminating the need to forward or return pieces containing perishable items which would be of no use or value to either the sender or the recipient.

To accommodate mailers of perishable items, the Postal Service has determined to extend the availability of the ''Change Service Requested'' endorsement option to Priority Mail pieces that also bear the marking ''Perishable'' and for which electronic ACS service has been elected. Since this option is available only to ACS mailers and only for Priority Mail pieces bearing the additional ''perishable'' marking, and given that the use of this endorsement is already permitted for pieces sent via letters and sealed parcels, it is reasonable to conclude that all mailers who elect this option will be aware of the nature of the service provided and the consequences in the event a piece bearing the endorsement is undeliverable as addressed. This change is accordingly effective immediately.

The Postal Service is also amending DMM F010.5.1 for consistency with DMM C022.3.10 and C022.3.12, which establish procedures for acceptance and handling of mail-pieces containing mailable live animals. The Postal Service does not intend that the handling procedures for the endorsement ''Change Service Requested'' replace those established for accepting, marking, and handling, of mail containing live animals; consequently, DMM F010.5.1 is amended to preclude mailers from electing the ''Change Service Requested'' option for mail pieces containing live, mailable animals.

The Postal Service is soliciting comments on this final rule.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following revisions of the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

F FORWARDING AND RELATED SERVICES

F010 Basic Information

* * * * *

5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

5.1 Priority Mail and First-Class Mail

[Revise the ''Change Service Requested'' portion of the table in 5.1 to read as follows:]

* * * * *

''Change Service Requested''	Separate notice of new address or reason for nondelivery provided; in either case, address correction fee charged, piece disposed of by USPS. Use of this endorsement is limited to mail participating in electronic Address Change Service (ACS). It may be used only for: (1) pieces mailed at First-Class rates (excluding live animals) that bear the proper ACS codes, and (2) mail pieces mailed at Priority Mail rates that contain perishable matter (excluding live animals), bear the proper ACS codes, and that bear the endorsement ''Perishable.'' This endorsement must not be used for mail with special services (e.g., certified or registered mail) or for Priority Mail containing non-perishable matter, or for any mail that contains live animals.

* * * * *

F030 Address Correction, Address Change, FASTforward SM, and Return Services

* * * * *

5.0 RETURNING MAIL

* * * * *

5.3 Express Mail, Priority Mail, First-Class Mail

[Amend 5.3 to read as follows:]

Undeliverable-as-addressed mail pieces sent as Express Mail, Priority Mail, and First-Class Mail (including stamped cards and postcards) that cannot be forwarded or delivered as addressed are returned when possible to the sender at no additional charge. Exception: First-Class Mail pieces, and Priority Mail pieces containing perishable contents, that bear the endorsement ''Change Service Requested'' and that cannot be forwarded or delivered as addressed and that do not contain live animals are disposed of by the USPS. Mail of all other classes may be returned to the sender if appropriately endorsed to guarantee return postage.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–29405 Filed 11–6–97; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960717195–7255–03; I.D. 100897E]

RIN 0648–AI95

Fisheries of the Exclusive Economic Zone Off Alaska; Insurance Coverage Provisions for Observer Contractors under the North Pacific Interim Groundfish Observer Program

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations that clarify an insurance coverage provision for observer contractors who provide observer services to vessels and shoreside processors participating in the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to respond to the North Pacific Fishery Management Council's (Council's) Insurance Technical Committee (ITC) recommendation to correct the terminology used to delineate required insurance coverages, by changing the references to ''Contractual General Liability'' to read ''Commercial General Liability.''

DATES: Effective November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION: In 1994, the ITC recommended that standardized insurance coverage provisions be required of

observer contractors who provide observer services to vessels and shoreside processors participating in the groundfish fisheries of the GOA and the BSAI. In 1996, NMFS implemented regulations (61 FR 56425, November 1, 1996) reflecting the ITC's recommendation and required observer contractors to provide NMFS with copies of ''certificates of insurance'' that verified the following coverage provisions: (1) Maritime Liability to cover ''seamen's'' claims under the Merchant Marine Act (Jones Act) and General Maritime Law, (2) coverage under the U.S. Longshore and Harbor Workers' Compensation Act, (3) States Workers' Compensation as required, and (4) Contractual General Liability.

At its June 4, 1997, meeting, the ITC clarified that its 1994 recommendation for standardized insurance provisions was intended to include a requirement for Comprehensive General Liability, not Contractual General Liability. Contractual General Liability refers to an endorsement to a Comprehensive General Liability policy, and extends the liability coverage to an additional party, for example, the vessel owner. In this instance, a contractual endorsement represents a shift in the responsibility of certain liabilities from the vessel owner to the observer contractor. While the observer contractor may offer this endorsement as an opinion in their contracts with vessel owners, the ITC intended that this shift of liability responsibilities be optional, not mandatory.

After the June Council meeting, the ITC clarified further that due to a recent change in the use of the standard liability coverage form used by insurance brokers, Commercial General Liability is the correct term to use, not Comprehensive General Liability.

Therefore, in consultation with the Council's ITC, NMFS clarifies regulations requiring standardized insurance provisions for observer contractors to accurately reflect the original intent of the ITC. Accordingly, NMFS revises the regulation at § 679.50(i) (2) (xiv) (E) *(4)* to clarify that observer contractors are required to provide a certificate of insurance that, in addition to other listed requirements, verifies Commercial General Liability coverage. This change means that observer contractors are not required to carry a contractual endorsement on their Commercial General Liability policy but they could offer the contractual endorsement as an option to the entities with whom they have contracts.

Classification

Pursuant to 5 U.S.C. 553 (b) (B), a rule may be issued without prior notice and opportunity for public comment if providing such notice and comment would be impractical, unnecessary, or contrary to the public interest. Additionally, a rule may be made effective prior to 30 days after its issuance if the rule relieves a restriction pursuant to 5 U.S.C. 553 (d) (1).

This final rule accurately implements the original intent of the ITC and NMFS concerning standardized insurance coverage provisions for observer contractors. The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) finds that providing an opportunity for prior notice and comment on this rule is unnecessary. This rule does not eliminate the basic insurance requirement. Rather, by using the correct terminology, it merely clarifies the original intent to allow vessel owners and observer contractors to choose who pays for a particular type of endorsement. Furthermore, for parties who were previously required to purchase the endorsement, and who opt not to purchase that endorsement in the future, this rule will relieve a restriction. Accordingly, for the reasons set forth above, the Assistant Administrator finds good cause to dispense with prior notice and opportunity for public comment and to make this rule effective immediately upon publication in the **Federal Register**.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*., are inapplicable.

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 30, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq*., 1801 *et seq*., and 3631 *et seq.*

2. In § 679.50, paragraph (i)(2)(xiv)(E)(*4*) is revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

* * * * *

(i) * * *

(2) * * *

(xiv) * * *

(E) * * *

(*4*) Commercial General Liability.

* * * * *

[FR Doc. 97–29507 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 216
Friday, November 7, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–84–AD]

RIN 2120–AA64

Airworthiness Directives; HOAC Austria Model DV–20 Katana Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain HOAC Austria Model DV–20 Katana airplanes. The proposed AD would require replacing the nose wheel leg of the nose landing gear (NLG) with a part of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by the proposed AD are intended to prevent NLG collapse caused by cracks in the welding of the nose wheel tappet of the NLG, which could result in the inability to control the airplane during landing, takeoff, and other ground operations.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–84–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger P. Chudy, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–5688; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–84–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–84–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Austro Control GmbH, which is the airworthiness authority for Austria, recently notified the FAA that an unsafe condition may exist on certain HOAC Austria Model DV–20 Katana airplanes. The Austro Control GmbH reports that an incident of defective welding on the nose wheel tappet of the nose landing gear (NLG) caused the NLG to collapse during a hard landing on one of the referenced airplanes. These conditions, if not corrected, could result in NLG collapse and the inability to control the airplane during landing, takeoff, and other ground operations.

Explanation of the Relevant Service Information

HOAC Austria has issued Diamond Aircraft Industries Service Bulletin No. 20–32, dated April 5, 1996, which specifies procedures for inspecting the weld on the nose wheel tappet of the NLG for cracks. This service bulletin specifies replacement of the nose wheel leg of the NLG with a part of improved design, leg version ''B'', in accordance with the applicable maintenance manual.

The Austro Control GmbH classified this service bulletin as mandatory and issued Austrian AD No. 86, dated May 29, 1996, in order to assure the continued airworthiness of these airplanes in Austria.

FAA's Determination

This airplane model is manufactured in Austria and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Austro Control GmbH has kept the FAA informed of the situation described above.

The FAA has examined the findings of the Austro Control GmbH; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop in other HOAC Austria Model DV–20 Katana airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the nose wheel leg of the NLG with a part of improved design, nose

wheel leg version ''B'', in accordance with the applicable maintenance manual.

Cost Impact

The FAA estimates that 20 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 per hour. Parts cost approximately $900 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,200 or $960 per airplane.

Differences Between the Austrian AD, the Service Bulletin, and This Proposed AD

Austrian AD No. 86, dated May 29, 1996, and Diamond Aircraft Industries Service Bulletin N. 20–32, dated April 5, 1996, both give the owners/operators of certain HOAC Austria Model DV–20 Katana airplanes the option of either (1) repetitively inspecting the weld of the nose wheel tappet in the NLG until cracks are found, at which time immediate modification or replacement (with parts of improved design) would be required; or (2) immediately replacing the weld of the nose wheel tappet in the NLG with parts of improved design.

The FAA's policy is to provide corrective action that will eliminate the need for repetitive inspections. The FAA has determined that long-term operational safety will be better assured by design changes that remove the source of the problem, rather than by repetitive inspections or other special procedures.

Because replacing the nose wheel leg (with parts of improved design) eliminates the need for repetitive inspections, the proposed AD differs from the service bulletin and the Austrian AD in that it would mandate the replacement.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

HOAC Austria: Docket No. 97–CE–84–AD.

Applicability: Model DV–20 Katana airplanes, serial numbers 20005 through 20160, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent nose landing gear (NLG) collapse caused by cracks in the welding of the nose wheel tappet of the NLG, which could result in the inability to control the airplane during landing, takeoff, and other ground operations, accomplish the following:

(a) Replace the nose wheel leg of the NLG with a part of improved design, nose wheel leg version ''B'', in accordance with the applicable maintenance manual.

Note 2: Diamond Aircraft Industries Service Bulletin No. 20–32, dated April 5, 1996, specifies the replacement required by this AD.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to HOAC Austria Ges.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Austrian AD No. 86, dated May 29, 1996.

Issued in Kansas City, Missouri, on October 31, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29408 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–43–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE (Socata) Model TBM 700 airplanes. The proposed AD would require replacing the starter generator mounting adapter

with a part of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent loss of the starter generator caused by failure of the starter generator mounting adapter, which could result in loss of electrical power.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–43–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the SOCATA-Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone 62.41.74.26; facsimile 62.41.74.32; or the Product Support Manager, SOCATA-Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile (954) 964–1668. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–43–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–43–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Socata Model TBM 700 airplanes. The DGAC reports four incidents of cracked starter generator mounting adapters and one incident of a broken adapter. These conditions, if not detected and corrected, could result in loss of electrical power.

Relevant Service Information

Socata has issued Service Bulletin No. SB 70–072, dated January 1996, which specifies procedures for replacing the starter generator mounting adapter with a part of new design. The parts necessary for this replacement are included in Socata Kit No. OPT70K0058–24.

The DGAC classified this service bulletin as mandatory and issued French AD 95–242(B)R1, dated February 28, 1996, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Socata Model TBM 700 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the starter generator mounting adapter with a part of improved design by incorporating Socata Kit No. OPT70K0058–24. Accomplishment of the proposed replacement would be in accordance with Socata Service Bulletin No. SB 70–072, dated January 1996.

Cost Impact

The FAA estimates that 55 airplanes in the U.S. registry would be affected by the proposed AD.

The proposed replacement would take approximately 2 workhours per airplane to accomplish, at an average labor rate of approximately $60 an hour. Parts to accomplish the proposed AD will be provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,600 or $120 per airplane.

Differences Between the French AD, the Service Bulletin, and This Proposed AD

French AD 95–242(B)R1, dated February 28, 1996, and Socata Service Bulletin No. SB 70–072, dated January 1996, both give the owners/operators of certain Model TBM 700 airplanes the option of replacing the starter generator mounting adapter immediately or inspecting this adapter for cracks every 25 hours time-in-service (TIS) up to 100 hours TIS, at which time the replacement is mandatory. This allows the owners/operators the option of having their airplanes inspected up to three times before mandatory replacement, provided no cracked adapters were found, which, if found cracked, would require immediate replacement.

The FAA has determined that, since the parts for the replacement are free; the parts are available; and the action takes less than 2 workhours to accomplish, 25 hours TIS would be adequate time to incorporate the replacement. If followed with a final rule, the proposed AD would require replacing the starter generator mounting adapter within 25 hours TIS, and would not allow the option of repetitively

inspecting every 25 hours TIS up to 100 hours TIS.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

SOCATA—Groupe Aerospatiale: Docket No. 97–CE–43–AD.

Applicability: Model TBM 700 airplanes, serial numbers 1 through 109, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 25 hours time-in-service (TIS), unless already accomplished.

To prevent loss of the starter generator caused by failure of the starter generator mounting adapter, which could result in loss of electrical power, accomplish the following:

(a) Replace the starter generator mounting adapter with a part of improved design by incorporating Socata Kit No. OPT70K0058–24. This replacement shall be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Socata Service Bulletin No. SB 70–072, dated January 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. These documents may also be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in French AD 95–242(B)R1, dated February 28, 1996.

Issued in Kansas City, Missouri, on October 31, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29411 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–109–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require replacement of the main landing gear (MLG) uplocks with new or modified MLG uplocks. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the MLG to lock in the stowed position due to ice accumulation on the uplock hook and roller assembly, which could result in the inadvertent deployment of the MLG during flight.

DATES: Comments must be received by December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–109–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes equipped with particular main landing gear (MLG) uplocks. The LBA advises that it has received a report of an in-flight event in which the MLG failed to lock in the stowed position. This locking failure was attributed to ice accumulation on the uplock hook and roller assembly. This condition, if not corrected, could result in the inadvertent deployment of the MLG during flight.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–32–183, dated October 9, 1996, which describes procedures for replacement of the uplocks of the right- and left-hand MLG with new or modified uplocks. The new and modified uplocks have a chamfer added in the inside part of the hook, and a relocated radius center in the inside part of the hook to increase the gap with the gear roller. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 96–322, dated December 5, 1996, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 Dornier Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no charge to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $12,000, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier: Docket 97–NM–109–AD.

Applicability: Model 328–100 airplanes equipped with main landing gear (MLG) uplocks having part number 22405–000–03, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG to lock in the stowed position, and consequent inadvertent deployment of the MLG during flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, replace the right- and left-hand MLG uplocks with new or modified uplocks, in accordance with Dornier Service Bulletin SB–328–32–183, dated October 9, 1996.

(b) As of the effective date of this AD, no person shall install an MLG uplock having part number 22405–000–03 on the landing gear of any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–322, dated December 5, 1996.

Issued in Renton, Washington, on October 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29412 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–113–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require replacement of certain electrical terminals with new electrical terminals. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent loose electrical connections from causing an increase in electrical resistance, which could result in overheating at the electrical terminals and consequent smoke/fire in the airplane passenger cabin.

DATES: Comments must be received by December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–113-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–113–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier 328–100 series airplanes. The LBA advises that, during a failed startup of an engine, the flight crew detected a smell of burned cables. This failure was attributed to loose electrical connections in the passenger cabin, which caused an increase in the electrical resistance. This condition, if not corrected, could result in overheating at the electrical terminals and consequent smoke/fire in the airplane passenger cabin.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–24–188, dated September 11, 1996, which describes procedures for replacement of certain electrical terminals in the passenger cabin with new electrical terminals. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 96–291, dated November 7, 1996, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA

has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 7 Dornier Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $840, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier: Docket 97–NM–113–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3015 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loose electrical connections from causing an increase in electrical resistance, which could result in overheating at the electrical terminals and consequent smoke/fire in the airplane passenger cabin, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, replace the electrical terminals in the passenger cabin with new electrical terminals, in accordance with Dornier Service Bulletin SB–328–24–188, dated September 11, 1996.

(b) As of the effective date of this AD, no person shall install an electrical terminal having part number 001A903A8010002, 001A903A8020002, or 001A903A8030002 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116, FAA.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–291, dated November 7, 1996.

Issued in Renton, Washington, on October 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29413 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–77–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB9, TB10, TB20, TB21, and TB200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE (Socata) Models TB9, TB10, TB20, TB21, and TB200 airplanes. The proposed AD would require inspecting the bolts and spacers of the upper attachments of the front belts for cracks, dents, etc. (damage); replacing any damaged bolts or spacers; incorporating a front belts upper attachment reinforcement kit; and reconditioning the belts. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent failure of the upper seat belt attachment caused by excessive loads on the upper attachment of the belt, which could result in bodily injury to the occupants during landing.

DATES: Comments must be received on or before December 15, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–77–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone 62.41.74.26; facsimile 62.41.74.32; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile (954) 964–1668. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–77–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–77–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Socata Models TB9, TB10, TB20, TB21, and TB200 airplanes. The DGAC advises that the upper attachment of the seat belts could exceed maximum load requirements during an emergency landing condition, causing failure of these seat belt upper attachments. This condition, if not detected and corrected, could result in bodily injury to the occupants during landing.

Relevant Service Information

Socata has issued Service Bulletin No. SB 10–103 and Service Bulletin No. SB 10–104, both dated June 1996. These service bulletins specify procedures for inspecting the bolts and spacers of the upper attachments of the front belts for cracks, dents, etc. (damage); replacing any damaged bolts or spacers; incorporating a front belts upper attachment reinforcement kit; and reconditioning the belts. Service Bulletin No. SB 10–103 applies to Socata Models TB10, TB20, TB21, and TB200 airplanes, and Model TB9 airplanes equipped with upholstering on the upper duct posts. Service Bulletin No. SB 10–104 applies to Socata Model TB9 airplanes not equipped with upholstering on the upper duct posts.

The DGAC classified these service bulletins as mandatory and issued French AD 96–142(A) and French AD 96–143(A), both dated July 17, 1996, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Socata Models TB9, TB10, TB20, TB21, and TB200 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the bolts and spacers of the upper attachments of the front belts for cracks, dents, etc. (damage); replacing any damaged bolts or spacers; incorporating a front belts upper attachment reinforcement kit; and reconditioning the belts. Accomplishment of the proposed actions would be in accordance with the service bulletins previously referenced.

Cost Impact

The FAA estimates that 320 airplanes in the U.S. registry would be affected by the proposed AD.

Accomplishing the proposed replacement would take approximately 3 workhours per airplane, at an average labor rate of approximately $60 an hour. Parts to accomplish the proposed AD cost approximately $300. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $153,600 or $480 per airplane.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

SOCATA—Groupe Aerospatiale: Docket No. 97–CE–77–AD.

Applicability: Models TB9, TB10, TB20, TB21, and TB200 airplanes, serial numbers 1 through 1701; 1707 to 1750; 1758 to 1763; 1767, 1768, and 1769, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the upper seat belt attachment caused by excessive loads on the upper attachment of the belt, which could result in bodily injury to the occupants during landing, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect the bolts and spacers of the upper attachments of the front belts for cracks, dents, etc. (damage), in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of one of the following service bulletins, as applicable:

(1) Socata Service Bulletin No. SB 10–103, dated June 1996, which applies to Socata Models TB10, TB20, TB21, and TB200 airplanes, and Model TB9 airplanes equipped with upholstering on the upper duct posts.

(2) Socata Service Bulletin No. SB 10–104, dated June 1996, which applies to Socata Model TB9 airplanes not equipped with upholstering on the upper duct posts.

(b) Prior to further flight, replace any damaged bolts or spacers found during the inspection required by paragraph (a) of this AD.

(c) Within the next 50 hours TIS after the effective date of this AD, incorporate either front belts upper attachment reinforcement kit No. OPT10 921000 or OPT10 920900 and recondition the belts in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of the applicable service bulletin referenced in paragraph (a)(1) or (a)(2) of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. These documents may also be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in French AD 96–142(A) and French AD 96–143(A), both dated July 17, 1996.

Issued in Kansas City, Missouri, on October 31, 1997.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29422 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–236–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require inspections to detect discrepancies of the support straps of the flaps and adjacent areas, and corrective action, if necessary; it would also require replacement of the support straps with new straps made of steel. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the support straps of the flaps, which could result in further damage to the flap structure, and consequently lead to reduced controllability of the airplane.

DATES: Comments must be received by December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–236–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA,Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–236–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No.97–NM–236–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that it received a report indicating that, during a scheduled inspection, fatigue cracks were found in flap support straps. Such fatigue cracking, if not detected and corrected in a timely manner, could result in damage to the flap structure, and consequently lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–57–033, dated May 29, 1997, Revision 1, dated August 18, 1997, which describes procedures for visual and detailed inspections to detect discrepancies of the flap support straps and adjacent areas, and corrective action, if necessary. The service bulletin also describes procedures for replacement of the support straps of the flaps with new straps made of steel. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–117, dated June 9, 1997, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Revision 1 of the service bulletin described previously, except as specified below.

Differences Between the Proposed AD and the Related Service Information

This proposed AD would differ from Saab Service Bulletin 340–57–033, Revision 1, dated August 18, 1997, in that the service bulletin recommends that any crack detected during an inspection be repaired in accordance with instructions that would be provided by the manufacturer. However, the FAA has determined that the repair of any crack would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 252 Saab Model SAAB SF340A and SAAB 340B series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 30 work hours per airplane to accomplish the proposed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection proposed by this AD on U.S. operators is estimated to be a total of $1,800 per airplane.

It would take approximately 180 work hours per airplane to accomplish the proposed detailed visual inspection and concurrent replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,580 per airplane. Based on these figures, the cost impact of the detailed visual inspection and replacement proposed by this AD on U.S. operators is estimated to be $3,875,760, or $15,380 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 97–NM–236–AD.

Applicability: Model SAAB SF340A and SAAB 340B series airplanes, as listed in Saab Service Bulletin 340–57–033, Revision 1, dated August 18, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the flap support straps, which could result in further damage to the flap structure and reduced controllability of the airplane, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Prior to the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, perform a visual inspection to detect discrepancies (i.e., cracking and/or damage) of the support straps of the left-and right-hand flaps and adjacent areas, in accordance with Saab Service Bulletin 340–57–033, Revision 1, dated August 18, 1997. If any discrepancy is detected, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) At the next scheduled structural inspection of the flaps, but not later than the accumulation of 3,000 flight cycles after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD, in accordance with Saab Service Bulletin 340–57–033, Revision 1, dated August 18, 1997. Accomplishment of the inspection and replacement specified in paragraphs (b)(1) and (b)(2) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) Perform a detailed inspection to detect discrepancies (i.e., cracking and/or damage) of the support straps of the left-and right-hand flaps and adjacent areas, in accordance with the service bulletin. If any discrepancy is detected, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116. And,

(2) Replace the support straps of the left- and right-hand flaps with new straps made of steel, in accordance with the service bulletin.

(c) As of the effective date of this AD, no person shall install a flap assembly having part number 7257800–501 through –508 inclusive, –571, –572, or –851 through –858 inclusive, on any airplane, unless that flap assembly has been modified in accordance with Saab Service Bulletin 340–57–033, Revision 1, dated August 18, 1997.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–117, dated June 9, 1997.

Issued in Renton, Washington, on October 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29421 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require replacement of a capacitor of the main landing gear (MLG) circuitry with a new electrolytic capacitor having a tantalum casing. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the failure of the landing gear to retract properly as a result of failure of a capacitor in the MLG circuitry and subsequent power interruption.

DATES: Comments must be received by December 8, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–179–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–179–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that it has received reports that, during functional tests of the landing gear safety valve, the main landing gear (MLG) retraction cycle was interrupted. Investigation revealed that the interruption was attributed to the rupture of a capacitor; this capacitor normally enables the continuation of the gear retraction cycle in the event of power interruption. Failure of this capacitor in the MLG circuitry combined with electrical power interruption, if not corrected, could result in failure of the MLG to retract properly.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–32–1139, Revision 1, dated December 30, 1994, which describes procedures for replacement of a capacitor of the MLG circuitry with a new electrolytic capacitor having a tantalum casing. Replacement with the new capacitor would eliminate the possibility and consequences of its rupture. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–187–085(B)R2, dated January 29, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 31 Airbus Model A320 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost for required parts would be minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,720, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 97–NM–179–AD.

Applicability: Model A320 series airplanes on which Airbus Modification 21574 (Airbus Service Bulletin A320–32–1139, Revision 1, dated December 30, 1994) or 21999 has not been installed, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) to retract properly as a result of failure of a capacitor in the landing gear circuitry and subsequent electrical power interruption, accomplish the following:

(a) Within 8 months after the effective date of this AD, replace capacitor 57GA installed in electronic rack 90VU with a new electrolytic capacitor having a tantalum casing, in accordance with Airbus Service Bulletin A320–32–1139, Revision 1, dated December 30, 1994.

(b) As of the effective date of this AD, no person shall install a capacitor having part number 57GA (without a tantalum casing) in the main landing gear circuitry on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–187–085(B)R2, dated January 29, 1997.

Issued in Renton, Washington, on October 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–29420 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Dockets Nos. OST–97–3014 and OST–97–2881]

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary, (DOT).

ACTION: Request for comments, petition for rulemaking on rules governing computer reservations systems.

SUMMARY: The Department is inviting interested persons to comment on a petition for rulemaking filed by American West Airlines that requests two new rules governing computer reservations systems (CRSs). America West asks the Department to amend its CRS rules (14 CFR Part 255) to include a prohibition against certain CRS practices that allegedly impose higher booking fee costs on airlines and enable travels agents to make transactions that damage an airline's ability to control its inventory. The Department invites persons wishing to comment on America West's proposal to include those comments in their responses to the Department's advance notice of proposed rulemaking in Docket OST–97–2881.

DATES: Comments and reply comments must be submitted on or before December 9, 1997, and January 23, 1998, respectively, the due dates for comments and reply comments in Docket No. OST–97–2881.

ADDRESSES: Comments must be filed in Room PL401, Docket OST–97–2881, U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file six copies of its comments. The comments should state that they are filed in Docket OST–97–2881.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: The Department adopted its regulations governing CRSs, 14 CFR Part 255, because, if CRS firms were unregulated, they could use the systems to injure airline competition and deny consumers and travel agents access to accurate and complete information on airline services. We recently began a proceeding to reexamine our regulations to see whether they are still necessary and, if so, whether they should be changed, by publishing an advance notice of proposed rulemaking. 62 FR 47606, September 10, 1997. The comments and reply comments on that advance notice will be due on December 9, 1997, and January 23, 1998, under the revised comment schedule established by us.

We note that the rules will expire on December 31, 1997, unless we change the termination date. We are holding an expedited rulemaking proceeding to consider amending the rules' sunset provision so that the rules will remain in effect during our overall examination of them, as we noted in the advance notice, 62 FR at 47610–47611.

The advance notice summarizes our findings in earlier proceedings on the need for CRS rules and lists a number of issues that parties should address in their comments. 62 FR at 47607, 47609–47610. Among other things, the advance notice describes our past findings that market forces do not discipline the prices and quality of service offered by systems to participating airlines (participating airlines are the airlines whose services are sold through a system). 62 FR at 47608. *See also* 61 FR 42197, 42198, 42201–42202, August 14, 1996. Whether these findings are still valid is one of the issues that will be considered in our reexamination of the rules.

After we published the advance notice, America West filed a petition for proposed rulemaking that asks up to adopt two rules to stop CRS practices that allegedly impose unreasonable costs on participating airlines. America West alleges that each system offers incentive programs to travel agencies that encourage travel agents to make unnecessary and abusive airline transactions. A travel agency typically pays a much lower fee (or no fee) for CRS services if it makes a certain number of booking transactions each month. According to America West, a travel agency may have an incentive to make illegitimate booking transactions because doing so will enable it to receive CRS services at lower cost, even though the agency's legitimate transactions are too few to make the agency eligible for the discounted fees. America West asserts that travel agencies also make illegitimate or unnecessary books transactions for other reasons. Whatever the reason, all booking transactions generally impose a booking fee liability on a participating airline.

America West contends that, since each system uses a transactional methodology for calculating booking fees (the fees charged participating airlines), an airline must pay fees whenever travel agents conduct transactions involving its services, whether or not the transaction benefits the airline or results in the airline's carrying revenue passengers. According to America West, a participating airline like itself therefore must pay fees for many booking transactions that allegedly provide it no benefit. America West further asserts that the systems refuse to make any real effort to stop illegitimate travel agent transactions that create booking fee revenue for the systems. America West additionally charges that Sabre and Apollo, the two largest systems, each protects its major airline affiliate, respectively American and United, from similar abuses by denying travel agents the ability to conduct certain types of transactions that often lead to illegitimate bookings. America West alleges that the systems, however, have been unwilling to provide similar protection for participating airlines. Finally, America West alleges that the Internet has made matters worse, for the Internet booking sites created by travel agencies and other firms use a CRS as the booking engine.

America West therefore asks us to adopt rules allowing systems to charge booking fees only for a transaction involving actual travel and requiring each system to deny its travel agency

users the ability to create a passive booking on an airline if that airline asks the system to terminate that capability (a passive booking is a booking transaction that is not sent to the airline's internal reservations system).

We believe that the issues raised by America West's petition warrant further consideration. We are aware of complaints from other participating airlines raising similar concerns. Our advance notice of proposed rulemaking in Docket OST–97–2881 therefore included this among the specific issues that we asked commenters to address. 62 FR at 47610 (para. 12). We thus intended to consider this issue in our overall reexamination of the rules.

To facilitate our consideration of the issues presented by the America West petition, commenters should include their responses to the petition in their comments and reply comments on our advance notice of proposed rulemaking. America West itself is filing its petition as a response to the advance notice. Petition at 2, n. 2. Considering America West's proposals in that proceeding, Docket OST–97–2881, will be more efficient than considering them in a separate docket. Commenters therefore should not file comments on the petition in the docket for America West's petition.

Issued in Washington, DC on October 31, 1997, under authority delegated by 49 CFR § 1.56a(h)2.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–29467 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–243025–96]

RIN 1545–AU61

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking, amendment to notice of proposed rulemaking, and notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** (54 FR 9460) on March 7, 1989 and amends proposed regulations relating to changes in family status. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by February 5, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–243025–96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-243025–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Sharon Cohen, (202) 622–6080; concerning submissions or to request a public hearing, Evangelista Lee, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Q&A–8 of § 1.125–1 [1] and Q&A–6(c) and (d) of § 1.125–2 [2] provide that a participant may make benefit election changes pursuant to changes in family status and separation from service. The temporary regulations set forth the standards under which a cafeteria plan can allow an employee to change his or her health coverage election during a period of coverage to conform with the special enrollment rights under the Health Insurance Portability and Accountability Act of 1996, and to change his or her health coverage or group-term life insurance coverage in a variety of other ''change in status'' situations. Thus, these proposed regulations modify Q&A–8 of § 1.125–1 and Q&A–6(c) and (d) of § 1.125–2, and clarify that the ''change in family status rules'' in the existing proposed regulations continue to apply to qualified benefits (including dependent care assistance under section 129 and adoption assistance under section 137) other than accident or health coverage and group-term life insurance coverage. Election changes continue to be permitted where there has been a significant change in the health coverage of the employee or spouse attributable to the spouses's employment.

In addition, the temporary regulations provide that the rules of section 401(k) and (m), rather than the rules in the temporary regulations that apply to other qualified benefits, govern election changes under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or with respect to employee contributions under section 401(m). Therefore, the proposed regulations withdraw Q&A–6(f) of § 1.125–2.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 125. The temporary regulations contain rules relating to the circumstances under which a cafeteria plan participant may revoke an existing election and make a new election during a period of coverage.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any

[1] Published as a proposed rule at 49 FR 19321 (May 7, 1984).

[2] Published as a proposed rule at 54 FR 9460 (March 7, 1989).

person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Catherine Fuller and Sharon Cohen, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, § 1.125–2 Q&A–6(f) in the notice of proposed rulemaking that was published on March 7, 1989 (54 FR 9460) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

Amendments to Previously Proposed Rules

Accordingly, the proposed rules published on May 7, 1984 (49 FR 19321) and March 7, 1989 (54 FR 9460) are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. In § 1.125–1, as proposed May 7, 1984 (49 FR 19321), in Q&A–8, Q–8 is republished and A–8 is amended by revising the last sentence to read as follows:

§ 1.125–1 Questions and answers relating to cafeteria plan.

* * * * *

Q–8: What requirements apply to participants' elections under a cafeteria plan?

A–8: * * * However, except for benefit elections relating to accident or health plans and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election after the period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage if both the revocation and the new election are on account of and consistent with a change in family status (e.g., marriage, divorce, death of spouse or child, birth or adoption of child, and termination of employment of spouse).

* * * * *

Par. 2. In § 1.125–2, as proposed March 7, 1989 (54 FR 9460), in Q&A–6, Q–6 is republished and A–6 is amended by revising A–6(c) and (d) to read as follows:

§ 1.125–2 Miscellaneous cafeteria plan questions and answers.

* * * * *

Q–6: In what circumstance may participants revoke existing elections and make new elections under a cafeteria plan?

A–6: * * *

(c) *Certain Changes in Family Status.* Except as otherwise provided, in the case of benefits other than accident or health plan coverage and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election during a period of coverage and to make a new election for the remaining portion of the period if the revocation and new election are both on account of a change in family status and are consistent with such change in family status. For purposes of this paragraph (c) of Q&A–6, examples of changes in family status for which a benefit election change may be permitted include the marriage or divorce of the employee, the death of the employee's spouse or a dependent, the birth or adoption of a child of the employee, the termination of employment (or the commencement of employment) of the employee's spouse, the switching from part-time to full-time employment status or from full-time to part-time status by the employee or the employee's spouse, and the taking of an unpaid leave of absence by the employee or the employee's spouse. Benefit election changes are consistent with family status changes only if the election changes are necessary or appropriate as a result of the family status changes. In the case of accident or health plans, election changes are permitted where there has been a significant change in the health coverage of the employee or spouse attributable to the spouse's employment. For additional rules governing cafeteria plan election changes with respect to accident or health plan coverage and group-term life insurance coverage, see § 1.125–1T.

(d) *Separation from Service.* Except with respect to accident or health plan coverage and group-term life insurance coverage, a cafeteria plan may permit an employee who separates from the service of the employer during a period of coverage to revoke existing benefit elections and terminate the receipt of benefits for the remaining portion for the coverage period. The plan must prohibit the employee, if the employee should return to service for the employer, from making new benefit elections for the remaining portion of the period of coverage. For rules governing cafeteria plan election changes with respect to accident or health plan coverage and group-term life insurance coverage, see § 1.125–4T.

* * * * *

Proposed Amendments to the Regulations

In addition, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority for part 1 continues to read in part as follows:

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

Par. 2. Section 1.125–4 is added to read as follows:

[The text of this proposed section is the same as the text of § 1.125–4T published elsewhere in this issue of the **Federal Register.**]

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97–29086 Filed 11–6–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–97–050]

RIN 2115–AE46

Special Local Regulations: BellSouth Winterfest Boat Parade, Broward County, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the BellSouth Winterfest Boat Parade which will be held annually during the second Saturday of December on the waters of the Port Everglades turning basin and the intracoastal waterway from Dania Sound light to the Pompano Beach daybeacon.

DATES: Comments must be received on or before December 8, 1997.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group Miami, 100 MacArthur Cswy Miami Beach, Florida 33139, or may be delivered to the Operations Department at the same address between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 535–4448. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: LTJG J. Delgado, Coast Guard Group Miami, FL at (305) 535–4409.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names, addresses, identify this rulemaking (CGD07–97–050), and the specific section of this proposal to which their comments apply, and give reasons for each comment.

The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned. Persons may request a public hearing by writing to the address under **ADDRESSES** and stating why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

The BellSouth Winterfest Boat Parade is a nighttime parade of approximately 110 pleasure and fishing boats ranging in length from 20 feet to 200 feet decorated with holiday lights. There will be approximately 1000 spectator craft. The parade will form in the staging area at the Port Everglades turning basin then proceed north up the Intracoastal Waterway (ICW) to Lake Santa Barbara where the parade will disband. The regulated area will include the Port Everglades turning basin and the intracoastal waterway from Dania Sound light 35 LLNR 47575 to Pompano Beach daybeacon 74 LLNR 47230.

The regulated area also includes the staging area which is the Port Everglades Turning Basin and that portion of the Intracoastal Waterway extending from Port Everglades Turning Basin to Dania Sound light 35 LLNR 42865. The regulations establish the staging area as a no anchoring area. The regulations also establish no anchorage areas in the vicinity of the viewing area which extends from the Sunrise Blvd Bridge south to New River Sound Day light 3 (LLNR 47240) west of the ICW. While the parade is transiting, these regulations will prohibit nonparticipating vessels from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade unless authorized by the patrol commander. After the passage of the parade participants, all vessels will be allowed to resume normal operations.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into the regulated area is prohibited for only 5 hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as the regulations would only be in effect for approximately five hours each day for one day each year. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

These proposed regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2 of Commandant Instruction M16475.1B. In accordance with that section, this proposed action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact have been prepared and are available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.729 is added to read as follows:

§ 100.729 BellSouth Winterfest Boat Parade; Broward County, FL.

(a) *Regulated Area:* The regulated area will include the Port Everglades turning basin and the intracoastal waterway from Dania Sound light 35 LLNR 47575 to Pompano Beach daybeacon 74 LLNR 47230. The regulated area also includes the staging area which is the Port Everglades Turning Basin and that portion of the Intracoastal Waterway extending from Port Everglades Turning Basin to Dania Sound light 35 LLNR 42865. The regulations establish the staging area as a no anchoring area. The regulations also establish no anchorage areas in the vicinity of the viewing area which extends from the Sunrise Blvd Bridge south to New River Sound Day light 3 (LLNR 47240) west of the ICW.

(b) *Special Local Regulations:*

(1) While the parade is transiting, nonparticipating vessels are prohibited from approaching within 500 feet ahead of the lead vessel in the parade to 500 feet astern of the last participating vessel in the parade to within 50 feet on either side of the parade unless

authorized by the patrol commander. Anchoring in the viewing area is prohibited unless authorized by the Patrol Commander. Entry or anchoring in the staging area is prohibited, unless authorized by the Patrol Commander. After the passage of the parade participants, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective Date:* This section is effective annually on the second Saturday in December from 5 p.m. to 10 p.m. EST.

Dated: October 27, 1997.

Norman T. Saunders,

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

[FR Doc. 97–29508 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5919–3]

Notice of Extension of Comment Period for the GE-Housatonic Site Included in National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 23

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of extension of comment period for GE-Housatonic site.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the GE-Housatonic site in Pittsfield, Massachusetts which was proposed to be added to the National Priorities List (NPL) on September 25, 1997 (62 FR 50450). The comment period was scheduled to end on November 24, 1997. However, due to the unique circumstances surrounding the GE-Housatonic site, the comment period will be extended until March 1, 1998.

The Environmental Protection Agency (EPA) has formed a partnership with several state and federal agencies (intergovernmental team) in order to achieve a comprehensive solution to the environmental problems at the GE/Housatonic River Site in Pittsfield, MA. The Intergovernmental Team is comprised of representatives from EPA, the Massachusetts Department of Environmental Protection, the Massachusetts Executive Office of Environmental Affairs, the Massachusetts Attorney General's Office, the Connecticut Department of Environmental Protection, the Connecticut Attorney General's Office, the US Department of Interior, the US Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the United States Department of Justice. The Intergovernmental Team is attempting to negotiate, with General Electric, a comprehensive solution in lieu of final listing of the General Electric/Housatonic River Site on the National Priorities list. In order to facilitate this intensive and comprehensive negotiation, the EPA has decided to extend the public comment period until March 1, 1998.

Numerous parties, including the public, are directly or indirectly participating in these negotiations. These parties include the City of Pittsfield and other cities and towns downstream of the GE facility, environmental and business groups.

DATES: Comments regarding the GE-Housatonic site must be submitted (postmarked) on or before March 1, 1998.

ADDRESSES:

By Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Federal Express: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to Superfund.Docket@EPAMAIL.EPA.GOV.

E-mailed comments must be followed up by an original and three copies sent by mail or Federal Express.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, State and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

Dated: October 27, 1997.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 97–29481 Filed 11–6–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 90

[WT Docket No. 96–86; FCC 97–373]

The Development of Technical and Spectrum Requirements for Meeting Public Safety Agency Communication Requirements, Establishment of Rules and Requirements for Priority Access Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopts a *Second Notice of Proposed Rulemaking (Second NPRM)* which makes a range of proposals relating to public safety communications in the 746–806 MHz band and in general. The *Second NPRM* discusses goals for establishing a plan to ensure the efficient and effective use of spectrum to meet critical public safety communications needs, proposes and seeks comment on service rules for the 24 megahertz of spectrum that the Commission has proposed to allocate for public safety needs, seeks comment relating to the establishment of wireless priority access services by commercial systems for use in meeting communications needs in emergency and disaster situations, and proposes technical requirements to protect broadcast licensees operating in the 746–806 MHz band from interference. This action is taken as part of the Commission's compliance with its mandate under the Balanced Budget Act of 1997.

DATES: Comments are due on or before December 22, 1997, and reply comments are due on or before January 12, 1998. Written comments by the public on the proposed information collections are due January 6, 1998. Written comments on the proposed information collections must be submitted by the Office of Management and Budget (OMB) on or before January 6, 1998.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room 222, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy

Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503, or via the internet to fain__t@eop.gov.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Mary Woytek, David Siehl, or Jon Reel, Policy Division, (202) 418–1310. For additional information concerning the information collections contained in this *Second NPRM*, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Second NPRM* in WT Docket No. 96–86, FCC 97–373, adopted October 9, 1997, and released October 24, 1997. The complete text of this notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036. This *Second NPRM* contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

This *Second NPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *Second NPRM*, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due January 6, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–XXXX.

Title: Development of Operational, Technical, and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, Establishment of Rules and Requirements for Priority Access Service (*Second NPRM*, WT Docket No. 96–86).

Form No.: N/A.

Type of Review: New Collection.

Respondents: Primary: 55 regional planning committees + 1 national planning committee + 1 standards committee + 2,000 entities applying for extended implementation = 2,057.

Third Party: 6,600 eligible entities (estimate based on 120 per regional committee). (This figure includes 2,000 eligible entities already included as primary respondents that may apply to the Commission for extended implementation.)

Number of Respondents: 6,657.

Estimated Time Per Response: Primary: Regional planning committee: 10,270 hours; National planning committee: 10,000 hours; Standards committee: 10,000 hours; Entity seeking extended implementation: 10 hours;

Third Party: Eligible entity—6 hours.

Total Annual Burden: 644,450 hours.

Total Annual Cost: $0 . There are no capital/startup or operational and maintainance cost associated with this collection. The Commission estimates the respondents will not hire contract staff to prepare the material.

Needs and Uses: In the Balanced Budget Act of 1997, Congress directed the Commission to dedicate 24 megahertz of spectrum in the 746–806 MHz band for public safety services. The enclosed Second Notice of Proposed Rulemaking, FCC 97–393, in WT Docket No. 96–86 proposes service rules to make the spectrum available for licensing.

In order to satisfy local and regional needs and preferences, the Commission proposes that regional planning committees made up of representatives from the public safety community draft and submit of regional plans. The regional plans may include plans for both spectrum reserved for interoperability and spectrum available for general public safety use. Creation of these plans will necessarily impose some burden, both on the eligible entities that make their needs known, and on the planners who seek to accommodate them. In addition, the Commission proposes that a planning committee convene to develop nationwide interoperability policies and procedures, and mentions the possibility that an entity may be formed to assist the Commission in formulating technical standards. Commission personnel will use the information to assign licenses, and may also use the information to determine regional spectrum requirements and to develop technical standards. The information will also be used to determine whether prospective licensees will operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the optimal use of the available frequencies.

Synopsis of the Second Notice of Proposed Rulemaking

1. In this *Second Notice of Proposed Rulemaking (Second NPRM)* the Commission makes a range of proposals relating to public safety communications in the 746–806 MHz spectrum band. The proposals include service rules for the 24 megahertz of spectrum that Congress, in the Balanced Budget Act of 1997, has committed to public safety services;[1] the establishment of wireless priority access services by commercial systems for use in meeting communications needs in emergencies; and technical requirements to protect broadcast licensees operating in the 746–806 MHz band from interference. The Commission notes that this *Second NPRM* does not address all the issues raised in the Notice of Proposed Rulemaking in this proceeding (61 FR 25185, May 20, 1996) (*Public Safety NPRM*) or in the Final Report of the Public Safety Wireless Advisory Committee.[2] To the extent that important issues remain, they will be addressed in future proceedings.

I. Public Safety Communications

A. Interoperability Service Rules

2. The *Second NPRM* first considers service rules in the 746–806 MHz band for public safety interoperability, and discusses the following issues that arise in the context of interoperability: location and amount of interoperability spectrum; types of communication; transmission technology; channel spacing; channel requirements; equipment standards; eligibility, use, and licensing; and trunking and

[1] Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97–157, *Notice of Proposed Rulemaking*, FCC 97–245, 62 FR 41012 (July 31, 1997) (*Allocation NPRM*). Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997).

[2] Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration, September 11, 1996 (PSWAC Final Report).

technical standards. The *Second NPRM* then discusses similar issues for the spectrum that is not reserved for interoperability, *i.e.*, those frequencies to be made available for the use of individual public safety entities.

3. The *Public Safety NPRM* proposed a formal definition of interoperability and related definitions of Infrastructure-independent and Infrastructure-dependent interoperability, and Multi-jurisdictional and Multi-disciplinary interoperability. The PSWAC Final Report adopted these definitions, and additionally proposed that ''mission critical'' communications be defined as that which must be immediate, ubiquitous, reliable and, in most cases, secure. The Commission seeks further comment on these definitions and on any proposals for different definitions.

1. Interoperability Spectrum

Location and Amount of Interoperability Spectrum

4. The Commission proposes to dedicate a significant amount of spectrum in the 746–806 MHz band solely for interoperability communications. The Commission seeks comment on the amount of spectrum that should be dedicated for interoperability communications. The precise amount adopted by the Commission will also reflect the comments and suggestions received in regard to the spacing and number of channels required.

5. The *Second NPRM* also asks commenters who believe that the Commission should attempt to allocate spectrum for interoperability from other public safety bands or elsewhere to indicate which bands should be used to provide such spectrum, and how channels within those bands might be cleared throughout the Nation in order to realize the Commission's goal of nationwide interoperable communications. If commenters believe that interoperability channels should be designated in more than one band, the Commission asks that they indicate how nationwide interoperability can be achieved using channels in different bands.

Types of Communication

6. The *Second NPRM* tentatively concludes that it would be useful to categorize public safety communications into four separate types: voice, data, image/high speed data (image/HSD), and video. In order to determine whether and how each of these types of potential interoperability communications could or should be accommodated in the Commission's designation of interoperability spectrum, comment is solicited on whether the Commission should designate interoperability spectrum for:

- Voice channels only (with data capability on such channels).
- Voice and data channels only.
- Voice, data, image/HSD, slow motion video, and full motion video channels.
- Channels that would accommodate some other combination of uses.

Transmission Technology

7. In order to ensure interoperability among all public safety agencies, an important factor to consider is whether to specify the modulation technology for interoperability channels. Because the Commission's goal is to provide for nationwide interoperability, the Commission tentatively concludes that at a minimum the Commission must specify whether analog FM or digital modulation technologies should be used for interoperability channels. The *Second NPRM* addresses these issues in the context of the various types of interoperability communications the Commission is considering.

Voice

8. The *Second NPRM* invites comment on whether the achievement of interoperability on analog or digital modulation for voice interoperability channels should be specified. In addition, the *Second NPRM* seeks comment regarding whether standards on these channels, whether analog or digital, should be adopted. The Commission asks commenters how long it would take to develop digital standards and whether the time associated with the development process offsets the advantages of digital technology. The Commission also seeks comment regarding whether adopting a digital standard would result in all interoperability equipment being tied to today's digital technology for many years, even if that technology experiences great advances in the next century.

Data, Image/HSD, and Video

9. Given that technical standards will have to be developed regardless of whether analog or digital technology is used for data channels, the Commission proposes to adopt the use of digital modulation on such channels, in order to benefit from the throughput advantages of digital technology. Because image/HSD and video communications also involve the transmission of digital information, the Commission proposes to adopt the use of digital modulation on these channels. The same considerations allotted to data communications would apply to image/HSD and video communications. The *Second NPRM* seeks comment on these proposals.

10. As a related issue, the *Second NPRM* seeks comment regarding whether technical standards should be mandated for data, image/HSD, or video equipment used for interoperability. If so, the *Second NPRM* also asks what technical standards would be necessary on data, image/HSD, and video channels to achieve interoperability if digital systems, or analog-based systems, are employed? In addition, the Commission asks commenters to indicate the data rates they believe are desirable or necessary for each type of digital communication (*i.e.*, data, image/HSD, and video).

Channel Spacing

11. An important consideration in deciding how spectrum should be designated for different types of interoperable communications is the spacing of the channels needed to support such communications. The *Second NPRM* therefore explores this issue with respect to each of the four categories of interoperable communications discussed above, and requests comment on any other categories that may be appropriate.

12. The Commission seeks comment regarding the following issues relating to channel spacing for interoperability channels:

- What channel spacing is needed to ensure appropriate voice quality and clarity for voice interoperability channels?
- Should the interoperability channels be spaced 25 kilohertz apart to more easily enable these channels to be incorporated into equipment operating in the 806–821 MHz band? Or should the Commission consider a transition to 12.5 kHz channels for the 806–821 MHz band?
- What channel spacing is needed to ensure appropriate data capacity for data interoperability channels?
- To what extent might voice channels also be used by public safety personnel to carry data?

13. The *Second NPRM* seeks comment on what channel spacings should be adopted for voice, data, image/hsd, and video interoperability channels. The Commission requests that commenters consider issues such as the use of analog or digital technology and the appropriate data rates for different types of communications, and discuss their rationale in suggesting appropriate channel spacings for voice, data, image/HSD, slow motion video, and full

motion video channels. The Commission also asks commenters to indicate whether the channel spacings they suggest are based on current or future state-of-the-art technology in digital efficiency, as measured in bits/second/Hertz.

Channel Requirements

14. The *Second NPRM* seeks input regarding the number of interoperability channels that should be designated for each type of communication described above, and with regard to additional factors related to channelization, such as the number of paired or unpaired channels needed for the various types of communications.

15. Specifically, the *Second NPRM* seeks comment on the number of channels that commenters believe should be dedicated for interoperability uses for: voice transmissions (mobile-only, or base and mobile channel pairs); data transmissions (base-only, or base and mobile channel pairs); image/HSD transmissions (base-only, or base and mobile channel pairs); slow motion video transmissions (mobile-only, or base and mobile channel pairs); and full motion video transmissions (mobile-only, or base and mobile channel pairs). In commenting on the number of interoperability channels that should be designated, the Commission asks interested parties to indicate the channel spacing they assume for each type of channel.

Equipment Standards

16. The Commission recognizes that poor quality receivers could impede communications on the interoperability channels, and so invites comment as to whether to establish receiver standards for the interoperability channels. The Commission observes that its authority to regulate receiver standards may be limited. It notes, for example, that § 302(a) of the Communications Act grants the Commission specific authority to regulate the susceptibility to interference of home electronic equipment such as TV receivers. The Commission therefore asks those commenters recommending mandatory receiver standards to indicate the technical parameters to be standardized and to address the Commission's legal authority to adopt such standards.

17. The *Second NPRM* also seeks comment regarding whether the Commission should require that all public safety mobile and portable radios operating in the 746–806 MHz band be capable of operating on all voice and data interoperability channels in that band. In addition, the *Second NPRM* invites comment regarding whether it is technically feasible to incorporate the 746–806 MHz interoperability channels into mobile and portable radios operating in the 806–824/851–869 MHz band, and whether doing so is dependent on whether the Commission employs television Channels 68 and 69 for mobile-to-base transmissions or whether the Commission decides instead to use television Channels 63 and 64 for some or all mobile-to-base transmissions. If incorporating 746–806 MHz interoperability channels into 806–824/851–869 MHz mobile and portable radios is technically feasible, commenters are asked to address whether the Commission should require that all public safety mobile and portable radios operating in 806–824/851–869 MHz band manufactured or imported beginning one year after the effective date of the Report and Order adopted in this proceeding, be capable of operating on the interoperability channels in the 746–806 MHz band.

18. On the other hand, the Commission suggests that the best and easiest way to provide for mobile and portable radio equipment on these channels might be for equipment manufacturers to build ''interoperability radios'' (*i.e.*, radios that transmit and receive only on voice and data interoperability channels). The *Second NPRM* seeks comment on this option, and on the trade-offs between this and the previous option (of requiring all radios to operate on the interoperability channels).

2. Eligibility, Use, and Licensing

Definitions

19. The *Public Safety NPRM* tentatively concluded that the Commission should adopt formal definitions relating to public safety. The Commission does not intend to take further action on the definitions it proposed, however, since in directing the Commission to assign 24 megahertz of spectrum in the 746–806 MHz band for public safety services, Congress defined ''public safety services'' to mean services: [3]

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided—

(i) By State or local government entities; or

(ii) By nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.

20. The *Second NPRM* tentatively concludes that a definition of a public safety service provider can be based upon the statutory definition of public safety services, and that such a definition would be helpful in developing service rules for the 746–806 MHz band. The *Second NPRM* proposes to define the term as follows:

Public Safety Service Provider: (1) A State or local government entity that provides public safety services; or (2) a non-governmental organization that is authorized to provide public safety services by a governmental entity pursuant to § 337(f)(1)(B)(ii) of the Communications Act.

21. The Commission notes that two broad groups fall within this definition—governmental public safety services providers, and authorized non-governmental public safety services providers. The Commission also notes that many entities with public safety interests, and with which public safety service providers may need to communicate by radio, do not fall within the statutory definition. Eligibility issues regarding use of the interoperability channels and for channels from the non-interoperability (general use) public safety spectrum are discussed under separate headings below.

National and Regional Planning

22. The *Second NPRM* addresses how interoperability spectrum may best be managed for effective interoperable communications. As a threshold question, however, the Commission asks commenters to discuss which policies it should set at the national level, and which should be set by those in closer proximity to State and local public safety users. In the *NPSPAC Proceeding*, the Commission established 55 regions and directed each to develop plans for use of both the interoperability and the non-interoperability channels.[4] The regions were to establish procedures for interoperability that best suited their individual requirements. The Commission could adopt a similar process for the interoperable channels in the 746–806 MHz band. The *Second NPRM* tentatively concludes that the Commission's primary goal with respect

[3] § 337(f)(1) of the Communications Act, 47 U.S.C. 337(f)(1), as added by the Balanced Budget Act of 1997, 3004.

[4] Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821–824/866–869 MHz Bands by the Public Safety Services, GEN Docket No. 87–112, (*NPSPAC Proceeding*), *Memorandum Opinion and Order*, 53 FR 11849 (April 11, 1988). *See Report and Order*, GEN Docket Nos. 87–112, 53 FR 1022 (January 15, 1988) (*NPSPAC Report and Order*).

to interoperability should be seamless interoperability on a nationwide basis.

23. The *Second NPRM* requests comment regarding four alternative approaches to managing the interoperability channels in the 746–806 MHz band. First, the Commission asks commenters to consider whether the individual NPSPAC regional planning committees should develop plans for the operation and use of the interoperability channels in the 746–806 MHz band. Second, as a variation on this approach, commenters should consider whether the Commission should create parallel regional organizations devoted entirely to developing plans and procedures for use of the interoperability channels. Commenters favoring either of these two options should discuss how these channels could be entrusted to the individual regions without compromising the goal of seamless nationwide interoperability.

24. As a third alternative, the *Second NPRM* asks whether a national planning process to develop nationwide plans and procedures for the interoperability channels should be adopted. Finally, the *Second NPRM* asks commenters to discuss a fourth option in which specific nationwide guidelines and procedures for the use of the interoperability channels would be developed.

Categories of Interoperability Uses

25. In the *Public Safety NPRM*, the Commission discussed public safety interoperability in three general contexts: day-to-day, mutual aid, and emergency preparedness or task force operations. The *Second NPRM* asks whether it is necessary or advisable to provide specific amounts of spectrum for each of these uses, or whether the Commission should instead provide spectrum for general interoperability use. If commenters believe that interoperability channels should be designated for specific uses, the Commission asks them to suggest how many of each type of channel should be designated for each category.

26. The *Second NPRM* also asks commenters to consider whether in an emergency all voice, data, image/HSD, and video interoperability channels should become mutual aid channels. The Commission invites comment regarding the alternative approaches of allowing the regions, either individually or as participants in a national planning committee, to decide how many channels, and what kind of channels, should be used for each category of interoperability. If the Commission permits the regions to decide these questions, commenters should discuss whether the Commission should designate a minimum number of the interoperability channels for mutual aid and set their location. The Commission's tentative view is that this would ensure that immediately identifiable channels would be available for mutual aid nationwide.

Eligibility and Use of Interoperability Channels

27. The Commission tentatively concludes that all public safety service providers should be eligible to use all of the interoperability channels. The Commission also tentatively concludes, however, that eligibility alone should not guarantee unlimited access to these channels, but rather that their use should only be permitted in accordance with the plan for interoperability. The Commission also believes that it would be consistent with the new § 337 of the Communications Act and the intent of Congress to broaden the eligibility for interoperability channels, because public safety service providers may need to interact with entities which provide services that do not fall within the definition of public safety services established by Congress in § 337. The Commission tentatively concludes that public safety service providers will need to communicate with their Federal counterparts, and seeks comment regarding how the interoperability channels should be made available to Federal users, and how the Table of Allocations may need to be revised to permit Federal use. The *Second NPRM* also seeks comment regarding whether such use would be consistent with congressional objectives in amending § 337 of the Communications Act.

28. The *Second NPRM* next proposes that authorized non-governmental providers are among the public safety service providers for whom the interoperability channels are specifically intended, but that orderly and effective use of these channels requires that all users use the interoperability channels only in accordance with the interoperability plan. The Commission further tentatively concludes that, in formulating such plans, the planners should have full latitude to restrict the use of the interoperability channels as they judge necessary to ensure that these channels are put to effective use. The *Second NPRM* seeks comment on these tentative conclusions.

29. The *Second NPRM* further asks commenters whether the plans governing access to the interoperability channels should be designed by the individual regions, either through the regional planning committees or through regional committees established specifically to address interoperability, or whether at least some of these rules should be prescribed at the national level, either by the Commission or through a national interoperability planning committee. The Commission asks commenters to consider the possibility that some rules for the interoperability channels, such as the mutual aid channels or the task force channels, might be formulated by the Commission, while regional committees or other regional groups might formulate the rules governing access to the channels designated for day-to-day use. The Commission also asks commenters whether access by Federal agencies should be regulated at the national level, with the rules governing access by other entities to be set at the regional level. Finally, the *Second NPRM* asks whether standards and procedures should be adopted to ensure that the interoperability plans are reasonable, effective, and fair.

30. The *Second NPRM* also solicits comment regarding whether some channels should be designated for particular services nationwide, or whether all eligible entities should have access to all the channels within a given category. Commenters are again asked whether these decisions should be made by the regions individually, either through the regional planning committees or through regional committees established specifically to address interoperability; by a national interoperability planning committee; or by the Commission. Commenters should consider the option of the Commission deciding these issues for some, but not all, of the interoperability channels.

31. The *Second NPRM* also invites comment regarding how the voice, data, image/HSD, and video interoperability channels should be assigned to licensees. Specifically the *Second NPRM* asks whether authorizations for base and control transmitters operating on the interoperability channels should be obtained from the Commission, or whether the Commission should adopt an alternative approach, such as giving the regions more authority for the interoperability channels and allowing each region to authorize individual agencies to operate base stations without the need for separate station authorizations. In either case, public safety entities could operate mobile units and portables on the interoperability channels without separate authorization as long as they were operating in accordance with the approved regional plan.

3. Trunking on Interoperability Spectrum

32. The *Second NPRM* notes that in a large-scale emergency, wireless communication among many personnel from different agencies and regions must be rapidly coordinated. It tentatively concludes that a trunked system is the best, and possibly the only practicable, method by which this goal can be achieved.

33. The Commission has not required use of specific trunking standards for public safety communications services, nor has it specified such standards for private or commercial mobile radio services. However, the Commission states that interoperability among public safety users could be thwarted absent a trunking standard. It also states that it is vitally important that the public safety spectrum be used in the most efficient way feasible. For these reasons, as well as the operational benefits that trunking technology can provide, the *Second NPRM* asks whether the Commission should adopt a trunking standard for communications on the interoperability channels. Because the Commission's goal is to promote the ability of public safety users to communicate across regional as well as across agency lines, the Commission asks whether it should mandate a single nationwide trunking standard, rather than leave to the individual regions the decision of whether to employ conventional or trunked operations, or of selecting regional trunking standards.

4. Technical Standards for Interoperability Spectrum

34. The *Second NPRM* suggests various approaches for developing digital or trunking standards for interoperability channels and invites comment regarding these approaches. The Commission is particularly interested in views concerning the option that would have the greatest likelihood of successfully meeting the needs of the public safety community. Because the Commission intends to initiate licensing of the public safety spectrum as soon as practicable, it also requests comments as to the approach to development of standards for interoperability spectrum that is likely to be the most expeditious. Finally, the Commission indicates that in addition to a basic trunking standard for interoperability channels, related technical standards may be required to enable effective interoperability. Therefore, the *Second NPRM* invites comments as to the scope of any such additional standards that may be needed to ensure effective interoperability, how such standards should be developed, and what elements these standards should encompass.

B. General Service Rules

35. The *Second NPRM* turns from the service rules for the portion of the public safety spectrum designed to promote interoperability to similar issues related to service rules for the remainder of the public safety spectrum in the 746–806 MHz band. For these general service rules, the Commission's primary concerns are to alleviate the shortage of channels available to public safety agencies for their internal use and to provide spectrum for new types of communications, such as image and video.

1. Regional Planning Committees

36. The *Second NPRM* proposed to use the regional planning approach taken an earlier allocation of spectrum, the allocation of the 821–824/866–869 MHz bands for public safety use. In that instance, the Commission used a National Plan created by the National Public Safety Planning Advisory Committee (NPSPAC).[5] This plan comprised both national and regional elements, which allowed the Commission to establish nationwide rules where appropriate, but still provided sufficient flexibility for regional planners to tailor solutions to local public safety problems. The Commission tentatively concludes that this dichotomy between national and regional elements has been successful and thus proposes to use the regional planning approach again for that portion of the public safety spectrum that is not devoted to interoperability. The *Second NPRM* seeks comment regarding this proposal, as well as any other alternatives for the administration of the spectrum, and encourages suggestions regarding the organization and operation of the regions and the regional planning committees. Commenters should consider the Commission goals of equitable distribution of frequencies, efficient use of spectrum, and minimizing the burden on both public safety service providers and the regional planning committees.

37. The *Second NPRM* proposes to retain the boundaries of current regions. Minor modifications may be needed depending upon the comments received. The Commission asks whether the boundaries of the multi-state regions that serve metropolitan areas are drawn along optimal lines, and whether other multi-state metropolitan regions should be created. The *Second NPRM* proposes to retain the existing committees, with at most minor modifications to their boundaries, and to add the 746–806 MHz band to the 821–824/866–869 MHz bands that the planning committees have been using to create regional plans. The Commission seeks comment regarding this proposal.

38. The *Second NPRM* invites commenters to address the procedures for ensuring the equitable distribution of frequencies among eligible entities, and to evaluate any need for procedural guidelines for the committees. The *Second NPRM* also proposes that regional plans be required to include the same minimum elements as required by the *NPSPAC Report and Order.* These include:

- A cover page that clearly identified the document as the regional plan for the defined region.
- The name of the regional planning chairperson, including mailing address and telephone number.
- The names of the members of the regional planning committee, including organizational affiliations, mailing addresses, and telephone numbers.
- A summary of the major elements of the plan.
- A general description of how the spectrum would be allotted among the various eligible users within the region.
- An explanation of how the requirements of all eligible entities within the region were considered and, to the degree possible, met.
- An explanation as to how needs were assigned priorities in areas where not all eligible entities could receive licenses.
- An explanation of how the plan had been coordinated with adjacent regions.
- A detailed description of how the plan put the spectrum to the best possible use by requiring system design with minimum coverage areas, by assigning frequencies so that maximum frequency reuse and offset channel use may be made, by using trunking, and by requiring small entities with minimal requirements to join together in using a single system where possible.
- The signature of the regional planning chairperson.

The Commission invites comment regarding whether these listed elements should be amended to include any additional provisions, or whether the current elements require clarification or reformulation.

The *Second NPRM* proposes to utilize the same review and modification procedures as followed under the National Plan. These procedures include public notice and opportunity for comment. The Commission notes that this proceeding presents an

[5] *See NPSPAC Report and Order.*

opportunity to revise the process, and invites comment regarding ways that the modification procedures could be improved. The Commission invites commenters to address the requirement that regions wishing to modify their plans must obtain the express concurrence of adjacent regional planning committees to the proposed modifications prior to submitting them for Commission approval.

2. Eligibility and Licensing of General Use Channels

40. Regarding the channels in the 746–806 MHz band public safety spectrum that are not reserved for interoperability, the *Second NPRM* tentatively concludes that the Commission should limit eligibility to entities that provide public safety services, as defined for this spectrum in § 337(f)(1) of the Communications Act. The Commission further tentatively concludes that the regional planning committees should, as an element of their regional plans, specify precisely which groups within the broad categories of the statutory definition they suggest should receive frequencies within their regions. The *Second NPRM* seeks comment on these tentative conclusions.

41. The *Second NPRM* also asks whether the Commission should prescribe rules or guidelines for determining if a service meets the statutory definition of a public safety service, and whether the Commission should prescribe substantive or procedural rules for the authorization of non-governmental organizations by governmental public safety service providers, as provided in § 337(f)(1)(B)(ii) of the Communications Act.

3. Provision and Use of Public Safety Channels

42. The following is a discussion of various issues relating to the provision and use of the general public safety spectrum. The goal with respect to the assignment of the general use spectrum is to provide a regulatory framework that will enable a variety of types of communications, and to facilitate utilization of an array of innovative technologies for the public safety community. The *Second NPRM* seeks comment on various matters that will assist us in developing such a framework.

Types of Communication

43. The *Second NPRM* seeks comment regarding what types of public safety communications should be reserved for the new band:

- Voice channels only (with data capability on such channels).
- Voice channels and data channels only.
- Voice, data, image/HSD, slow motion video, and full motion video channels.
- Channels that would accommodate some other combination of uses.

Channel Spacing

44. The *Second NPRM* next considers the matter of channel spacing for the general use channels. In so doing, it considers whether the Commission should decide on appropriate spacings for the channels designated in the 746–806 MHz band, or whether to employ a different approach to channelizing the band. The Commission suggests three such methods, each of which would give the regions various degrees of latitude in deciding on the spacings for channels licensed in their region, and seeks comments on these approaches.

45. If the Commission decides to play a role in determining the spacing of channels in the band, it seeks input from commenters regarding what those channel spacings should be for voice, data, image/HSD, slow motion video, and full motion video channels.

Channel Requirements

46. The *Second NPRM* next explores the issue of how many of each type of channel—*e.g.,* voice, data, image/HSD, or video—should be designated for assignment. It again suggests various methods that would give the regions different degrees of flexibility to decide how many of each type of channel should be made available for assignment in the respective regions. The *Second NPRM* seeks comment on these different approaches to determining how many channels will be made available for assignment to public safety licensees.

47. If it is decided that the Commission will devise the band plan to be used by all regions, comment is requested on the number of channels that should be designated for each of the following proposed uses:

- Voice transmissions (mobile-only, or base and mobile channel pairs).
- Data transmissions (base-only, or base and mobile channel pairs).
- Image/HSD transmissions (base-only, or base and mobile channel pairs).
- Slow motion video transmissions (mobile-only, or base and mobile channel pairs).
- Full motion video transmissions (mobile-only, or base and mobile channel pairs).

Finally, the *Second NPRM* invites comment as to whether voice, data, image/HSD, or video channels could or should be shared among public safety entities within a given area, or whether all assignments should be made on an exclusive basis.

Transmission Technology

48. The *Second NPRM* examines the issue of whether there is a need to mandate a particular transmission technology on the regularly assigned public safety channels. The Commission believes it would be preferable to give public safety licensees the ability to choose among available analog or digital technologies on their own authorized channels, and it is therefore not inclined to require any particular transmission technology to be mandated for voice, data, image/HSD, or video transmissions in the portion of the public safety spectrum in the 746–806 MHz band not used for interoperability. The *Second NPRM* seeks comment on this approach.

Equipment Standards

49. The *Second NPRM* tentatively concludes that there is no need to mandate receiver standards on the non-interoperability public safety channels. It also seeks comment on the issue of whether, if technically feasible, the Commission should require all public safety mobile and portable radios operating in the 746–806 MHz band to be capable of operating on all public safety and commercial channels in the band. The Commission indicates that the use of equipment capable of operating on the entire 746–806 MHz band could enable public safety users to employ commercial spectrum when and where such spectrum is available from commercial providers.

C. Technical Parameters for all Public Safety Channels and Operations in 746–806 MHz Band

50. In this section, the *Second NPRM* discusses various technical parameters that are associated with the operation and use of both the interoperable and general public safety channels. These parameters must be quantified in order to ensure the effective, efficient, and interference-free operation of these channels.

1. Bandwidth

51. The *Second NPRM* seeks comment as to the maximum authorized bandwidths that should be specified for different types of general and interoperability communications—*i.e.,* voice data, image/HSD and video. Also, if the Commission decides to permit regions to determine the spacings of their channels, it proposes to require the regions to identify the maximum authorized bandwidths that would be

associated with those channels. The *Second NPRM* seeks comment on these proposals.

2. Emission Mask; Frequency Stability; Power and Antenna Height

52. Part 90 of the Commission's rules specifies the required frequency stability, emission mask, and authorized power and antenna height for channels used in the various private land mobile bands. As with the authorization of maximum bandwidth, the Commission seeks comment regarding these parameters for the channels used for the four types of general and interoperability public safety communications.

53. Also, if the Commission permits regions to determine the spacings of their general use channels, it proposes to require the regions to identify the emission masks and frequency stabilities that would be associated with those channels. The *Second NPRM* seeks comment on these proposals.

3. Base Station Protection

54. The *Second NPRM* solicits comment on whether the Commission should specify the protection criteria that would apply to all exclusively assigned base stations operating on the public safety channels in the 746–806 MHz band, or whether the Commission should allow base stations to be assigned in accordance with protection criteria established in the regional plans. The Commission asks commenters supporting the establishment of uniform protection criteria to indicate whether they believe that the existing protection criteria for the 800 MHz and 900 MHz bands are appropriate, or whether some other standards should be applied.

D. Construction Requirements

55. The *Second NPRM* seeks comment on the appropriate construction deadline for licensees operating on the public safety spectrum in the 746–806 MHz band, including comment on factors that the Commission should consider in establishing construction deadlines that will best promote the timely deployment of public safety facilities.

E. Use of Television Channels 63, 64, 68, and 69 for Public Safety

56. In the *Allocation NPRM*, the Commission proposed the use of television Channels 63, 64, 68, and 69 for public safety. If the Commission decides in that proceeding to dedicate these particular television channels to public safety, then, to facilitate two-way, base/mobile communications, the *Second NPRM* proposes that: (1) the frequencies in Channels 63 and 64 (764–776 MHz) be used for all base-to-mobile transmissions; (2) the frequencies in Channels 68 and 69 (794–806 MHz) be used for all mobile-to-base transmissions; and (3) when providing for paired base-to-mobile and mobile-to-base communications, any base frequencies in Channel 63 should be paired with mobile frequencies in Channel 68 and any base frequencies in Channel 64 should be paired with mobile frequencies in Channel 69. The *Second NPRM* seeks comment on these proposals and, in particular, asks commenters who may utilize signals from the glonass satellites to discuss any concerns they may have about the possible use of Channels 68 and 69 for mobile-to-base public safety communications.

II. Priority Access Service

A. Background

57. The Department of Defense, as executive agent of the National Communications System (NCS), filed on October 19, 1995, a Petition for Rulemaking (Petition) on behalf of NCS, requesting the Commission to initiate a rulemaking proceeding to implement Cellular Priority Access Service (CPAS). According to NCS, the term ''priority access'' means that in emergencies, when cellular spectrum is congested, authorized priority users would gain access to the next available cellular channel before subscribers not engaged in national security and emergency preparedness (NSEP) functions.

58. Following the Commission's issuance of the *Public Safety NPRM*, the Wireless Telecommunications Bureau (Wireless Bureau) released a Public Notice seeking comment on the NCS Petition and asking interested parties to address the extent to which the issues raised in the NCS Petition are related to the public safety rulemaking proceeding.[6] The Commission received 20 comments and five reply comments in response to the *CPAS Public Notice*. Subsequent to the receipt of those comments, the Defense Information Systems Agency (DISA) filed a letter on behalf of NCS, submitting additional information concerning the CPAS proposal.

1. NCS Petition for Rulemaking

59. NCS asserts that priority access to cellular spectrum is essential in conducting response and recovery efforts of NSEP personnel at Federal, State, and local levels. The NCS Petition proposes that CPAS would be a voluntary offering of cellular carriers who would then be subject to mandatory CPAS rules should they elect to provide the service. Under the NCS proposal, cellular carriers would be permitted to charge for the service, determine the amount of spectrum available to CPAS, and discontinue the CPAS service offering at any time.

60. NCS also submits that the proposed CPAS rules would be consistent with the priority access rules that the Executive Office of the President will adopt concurrently for situations in which the President invokes war emergency powers pursuant to § 706 of the Communications Act. For implementation of CPAS, NCS submits that Priority Access Channel Assignment (PACA) technology, a cellular features description, should be used. The PACA feature permits the subscriber to obtain priority access to voice or traffic channels by queuing the originating calls of subscribers when channels are not available. Under the PACA queuing scheme, as proposed by NCS, there would be five levels of priority.

61. NCS proposes that State and local emergency providers would have the same priority level as Federal defense and law enforcement agencies and urges a uniform, nationwide cellular priority access scheme for effective implementation of CPAS. The rules advocated by NCS would (1) authorize cellular service providers to provide priority access; (2) ensure that such providers, when doing so, are not in violation of Communications Act provisions barring unreasonable discrimination or undue preference; and (3) override any existing contractual provisions inconsistent with the rules adopted.

2. PSWAC Final Report

62. The PSWAC Final Report also addresses the role of commercial services in supporting public safety communications. Among its recommendations, PSWAC states that ''[t]he use of commercial services and private contracts should be facilitated, provided the essential requirements for coverage, priority access and system restoration, security, and reliability are met.''[7] Further, the PSWAC Interoperability Subcommittee (PSWAC ISC) finds that, although commercial systems could be used to achieve

[6] *Public Notice*, Petition for Rulemaking Filed, Commission Seeks Comment on Petition for Rulemaking filed by National Communications System, WT Docket No. 96–86, 61 FR 18538 (April 18, 1996) (*CPAS Public Notice*).

[7] PSWAC Final Report at 4.

interoperability, they currently do not meet the requirements addressed in the PSWAC Final Report. Although the PSWAC ISC recommends that the Commission adopt rules to make commercial systems more responsive to public safety needs, including a requirement to offer a priority access option, it contends that there are many shortcomings to the NCS CPAS proposal. The PSWAC ISC concludes that those shortcomings flow from market forces and are not readily susceptible to regulatory cures.

B. Discussion of NCS Proposed Rules and Related Issues

1. Priority Access and Public Safety Communications Generally

63. The *Second NPRM* concludes that it is advisable to consider the issues raised by the NCS Petition in the context of this proceeding and therefore seeks comment on those issues. In the view of the Commission, based in part on the conclusions of the PSWAC Final Report, there is a substantial nexus between considerations of priority access and the needs of the public safety community. The *Second NPRM* maintains that the need for expedition regarding disposition of the wide range of public safety issues mitigates any concern that linking Commission consideration of these issues with Commission consideration of the NCS priority access proposal will delay resolution of the issues raised by the NCS Petition.

64. The *Second NPRM* specifically asks commenters to address the NCS contention that, although the public safety rulemaking might ultimately mitigate the need for priority access, there could be no harm in having rules to address the current situation.

65. The Commission believes that the record developed thus far regarding the NCS Petition does not furnish an adequate basis at this time for making more comprehensive proposals on issues relating to priority access. Based on the comments the Commission receives with respect to various priority access issues discussed in the *Second NPRM* and other related issues, it will determine how to proceed further in establishing priority access rules.

2. Priority Levels

66. The *Second NPRM* finds that it is premature to propose specific levels for priority based on the NCS proposal, and seeks more comment on the issue of priority levels that should be included in priority access.

67. The Commission believes that in the context of issues and problems raised in this *Second NPRM,* there are significant questions regarding how a priority access structure can best be formulated and applied. In this respect, the *Second NPRM* seeks comment on how the Commission should examine and resolve this issue. Interested parties may comment, for example, on whether it is better to require a formal prioritization structure or whether a less formal, more flexible approach should evolve. In terms of what is the most effective means to allow and encourage the marketplace to respond to the kinds of demand for this service offering, the *Second NPRM* seeks comment regarding whether the Commission should prescribe rules for priority levels, rely on industry and governmental agency groups to establish uniformly applied priority levels, or leave to carriers the decision to offer individual or customized priority levels, consistent with a single set of principles and criteria, to the subscribers who demand priority access.

68. The *Second NPRM* also seeks further comment on what priority access structure or structures would be most suitable to the commercial wireless environment as it continues to develop. Commenters should address what scheme of priority levels would provide the optimal service to meet the needs of NSEP users and associated public safety personnel while not interfering with the needs of citizens in emergencies. The Commission also seeks comment on what role should be played by commercial wireless providers, manufacturers of the equipment required, regional planning committees, Public Safety Answering Point (PSAP) personnel, trade associations, standard setting bodies such as the Telecommunications Industry Association (TIA), and other potential participants in going forward in the development of priority access.

3. Spectrum Capacity of Commercial Carrier Networks

69. The *Second NPRM* addresses contentions that a key consideration supporting the need for priority access is the current lack of sufficient capacity in the commercial wireless network. With a shortage of capacity, the flooding of the network by a high incidence of attempted calls in emergency situations could lead to increased blocking of a portion of those calls. Consequently, factors that affect capacity are also likely to affect the ability and incentive of commercial wireless service providers to furnish priority access services, as well as the need of the public safety community to obtain and utilize such services.

70. The amount of spectrum available for dedicated public safety communications uses is being substantially increased by the availability of 24 megahertz of spectrum in the 746–806 MHz band. One question in examining the NCS proposal is whether this increased spectrum for public safety communications lessens the need for priority access arrangements regardless of the status of capacity on commercial wireless networks. Thus, the Commission seeks comment regarding the relationship between the availability of this new public safety spectrum and the need for priority access arrangements.

71. Finally, the *Second NPRM* seeks comment regarding whether other recent developments in the utilization of spectrum for public safety communications may diminish the need for priority access services.

4. Liability Under § 202 of Communications Act

Adequacy of Current Provisions

72. The *Second NPRM* tentatively finds that, to the extent the provision of priority access service is a voluntary offering made by a carrier and to the extent the Commission refrains from establishing detailed rules regarding various levels of priority access, it would be prudent for the Commission to provide specifically for limitations on liability under § 202. Thus, the *Second NPRM* proposes that it will be sufficient for a Commercial Mobile Radio Service (CMRS) provider, in responding to any complaint alleging an unreasonable discrimination or undue preference under § 202 of the Communications Act, to demonstrate that the service provided by the carrier is exclusively designed to enable authorized priority users, in emergency situations when spectrum used by the carrier is congested, to gain access to the next available channel on the service network of the carrier, before subscribers not engaged in public safety or NSEP functions. The Commission seeks comment on this proposal.

73. Further, the Commission tentatively concludes that the types of priority access services that will qualify for limitation of liability under § 202 should be limited to CMRS services providing priority access to NSEP personnel, including Federal Government entities, in addition to State and local governmental entities performing public safety functions. Thus, the Commission also tentatively concludes that priority access services provided by commercial carriers to corporate or other business or private subscribers on a private contractual

basis would not constitute the type of priority access service that would qualify for any limitation of liability under § 202. The Commission tentatively concludes that this approach is consistent with the objective to serve the national defense and to meet the needs of public safety entities to improve their ability to respond to emergencies and disasters, and seeks comment on these tentative conclusions.

74. The *Second NPRM* also seeks comment regarding types of actions and conduct by carriers, in providing priority access service to authorized priority users, that would qualify for limitation of liability under § 202 of the Communications Act, as proposed in the *Second NPRM.*

Exercise of Forbearance Authority

75. The *Second NPRM*, in addition to the liability proposals discussed above, additionally seeks comment on alternative measures that the Commission could employ to ensure providers of priority access that they are excluded from potential liability under § 202. Such measures might include, for example, the exercise of the Commission's forbearance authority under § 10 of the Communications Act.

76. § 10 gives the Commission authority to forbear from applying any provision of the Communications Act, including § 202 and notwithstanding § 332(c)(1)(A), to a telecommunications service or class of telecommunications services, provided that the Commission makes certain determinations established in the statute.

77. § 10(a) of the Communications Act sets forth three prerequisite determinations for the Commission to make. The statute requires that, before forbearing from applying any section of Title II, the Commission must find that each of the following conditions applies:

(1) Enforcement of such regulation or provision is not necessary in order to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) Enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) Forbearance from applying such provision or regulation is consistent with the public interest.

78. The Commission seeks comment regarding whether it would be appropriate to forbear from applying § 202(a) of the Communications Act to the extent a carrier offers priority access service to NSEP personnel or to State or local governmental entities performing public safety functions. The Commission also asks for comment on the definition of consumers, what factors should be considered, what problems may arise in making those determinations, and examples of applying these tests in evaluating whether forbearance is appropriate.

79. Moreover, § 10(b) of the Communications Act requires weighing competitive effects in determining whether forbearance is consistent with the public interest under § 10(a)(3). With regard to this requirement of § 10(b), the *Second NPRM* asks what the potential competitive effects of commercially provided priority access service would be among CMRS providers, what the relevance of those competitive effects is regarding forbearance, and what the impact of those competitive effects would be on whether priority access is voluntary or mandatory.

5. Voluntary or Mandatory Provision of Priority Access

80. The *Second NPRM* seeks comment regarding whether CMRS providers should be permitted to provide priority access services on a voluntary basis. As a general matter, the Commission believes it is sound public policy to pursue market solutions to communications needs. The *Second NPRM* asks commenters to address whether, in this case, it is reasonable to expect that competitive forces will prompt CMRS providers to respond to market demand by developing and offering priority access services that meet the needs of Federal, State, and local government agencies.

81. In addition, whether CPAS is voluntary or mandatory may dictate the necessity for cost recovery or funding mechanisms. The *Second NPRM* seeks further comment concerning the means of funding that would result in the most effective implementation of priority access. The *Second NPRM* also invites comment on whether a flexible, non-prescriptive approach to funding would be advisable in order to allow carriers and government officials the latitude to develop cost recovery solutions that address particular needs for priority access.

6. Potential Limitations of Priority Access Service

82. NCS recognizes current technical constraints in the implementation of CPAS, because the standards for CPAS are still in the developmental stage. The *Second NPRM* seeks comment regarding the potential technical limitations summarized in this section. In particular, the *Second NPRM* asks commenters to address the extent of these potential limitations, efforts underway to reduce or overcome the limitations, and the implications of these potential problems for the viability and effectiveness of priority access systems.

Technical Standards; Operational Limitations

83. The NCS Petition suggests that priority access should be implemented using a PACA queuing scheme. The record indicates that the standard for the PACA feature, IS–53 A, is applicable only to cellular systems that use a Time Division Multiple Access (TDMA) air interface. Despite ongoing improvements, current analog phones still will not work with the CPAS scheme, because they have a five-second ''timeout'' feature.

84. In addition, implementation of the PACA standard requires the use of a switch-to-switch protocol, for intersystem interoperability (roaming). The Commission's understanding is that this protocol, IS–41 Rev. C, is final for cellular service and available for broadband PCS, and is currently implemented throughout a substantial part of the wireless industry. The IS–41 Rev. C protocol, however, is not compatible with all digital systems. Thus, the *Second NPRM* seeks comment regarding the progress of the development of priority access standards for digital cellular systems, and for wireless systems in general.

85. A further potential problem is that, although current protocols may provide intersystem capability for newly initiated calls, there appears to be no capability to provide for roaming between different systems while there is a pending request in the queue. The *Second NPRM* seeks comment regarding the significance of this technical issue. In particular, the Commission seeks comment regarding whether public safety users intend to use priority access while moving from place to place, or whether they contemplate that priority access will more likely be used at relatively confined emergency scenes.

86. Finally, the *Second NPRM* notes that CPAS, as proposed in the NCS Petition, does not have dispatch capability with immediate communications access. The Commission seeks comment regarding this issue, and regarding whether priority access will meet the needs of public safety personnel.

Equipment and Hardware Limitations

87. The record indicates that the PACA feature can be installed only in new phones, and thus is not ''backward compatible.'' Therefore, existing CMRS phones would not allow deployment of a priority access service.

88. Moreover, the CPAS feature is designed for implementation only by NSEP users who will have to acquire a commercial off-the-shelf or dual-mode handset built in accordance with the digital interface standards necessary to allow ''queuing'' operation. The record also indicates that for the CPAS proposal to work with analog handsets, cellular providers would have to implement the CPAS scheme differently than proposed, or implement two different CPAS schemes. The Second NPRM seeks comment regarding these priority access implementation issues.

Security Limitations

89. Consideration of the NCS CPAS proposal for NSEP users also entails recognition of the need for secure communications. Lack of security regarding analog-based cellular systems has been considered to be a problem, and digital communications may not be as secure as once thought, even with encryption codes. Additionally, there is comment that the proposed 3-digit code, ''*xx,'' to acquire access into the queue could be easily tampered with by computer ''hackers.'' The *Second NPRM* seeks comment regarding these security issues.

7. Other Issues

Types of Commercial Wireless Carriers Offering Priority Access

90. In view of the proposal for additional dedicated spectrum for public safety and increased capacity of existing and new CMRS providers, the *Second NPRM* tentatively concludes that all CMRS carriers, including cellular carriers, should be considered as potential providers of priority access service. The *Second NPRM* seeks comment on this tentative conclusion. The *Second NPRM* also seeks comment on whether priority access should be applicable to Mobile Satellite Systems (MSS) that are treated as CMRS under part 20 of the Commission's rules. Generally in this regard, the Commission also seeks comment on whether the applicability of priority access rules to CMRS carriers should parallel the same CMRS services as are subject to E911 requirements.

91. The *Second NPRM* further requests that commenters address the role of resellers of CMRS in offering priority access, particularly focussing on the issue of non-discrimination in resale. Finally, the *Second NPRM* seeks comment on whether priority access should be applied in the case of any newly reallocated spectrum that is made available to CMRS providers who may desire to provide priority access as part of their new service offerings.

Administration of Priority Access

92. In view of the scope of the Commission's proposal concerning priority access, the Commission finds it unnecessary at this time to address issues concerning aspects of administering priority access that were raised by the commenters. Those issues include the assignment of priority levels and safeguarding against potential abuses of priority access systems. Another issue the Commission is deferring is who should have or share responsibility in the administration of priority access, whether administrators of the regional planning committees and Public Safety Answering Points should have a role. While the Commission has decided to defer consideration of these issues, government entities, public safety agencies, and commercial providers of wireless service are encouraged to continue to work together to resolve them.

III. Protection of Television Services

93. In this section of the *Second NPRM*, the Commission discusses technical requirements for protecting incumbent channel 60–69 broadcast licensees and planned channel 60–69 digital television (DTV) allotments against interference. The Commission notes that its previous sharing criteria and analyses, which provided for the land mobile and television sharing of the 470–512 MHz band (TV channels 14–20), were based upon use of ''traditional'' private land mobile technology that typically employed a high powered base station to provide wide area coverage. The Commission anticipates that public safety users will employ such systems to a significant degree. At this juncture, however, it is not clear what types of services, technologies, or system architectures may be used for new types of public safety services. Accordingly, the Commission believes it is appropriate to consider in this proceeding a variety of approaches and criteria for protecting TV broadcasting from the services that will occupy channels 60–69.

Geographic Spacing Requirements Based on 55-Mile Reference Grade B Contour

94. The Commission indicates that it could protect co-channel analog TV stations on channels 60–69 during the DTV transition period by adopting geographical spacing requirements based on a 40 dB D/U signal ratio at the 55-mile Grade B contour of the protected TV station,[8] and could protect adjacent channel TV operations by adopting geographical spacing requirements based on a 0 dB D/U signal ratio.[9] The Commission states that if it were to adopt this approach, it would favor development of a table permitting operation at distances based on particular powers and antenna heights, similar to that in the current geographic separation standards in subpart L of part 90 of the Commission's rules. The Commission recognizes, however, that a table that permits operation at closer distances based on reduced power and antenna height may still be unnecessarily restrictive. The Commission therefore requests comment on whether adopting uniform geographic spacings based on the use of separation tables would be appropriate, and if so, what separation distances should be used in such tables.

95. The Commission also invites comment as to whether it should establish different separation distances to protect TV operations from interference from fixed and mobile operations in the 746–806 MHz band, and whether it should use different spacing requirements depending on the technology employed, location in the TV channel, or any other factor. Also, the Commission tentatively concludes that it would be appropriate to allow new licensees and TV licensees privately to negotiate shorter geographic separations than those the Commission has proposed.

96. Finally, the Commission recognizes that, in addition to addressing protection of analog TV stations, it must also address protection criteria for DTV stations operating on channels 60–69 during the transition period. It therefore seeks comment on the appropriate D/U ratios that should be applied for the protection of DTV stations.

Other Approaches

97. The Commission also requests comment on whether approaches other than the use of geographic separation tables based on the assumption of a 55-mile reference Grade B contour should be employed for the protection of TV operations. For example, since TV broadcast stations are authorized with

[8] *See* § 90.309 of the Commission's rules, 47 CFR 90.309.

[9] The adjacent channel separation requirement would also apply to protection of analog television operations on Channel 59.

effective radiated power (ERP) levels up to 5 megawatts, at an antenna HAAT of 610 meters (2,000 feet), it requests comment on whether the size of the reference contour should be increased accordingly. The Commission also seeks comment on whether the use of tables based on a particular reference Grade B contour could unnecessarily inhibit innovative or case-specific solutions to potential interference problems, and it therefore seeks comment on whether protection criteria should instead be based on requiring that a predicted D/U signal ratio be met based on a TV licensee's authorized facilities.

Other Issues

98. In the *DTV Proceeding*,[10] the Commission raised the possibility that, in negotiating among themselves for changes in allotments and assignments, TV licensees could include agreements for compensation. The Commission proposes to permit new licensees in this spectrum similarly to reach agreements with licensees of protected TV stations, including holders of construction permits, compensating them for converting to DTV transmission only before the end of the DTV transition period, accepting higher levels of interference than those allowed by the protection standards, or otherwise accommodating new licensees in these bands. The Commission believes that these measures would benefit the public by accelerating the transition to DTV and clearing the 746–806 MHz band for public safety services.

Administrative Matters

99. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 22, 1997, and reply comments on or before January 12, 1998. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

100. This *Second NPRM* is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a). *Initial Regulatory Flexibility Analysis*

101. As required by § 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this *Second NPRM*, but they must have a separate and distinct heading designating them as responses to the IRFA.

Initial Regulatory Flexibility Act Statement

Initial Regulatory Flexibility Analysis

102. As required by the Regulatory Flexibility Act (RFA),[11] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Second Notice of Proposed Rulemaking* (*Second NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second NPRM* provided above in paragraph 248 of the *Second NPRM*. The Commission will send a copy of the *Second NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[12] In addition, the *Second NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[13]

A. Need for, and Objectives of, the Proposed Action

103. This rulemaking proceeding was initiated to propose service rules for 24 megahertz of spectrum in the 746–806 MHz band. The spectrum, which is currently used by television (TV) Channels 60–69, is being made available to meet various public safety communications needs.

104. This rulemaking proceeding was also initiated to seek comment regarding whether certain commercial mobile radio service (CMRS) providers should be authorized to offer priority access service on a voluntary basis for purposes of enhancing national security and emergency preparedness (NSEP) functions. Priority access service will enable NSEP personnel and other public safety users to receive priority to available channels during emergencies. The rulemaking proceeding is also initiated to secure comment on other issues concerning such priority access.

105. The Commission endeavors to (1) provide for modern and innovative communications at high levels of efficiency and effectiveness required by the Nation's public safety entities; (2) explore the possibility of certain commercial services being used for public safety applications; and (3) protect TV stations on Channels 60–69 during the transition to digital television (DTV).

B. Legal Basis

106. The proposed action is authorized under §§ 1, 4(i), 10, 201, 202, 303(b), 303(g), 303(j), 303(r), and 403 of the Communications Act, 47 U.S.C. 151, 154(i), 160, 201, 202, 303(b), 303(g), 303(j), 303(r), 403.

C. Reporting, Recordkeeping, and Other Compliance Requirements

107. The Commission proposes the filing of regional plans drafted by planning committees made up of representatives of the public safety community. Applicants for public safety licenses may be required to make submissions to the planning committees justifying their requests for spectrum, and will be required to submit applications for spectrum licenses on Form 601. The proposals under consideration in the *Second NPRM* include the possibility of imposing recordkeeping and reporting requirements on individuals or organizations involved in establishing a national planning process to develop a nationwide interoperability plan, on individuals or organizations that may assist us in developing technical standards, and on small government

[10] Advanced Television Systems and their Impact upon the Existing Television Broadcast Service, MM Docket No. 87–268 (*DTV Proceeding*), *Sixth Report and Order*, 62 FR 26684 (May 14, 1997) (*DTV Sixth Report and Order*), *recon. pending.*

[11] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[12] *See* 5 U.S.C. 603(a).

[13] *See id.*

agencies who may request extended implementation. The Commission requests comment on how these requirements can be modified to reduce the burden on small entities and still meet the objectives of this proceeding.

108. With respect to priority access service, the proposals of the Commission in this *Second NPRM* do not entail reporting, recordkeeping, or other compliance requirements. If, however, there are matters pertaining to such requirements that relate to those issues on which the Commission also seeks comment in this *Second NPRM*, the Commission invites commenters to address how those matters may affect small entities who may be potential providers of priority access service.

D. Description and Number of Small Entities Involved

109. This *Second NPRM* will affect TV station licenses on Channels 60–69, public safety entities, and commercial mobile radio service (CMRS) providers. Commenters are requested to provide information regarding how many entities (overall) and how many small entities would be affected by the proposed rules in the *Second NPRM*.

(a) Television Stations

(1) Television Station Estimates Based on Census Data

110. The *Second NPRM* will affect full service TV stations, TV translator facilities, and low power TV (LPTV) stations. The Small Business Administration defines a TV broadcasting station that has no more than $10.5 million in annual receipts as a small business.[14] TV broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by TV to the public, except cable and other pay TV services.[15] Included in this industry are commercial, religious, educational, and other TV stations.[16] Also included are establishments primarily engaged in TV broadcasting and which produce taped TV program materials.[17] Separate establishments primarily engaged in producing taped TV program materials are classified under another SIC number.[18]

111. There were 1,509 TV stations operating in the Nation in 1992.[19] That number has remained fairly constant as indicated by the approximately 1,551 operating TV broadcasting stations in the Nation as of February 28, 1997.[20] For 1992[21] the number of TV stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.[22] There are currently 95 full service analog TV stations, either operating or with approved construction permits on channels 60–69.[23] In the *DTV Proceeding*, the Commission adopted a DTV Table which provides only 15 allotments for DTV stations on channels 60–69 in the continental United States.[24] There are seven DTV allotments in channels 60–69 outside the continental United States.[25] Thus, the rules will affect approximately 117 TV stations; approximately 90 of those stations may be considered small businesses.[26] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-TV affiliated companies. The Commission recognizes that the rules may also impact minority-owned and women-owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0 percent) of 1,221 commercial TV stations in the United States.[27] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9 percent) of 1,342 commercial and non-commercial TV stations in the United States.[28]

112. There are currently 4,977 TV translator stations and 1,952 LPTV stations.[29] Approximately 1,309 low power TV and TV translator stations are on channels 60–69[30] which could be affected by policies in this proceeding. The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. The Commission will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of TV stations are designated under this analysis as potentially small businesses. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

(2) Alternative Classification of Small TV Stations

113. An alternative way to classify small TV stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity (EEO) rule for broadcasting.[31] Thus, radio or TV

[14] 13 CFR 121.201, Standard Industrial Code (SIC) 4833 (1996).

[15] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, App. A–9 (1995) (ESA 1992 Census).

[16] *Id. See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes TV Broadcasting Station (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[17] ESA 1992 Census at App. A–9.

[18] *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and TV programs).

[19] *Allocation NPRM*, at App. C; ESA 1992 Census at App. A–9.

[20] *Allocation NPRM*, at App. C.

[21] A census for communications establishments is performed every five years ending with a ''2'' or ''7.'' *See* ESA 1992 Census at III.

[22] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[23] *See Allocation NPRM* at para. 2.

[24] *See DTV Proceeding, Sixth Report and Order*, App.B.

[25] *Allocation NPRM* at para. 2 n.5.

[26] The Commission uses the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 117 TV stations to arrive at 90 stations categorized as small businesses.

[27] *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (''MTDP'') (April 1996). MTDP considers minority ownership as ownership of more than 50 percent of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[28] *See* Comments of American Women in Radio and TV, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, *Women-Owned Business*, WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit SIC Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the Commission collect such data. However, the Commission sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, *Notice of Proposed Rulemaking*, 60 FR 06068 (February 1, 1995).

[29] *Allocation NPRM*, at App. C.

[30] *Allocation NPRM* at para. 2 n.3.

[31] The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to section 3(a) of the Small Business Act,

Continued

stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.[32] The Commission estimates that the total number of commercial TV stations with four or fewer employees is 132 and that the total number of non-commercial educational TV stations with four or fewer employees is 136.[33] The Commission does not know how many of these stations operate on Channels 60–69.

(b) Public Safety Entities

114. The public safety entities that will be affected by this *Second NPRM* are governmental entities. The definition of a small governmental entity is one with a population of fewer than 50,000.[34] There are approximately 85,006 governmental entities in the Nation.[35] This number includes such entities as States, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities, and towns, and, of those, 37,566, or 96 percent, have populations of fewer than 50,000.[36] The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the approximately 85,006 governmental entities, the Commission estimates that 96 percent, or 81,600, are small entities that may be affected by our rules. The Commission solicits comment on this estimate.

(c) Entities With Regard to Priority Access Service

115. Concerning the provision of priority access service, commenters are requested to provide information regarding how many providers of CMRS, existing and potential, will be considered small businesses. ''Small business'' is defined as having the same meaning as the term ''small business concern'' under the Small Business Act.[37] A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by SBA. The Commission seeks comment as to whether this definition is appropriate in this context. Additionally, the Commission requests each commenter to identify whether it is a small business under this definition. If the commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

116. The Commission has not yet developed a definition of small entities which respect to the provision of a CMRS service offering of priority access. Therefore, for entities not falling within other established SBA categories, the applicable definition of small entity is the definition under the SBA applicable to the ''Communications Services, Not Elsewhere Classified'' category. This definition provides that a small entity is one with $11.0 million or less in annual receipts.[38] The Census Bureau estimates indicate that of the 848 firms in the ''Communications Services, Not Elsewhere Classified'' category, 775 are small businesses. While the Commission anticipates some CMRS providers would elect to provide priority access service, it is not possible to predict either how many, or what percentage, of these providers would be small entities.

(1) Cellular Radio Telephone Service

117. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[39] The size data provided by the SBA does not enable the Commission to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees.[40] The Commission therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[41] Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. The Commission assumes that, for purposes of its evaluations and conclusions in this IRFA, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, the Commission does not know the number of cellular licensees, since a cellular licensee may own several licenses.

(2) Broadband Personal Communications Service

118. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to § 24.720(b) of the Commission's rules,[42] the Commission has defined ''small entity'' for Block C and Block F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining ''small entity'' in the context of broadband PCS auctions has been approved by the SBA.[43]

119. The Commission has auctioned broadband PCS licenses in all of its spectrum blocks A through F. The Commission does not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are

15 U.S.C. 632(a). However, this definition was adopted after public notice and an opportunity for comment. *See* Petition for Rulemaking To Require Broadcast Licensees To Show Non-Discrimination in Their Employment Practices, Docket No. 18244, RM–1144, *Report and Order,* 35 FR 8925 (June 6, 1970).

[32] *See, e.g.,* 47 CFR 73.3612 (requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395, Docket No. 21474, *First Report and Order,* 44 FR 6722 (February 2, 1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *See* Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines, MM Docket No. 96–16, *Order and Notice of Proposed Rulemaking,* 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

[33] The Commission bases this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395–B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

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

[35] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[36] *Id.*

[37] 15 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632).

[38] 13 CFR 120.21, SIC Code 4899.

[39] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[40] U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

[41] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

[42] 47 CFR 24.720(b).

[43] *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order,* 59 FR 37566 (July 22, 1994).

90 non-defaulting winning bidders that qualify as small entities in the Block C auction and 93 non-defaulting winning bidders that qualify as small entities in the D, E, and F Block auctions. Based on this information, the Commission concludes that the number of broadband PCS licensees that would be affected by the proposals in this *Second NPRM* includes the 183 non-defaulting winning bidders that qualify as small entities in the C, D, E, and F Block broadband PCS auctions.

(3) Specialized Mobile Radio

120. Pursuant to § 90.814(b)(1) of the Commission's rules,[44] the Commission has defined ''small entity'' for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of less than $15 million in the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[45]

121. The proposals set forth in the *Second NPRM* may apply to SMR providers in the 800 MHz and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues of less than $15 million.

122. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees affected by the proposals set forth in this *Second NPRM* includes these 60 small entities.

123. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz SMR licensees can be made, the Commission assumes, for purposes of our evaluations and conclusions in this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

(4) 220 MHz Service

124. Licensees for 220 MHz services that meet the definition of CMRS may be providers of priority access service if there is a demand for these services during emergencies and disasters. The Commission has classified providers of 220 MHz service into Phase I and Phase II licensees. There are approximately 2,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has estimated that there are approximately 900 potential Phase II licensees.

125. At this time, however, there is no basis upon which to estimate definitively the number of 220 MHz service licensees, either current or potential, that are small businesses. To estimate the number of such entities that are small businesses, the Commission applies the definition of a small entity under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[46] However, the size data provided by the SBA do not allow the Commission to make a meaningful estimate of the number of 220 MHz providers that are small entities because they combine all radiotelephone companies with 500 or more employees.[47] The Commission therefore uses the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. Data from the Bureau of the Census' 1992 study indicate that only 12 out of a total 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees—and these may or may not be small entities, depending on whether they employed more or less than 1,500 employees.[48] But 1,166 radiotelephone firms had fewer than 1,000 employees and therefore, under the SBA definition, are small entities. However, the Commission does not know how many of these 1,166 firms are likely to be involved in the 220 MHz service.

126. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total 220 MHz service entities, existing and potential, may offer a priority access service. In particular, the Commission seeks estimates of how many 220 MHz service entities, existing or potential, will be considered small businesses.

(5) Mobile Satellite Services (MSS)

127. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[49] According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million.[50]

128. Mobile Satellite Services or Mobile Satellite Earth Stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub or stations. The stations that are capable of transmitting while a platform is moving are included under § 20.7(c) of the Commission's rules[51] as mobile services within the meaning of §§ 3(27) and 332 of the Communications Act.[52] Those MSS services are treated as CMRS if they connect to the Public Switched Network (PSN) and also satisfy other criteria of § 332. Facilities provided

[44] 47 CFR 90.814(b)(1).

[45] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–553, *Second Order on Reconsideration and Seventh Report and Order*, 60 FR 48913 (September 21, 1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, Implementation of Sections 3(n) and 322 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 61 FR 6212 (February 16, 1996).

[46] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[47] 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, Table 3, SIC Code 4812 (industry data adapted by the Office of Advocacy for the U.S. Small Business Administration).

[48] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC Code 4812 (issued May 1995).

[49] 13 CFR 120.121, SIC Code 4899.

[50] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[51] 47 CFR 20.7(c).

[52] 47 U.S.C. 153(27), 332.

through a transportable platform that cannot move when the communications service is offered are excluded from § 20.7(c).[53]

129. The MSS networks may provide a variety of land, maritime and aeronautical voice and data services. There are eight mobile satellite licensees. At this time, the Commission is unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees and could be considered CMRS providers of priority access service.

(5) Other Commercial Mobile Radio Services

130. Other CMRS services may potentially be providers of priority access service if there is a demand for the transmission of voice, data, or text messages during emergencies and disasters.

a. Paging and Radiotelephone Service, and Paging Operations

131. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the paging service. Under the proposal, a small business will be defined as either (1) a entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging companies, we utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.[54]

132. The Commission estimates that the total current number of paging carriers is approximately 600. In addition, the Commission anticipates that a total of 16,630 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,550 Major Trading Area (MTA) licenses and 14,080 Economic Area (EA) licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that nearly all radiotelephone companies have fewer than 1,000 employees, and that no reliable estimate of the number of paging licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the current licensees and the 16,630 geographic area paging licensees either are or will consist of small entities, as that term is defined by the SBA.

133. Although the *Second NPRM* requests comment concerning all CMRS providers, the number of paging licensees that elect to provide some form of priority access service may depend on whether there is a market for wireless data or message text transmissions in emergency and disaster environments. The number may also depend on whether two-way paging providers, rather than providers of traditionally one-way service, are eventually included under any priority access rules.

b. Narrowband PCS

134. The Commission has auctioned nationwide and regional licenses for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the MTA and Basic Trading Area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licensees and 2,958 BTA licensees will be awarded in the auctions. Those auctions, however, have not yet been scheduled. Given that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, that all of the licensees will be awarded to small entities, as that term is defined by the SBA.[55]

c. Air-Ground Radiotelephone Service

135. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in § 22.99 of the Commission's rules.[56] Accordingly, the Commission will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[57] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

136. The Commission has reduced burdens wherever possible. To minimize any negative impact, however, we propose certain incentives for small entities, which will redound to their benefit. While public safety entities will be required to submit regional plans (to enable the Commission to accommodate regional needs and preferences), they will be able to pool their resources in developing such plans. The regulatory burdens the Commission has retained, such as filing applications on appropriate forms, are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. The Commission will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing significant economic impact on small entities. The Commission seeks comment on significant alternatives commenters believe should be adopted.

137. With respect to priority access service, the Commission is seeking comment regarding whether the provision of priority access service by wireless carriers should be on a voluntary basis. Thus, small entities at their option can elect to provide the service should they determine that there is a competitive market opportunity to do so. In addition, the Commission is proposing that in providing priority access service, providers of certain CMRS services are to be insulated from liability under § 202 of the Communications Act.[58] The Commission also seeks comment on alternatives regarding the priority access issues raised in the *Second NPRM.*

F. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

138. None.Insert Reg Flex Here.

Ordering Clauses

139. Accordingly, *it is ordered,* pursuant to §§ 1, 4(i), 10, 201, 202, 303(b), 303(g), 303(j), 303(r), and 403 of the Communications Act, 47 U.S.C. 151, 154(i), 160, 201, 202, 303(b), 303(g), 303(j), 303(r), 403, that notice is hereby given of the proposed regulatory changes described in this *Second Notice of Proposed Rulemaking,* and that comment is sought on these proposals.

140. *It is further ordered* that the Secretary shall send a copy of this *Second Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief

[53] 47 CFR 20.7(c).

[54] 13 CFR 121.201, SIC 4812.

[55] *See id.*

[56] 47 CFR 22.99.

[57] 13 CFR 121.201, SIC 4812.

[58] 47 U.S.C. 202.

Counsel for Advocacy of the Small Business Administration in accordance with § 603(a) of the Regulatory Flexibility Act.[59]

141. *It is further ordered* that the Petition for Rulemaking filed on October 19, 1995, on behalf of the National Communications System is granted in part to the extent indicated herein.

List of Subjects

47 CFR Part 20

Communications common carriers.

47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–29515 Filed 11–6–97; 8:45 am]

BILLING CODE 6712–01–P

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[59] Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601–612 (1980).

Notices

Federal Register

Vol. 62, No. 216

Friday, November 7, 1997

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

Food and Consumer Service

The Emergency Food Assistance Program Availability of Commodities for Fiscal Year 1998

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased commodities that the Department expects to make available for donation to States for use in providing food assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 1998. The commodities made available under this notice shall, at the discretion of the State, be distributed to organizations for use in preparing meals, and/or for distribution to households for home consumption.

EFFECTIVE DATE: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Program Administration Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Surplus Commodities

Surplus commodities donated for distribution under TEFAP are Commodity Credit Corporation (CCC) commodities determined to be available for donation by the Secretary of Agriculture under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (hereinafter referred to as section 416) and commodities purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (hereinafter referred to as section 32). The types of commodities typically made available under section 416 include dairy, grains, oils, and peanut products. The types of commodities purchased under section 32 include meat, poultry, fish, vegetables, and fruits. Donations of surplus commodities were initiated in 1981 as part of the Department's efforts to reduce stockpiles of government-owned commodities, such as cheese, flour, butter, and cornmeal, which had been acquired under section 416. These donations responded to concern over the costs to taxpayers of storing large quantities of foods, while at the same time there were persons in need of food assistance. The authority to donate surplus commodities for distribution through TEFAP is currently codified in Section 202 of the Emergency Food Assistance Act (EFAA) of 1983 (7 U.S.C. 7502).

In recent years, the supply of surplus commodities has been drastically reduced. These reductions are the result of changes in the agricultural price-support programs which have brought supply and demand into better balance, and accelerated donations and sales. The Department anticipates that there will be sufficient quantities of nonfat dry milk available for donation under section 416, and dried navy beans and dried prunes purchased under section 32, to support the donation of these commodities for distribution through TEFAP in FY 1998. While sufficient quantities of these commodities are anticipated to be available in FY 1998 to support such donations, the Department would like to point out that commodity acquisitions are based on changing agricultural market conditions; therefore, the above commodities may not be available for donation in FY 1998, or additional types of surplus commodities may become available.

Purchased Commodities

Congress responded to the reduced availability of surplus commodities with section 104 of the Hunger Prevention Act of 1988, Pub. L. 100–435, which added sections 213 and 214 to the EFAA. Those sections required the Secretary to purchase commodities for distribution to States in addition to those surplus commodities which otherwise might be provided to States for distribution under TEFAP. Pursuant to section 871(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, Congress repealed the authorization of funds for food purchases under section 214. In addition, section 871(g) added a new section 27 to the Food Stamp Act of 1977 under which the Secretary is required to use $100 million from the funds made available to carry out the Food Stamp Act for each of FYs 1997 through 2002 to purchase a variety of nutritious and useful commodities and distribute the commodities to States for distribution through TEFAP.

For FY 1998, the Department anticipates purchasing for distribution through TEFAP the following commodities: peanut butter, roasted peanuts, rice, macaroni, spaghetti, grits, fortified cereal, bakery mix, nonfat dry milk, egg mix, dehydrated potatoes, dehydrated soup mix, corn syrup, vegetable oil, dry bagged beans, raisins, the following canned foods: apple juice, applesauce, peaches, pears, vegetarian beans, refried beans, green beans, potatoes, tomatoes, tomato sauce, tomato juice, corn, orange juice, grapefruit juice, plums, pineapple, pork, salmon, tuna, beef, and chicken, as well as the following frozen foods: ground beef, ground turkey, cut-up chicken, and turkey roasts. The amounts of each item purchased will depend on the prices USDA must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of commodities or the non-availability of one or more types listed above. Once USDA has made the commodities available to States, State officials will be responsible for determining how to allocate the State's ''fair share'' to eligible organizations. States have full discretion in determining the amount of commodities that will be made available to organizations for distribution to needy households for use in home-prepared meals or for providing prepared meals to the needy at congregate feeding sites.

Dated: October 28, 1997.

Yvette S. Jackson,

Acting Administrator.

[FR Doc. 97–29426 Filed 11–6–97; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Meeting of Advisory Committee on Emerging Markets

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of section 10(a)(2) of The Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the first meeting of the Advisory Committee on Emerging Markets will be held November 18, 1997. The purpose of the committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the program on sharing agricultural expertise with emerging markets. The committee will also advise USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging markets in food and rural business systems.

DATES: The meeting will be held Tuesday, November 18, 1997 from 9:00 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The minutes of the meeting announced in this Notice shall be available for review. The meeting is open to the public and members of the public may provide comments in writing to Douglas Freeman, Foreign Agricultural Service, room 6506 South Building, U.S. Department of Agriculture, 14th and Independence Ave. SW., Washington, DC 20250, but should not make any oral comments at the meeting unless invited to do so by the Co-chairpersons.

Signed at Washington, DC, October 31, 1997.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 97–29436 Filed 11–6–97; 8:45 am]

BILLING CODE 3410–10–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: November 17, 1997.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 97–29598 Filed 11–5–97; 11:01 am]

BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 8, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: On August 29 and September 12, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 F.R. 45792 and 48050) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Office and Miscellaneous Supplies
(Requirements for the Naval Support Activity, New Orleans, Louisiana)

Services

Janitorial/Custodial
Veterans Administration Medical Center
2600 M. L. King, Jr. Parkway
Des Moines, Iowa
Janitorial/Custodial
L. W. Stoddard USARC
25 North Lake Avenue
Worcester, Massachusetts

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–29459 Filed 11–6–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 8, 1997.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for the Naval Construction Battalion Center, Gulfport, Mississippi)
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana

Office and Miscellaneous Supplies
(Requirements for the Naval Oceanographic Office, Stennis, Mississippi)
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana

Services

Grounds Maintenance
Veterans Administration Medical Center
Menlo Park, California
NPA: Rubicon Programs, Inc., Richmond, California

Food Service Attendant for the following locations: Schofield Barracks, Building 3004, Fort Shafter, Hawaii
Building 300
Helemano Military Reservation, Hawaii
NPA: Opportunities for the Retarded, Inc. Wahiawa, Hawaii

Janitorial/Custodial
Albany Research Center
Albany, Oregon
NPA: The Garten Foundation, Salem, Oregon

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Organizer, Day Planner, Travel Size
7530–01–366–5856

Bag, Currency
8105–00–NIB–0006

Beverly L. Milkman,
Executive Director.

[FR Doc. 97–29460 Filed 11–6–97; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held December 9, 1997, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on the encryption regulation.
4. Update on the Wassenaar Arrangement implementation regulation.
5. Discussion on the ''deemed export'' issue.
6. Discussion on the Enhanced Proliferation Control Initiative and continued publication of Entities of Concern.
7. Update on the Automated Export System.
8. Discussion on efforts to conform the Foreign Trade Statistics Regulations and the Export Administration Regulations on export clearance requirements.

Closed Session

9. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA

MS: 3886C, 14th & Pennsylvania Avenue, N.W., U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 16, 1996, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: November 3, 1997.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 97–29404 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 78–97]

Foreign-Trade Zone 75—Phoenix, Arizona Application For Foreign-Trade Subzone Status; Microchip Technology Inc. (Semiconductors) Chandler and Tempe, Arizona

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Phoenix, Arizona, grantee of FTZ 75, requesting special-purpose subzone status for the semiconductor manufacturing facilities of Microchip Technology Inc. (Microchip), located at sites in Chandler and Tempe, Arizona. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 30, 1997.

The Microchip facilities are located at two sites in the Phoenix area (Maricopa County): *Site 1*—(242,000 sq. ft. plus 475,000 sq. ft. planned on 80 acres) 2355 West Chandler Boulevard, Chandler, and *Site 2*—(200,000 sq. ft. on 6 acres) 1200 South 52nd Street, Tempe. The facilities (1,100 employees) are used for the manufacture of a range of semiconductor devices and related products, including field programmable microcontrollers, application-specific processors, related memory products, and application development tools. Foreign-sourced materials (some 10% of total) include halides, adhesives, resins, chemical preparations for photographic uses, molybdenum, transformers, convertors and inductors, insulated wire, instruments for measuring or checking electrical quantities, plastic sheets, plastic and paper packaging materials. Other materials that may also be purchased from abroad include glues and adhesives, transformers, resistors, diodes, transistors, integrated circuits, printed circuits, switches, fasteners, recorded media, and other electrical and automatic data processing equipment and components.

Zone procedures would exempt Microchip from Customs duty payments on foreign components used in export production (some 65% of shipments). On its domestic sales, Microchip would be able to choose the lower duty rate that applies to the finished products (duty-free—3%). The duty rates that apply on foreign-sourced items range from duty-free to 12.5 percent (with most in the 2.1%–7.3% range). FTZ procedures would also allow the deferral of duty payments on foreign capital equipment and parts until fully assembled and ready for production. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested partiesSubmissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 6, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 21, 1998.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

U.S. Department of Commerce, Export Assistance Center, Phoenix Plaza, 2901 North Central Avenue, Suite 970, Phoenix, Arizona.

Dated: October 31, 1997.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 97–29496 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request A Review: Not later than the last day of November 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

Antidumping duty proceedings	Period
Argentina: Barbed Wire & Barbless Fencing Wire A–357–405	11/1/96–10/31/97

Antidumping duty proceedings	Period
Argentina: Carbon Steel Wire Rods	
A–357–007	11/1/96–10/31/97
Brazil: Circular Welded Non-Alloy Steel Pipe	
A–351–809	11/1/96–10/31/97
Japan: Bicycle Speedometers	
A–588–038	11/1/96–10/31/97
Japan: Light Scattering Instruments	
A–588–813	11/1/96–10/31/97
Japan: Titanium Sponge	
A–588–020	11/1/96–10/31/97
Mexico: Circular Welded Non-Alloy Steel Pipe	
A–201–805	11/1/96–10/31/97
Singapore: Light-Walled Rectangular Pipe & Tube	
A–559–502	11/1/96–10/31/97
South Korea: Circular Welded Non-Alloy Steel Pipe	
A–580–809	11/1/96–10/31/97
Taiwan: Circular Welded Non-Alloy Steel Pipe	
A–583–814	11/1/96–10/31/97
The People's Republic of China: Fresh Garlic	
A–570–831	11/1/96–10/31/97
The People's Republic of China: Paper Clips	
A–570–826	11/1/96–10/31/97
The People's Republic of China: Tungsten Ore Concentrates	
A–570–811	11/1/96–10/31/97
Venezuela: Circular Welded Non-Alloy Steel Pipe	
A–307–805	11/1/96–10/31/97
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
Japan: Certain Small Electric Motors of 5 to 150 Horsepower	
A–588–090	11/1/96–10/31/97
Mexico: Fresh Tomatoes	
A–201–820	11/1/96–10/31/97
The Ukraine: Silicomanganese	
A–823–805	11/1/96–10/31/97

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295,27424 (May 19, 1996)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 1997. If the Department does not receive, by the last day of November 1997, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is required by statute but is published as a service to the international trading community.

Dated: October 31, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II Import Administration.

[FR Doc. 97–29495 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Extruded Rubber Thread From Malaysia

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

SUMMARY: In response to a request by the petitioner and four producers/exporters of the subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on extruded rubber thread from Malaysia. The period of review is October 1, 1995, through September 30, 1996.

We have preliminarily determined that sales have been made below the normal value by each of the companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Fabian Rivelis, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1776 or (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 1, 1996, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the Antidumping Duty Order on Extruded Rubber Thread from Malaysia (61 FR 51259).

In accordance with 19 CFR 353.22(a)(1), on October 2, 1996, the petitioner, North American Rubber Thread, requested an administrative review of the antidumping order covering the period October 1, 1995, through September 30, 1996, for the following producers and exporters of extruded rubber thread: Filati Lastex Sdn. Bhd. (Filati), Heveafil Sdn. Bhd. (Heveafil), Rubberflex Sdn. Bhd. (Rubberflex), and Rubfil Sdn. Bhd (Rubfil). On October 31, 1996, each of these four companies also requested an administrative review.

On November 15, 1996, the Department initiated an administrative review for Filati, Heveafil, Rubberflex, and Rubfil (61 FR 58513). In December 1996, the Department issued sales questionnaires to these four companies. The Department also issued cost questionnaires to Heveafil and Rubberflex.

On February 13, 1997, Rubfil withdrew its request for administrative review in accordance with 19 CFR 353.22(a)(5). However, we have not terminated the review for Rubfil because the petitioner also requested a review for this company. Because Rubfil did not respond to the Department's questionnaire, we have assigned a margin to Rubfil based on the facts available. (See the ''Facts Available'' section below, for further discussion.)

Filati, Heveafil, and Rubberflex submitted questionnaire responses in February 1997. In March 1997, petitioner alleged that Filati was selling at prices below the cost of production (COP) in its home market. Based on information submitted by petitioner, the Department found reasonable grounds to believe or suspect that sales in the home market were made at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Tariff Act of 1930, as amended (the Act). As a result, the Department initiated an investigation to determine whether Filati made home market sales during the period of review (POR) at prices below their respective COPs within the meaning of section 773(b) of the Act.

Also in March 1997, we issued supplemental questionnaires to Filati, Heveafil, and Rubberflex. We received responses to these supplemental questionnaires, as well as Filati's initial cost response in April 1997.

In June 1997, we issued additional supplemental questionnaires to these respondents. We received responses to the supplemental questionnaires in June and July 1997.

In July and August 1997, the Department conducted sales and cost verifications of the data submitted by the three respondents participating in this review, in accordance with 19 CFR 353.36(a)(iv).

Scope of the Review

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this review is dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1997).

Facts Available

In accordance with section 776(a)(2) of the Act, we preliminarily determine that the use of the facts available is appropriate as the basis for Heveafil's and Rubfil's weighted-average dumping margins. Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e), (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

A. Heveafil

We have used the facts available with regard to Heveafil under section 776(a)(2)(D) of the Act because the Department could not verify the information provided by Heveafil as required under section 782(i) of the Act, despite the Department's attempts to do so.

Specifically, we were unable to verify the COP and constructed value (CV) information provided by Heveafil because we discovered at verification that the company had destroyed the source documents upon which a large portion of its response was based. The destruction of these source documents raises particular concern, as Heveafil should have been well aware of the

necessity of these documents based upon its participation in prior segments of this proceeding. Moreover, there were significant delays in the verification process itself, caused by company difficulties in locating documents and the inability of company officials to link information submitted in the questionnaire response to the accounting system. Our findings at verification are outlined in detail in the public version of the cost verification report from Shawn Thompson and Irina Itkin to Louis Apple, dated October 17, 1997.

Because we were unable to verify the information submitted by Heveafil in this POR and because the company failed to adequately prepare and provide information during the verification, we preliminarily determine that Heveafil did not cooperate to the best of its ability. Thus, pursuant to section 776(b) of the Act, we are using adverse facts available. See Notice of Final Determination of Sales at Less Than Fair Value; Certain Pasta from Italy, 61 FR 30326, 30327–29 (June 14, 1996).

As adverse facts available for Heveafil, we have used the highest rate calculated for any respondent in a prior segment of this proceeding. This rate is 54.31%. We have determined that this rate is sufficiently high to effectuate the purpose of the facts available rule by deterring such non-cooperative actions as the destruction of source documents needed for verification.

B. Rubfil

In accordance with section 776(a)(2)(A) of the Act, we also preliminarily determine that the use of the facts available is appropriate as the basis for Rubfil's weighted-average dumping margin. Specifically, Rubfil did not respond to the Department's questionnaire, issued in December 1996. Because Rubfil did not respond to the Department's questionnaire and because the applicable subsections of section 782 do not apply with respect to this company, we must use facts otherwise available to calculate Rubfil's dumping margin.

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See Statement of Administrative Action accompanying the URAA, H.R. Rep. No., 316, 103rd Cong., 2d. Sess. 870 (SAA). The failure of Rubfil to reply to the Department's questionnaire demonstrates that it has failed to act to the best of its ability in this review, and, therefore, an adverse inference is warranted.

As adverse facts available for Rubfil, we have used the highest rate calculated for Rubfil in a prior segment of this proceeding (see Extruded Rubber Thread from Malaysia, Final Results of Antidumping Duty Administrative Review, 62 FR 33588 (June 20, 1997)), which is considered secondary information within the meaning of section 776(c) of the Act. See SAA at 870. This rate of 54.31 percent is the cash deposit rate currently assigned to Rubfil. In certain other proceedings we have refrained from using a respondent's current cash deposit rate as FA for that respondent. See, e.g., Carbon Steel Pipe and Tube from Thailand; Final Results of Antidumping Duty Administrative Review 62 FR 53821 (Oct. 16, 1997). However, based on the facts of this case, we find that this existing cash deposit rate is sufficiently high as to effectuate the purpose of the facts available rule.

C. Corroboration of Secondary Information

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike for other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of this proceeding, it is not necessary to question the reliability of that calculated margin. With respect to relevance, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available (see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (Fresh Cut Flowers) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

For both Heveafil and Rubfil, we examined the rates applicable to extruded rubber thread from Malaysia throughout the course of the proceeding. With regard to their probative value, the rate specified above is reliable and relevant because it is a calculated rate from the 1994–1995 administrative review. There is no information on the record that demonstrates that the rate selected is not an appropriate total adverse facts available rate for Heveafil and Rubfil. Thus, the Department considers these rates to be appropriate adverse facts available.

Normal Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than normal value (NV), we compared the United States price (USP) to the NV for Filati and Rubberflex, as specified in the ''United States Price'' and ''Normal Value'' sections of this notice.

Level of Trade and Constructed Export Price (CEP) Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade as export price (EP) or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, it is also the level of the starting-price sale, which is usually from the exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV by making a CEP offset, in accordance with

section 773(a)(7)(B) of the Act. See Certain Welded Carbon Steel Standard Pipes and Tubes From India: Preliminary Results of New Shipper Antidumping Duty Administrative Review, 62 FR 23760, 23761 (May 1, 1997).

Both Filati and Rubberflex claimed that they made home market sales at only one level of trade (*i.e.*, sales to original equipment manufacturers) and that this level was different, and more remote, than the level of trade at which they made CEP sales.

Because only one level of trade existed in the home market for both respondents, we conducted an analysis to determine whether a CEP offset was warranted for either company. In order to determine whether NV was established at a level of trade which constituted a more advanced state of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction which excludes economic activities occurring in the United States. We found that both respondents performed essentially the same selling functions in their sales offices in Malaysia for both home market and U.S. sales. Therefore, their sales in Malaysia were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an FOB foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to either Filati or Rubberflex. For a detailed explanation of this analysis, see the concurrence memorandum issued for the preliminary results of this review, dated October 31, 1997.

United States Price

For sales by Filati, we based USP on EP, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation and when the CEP methodology of section 772(c) of the Act was not otherwise applicable. In addition, for both Filati and Rubberflex, where sales to the first unaffiliated purchaser took place after importation into the United States, we based USP on CEP, in accordance with section 772(c) of the Act. For both companies, we revised the reported data based on our findings at verification.

A. Filati

We based EP on the gross unit price to the first unaffiliated purchaser in the United States. We made deductions from gross unit price, where appropriate, for discounts and rebates. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia (where we made price-to-price comparisons). In addition, where appropriate, we made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, U.S. brokerage and handling expenses, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act.

For sales made from the inventory of the U.S. subsidiary, we based USP on CEP, in accordance with section 772(b) of the Act. We calculated CEP based on the gross unit price to the first unaffiliated customer in the United States. We made deductions from gross unit price, where appropriate, for discounts and rebates. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Malaysia (where we made price-to-price comparisons). We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. brokerage and handling expenses, U.S. customs duty, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act. We made additional deductions, where appropriate, for commissions, credit, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We recalculated U.S. indirect selling expenses to exclude an offset claimed by Filati relating to imputed costs associated with financing antidumping and countervailing duty (CVD) deposits, in accordance the Department's practice (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043, (Oct. 17, 1997) (AFBs)).

Pursuant to section 772(d)(3) of the Act, we further reduced gross unit price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated CEP profit rate using the expenses incurred by Filati and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. Rubberflex

We based USP on CEP, in accordance with section 772(b) of the Act. We calculated CEP based on the gross unit price to the first unaffiliated customer in the United States. We made deductions from gross unit price, where appropriate, for discounts and rebates. We also made deductions for foreign inland freight, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. customs duty, and U.S. inland freight, in accordance with section 772(c)(2)(A) of the Act. We made additional deductions, where appropriate, for credit, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We recalculated U.S. indirect selling expenses to exclude an offset claimed by Rubberflex relating to imputed costs associated with financing antidumping and CVD duty deposits, in accordance the Department's practice (see AFBs).

Pursuant to section 772(d)(3) of the Act, we further reduced gross unit price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Rubberflex and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of each of the respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that the aggregate volume of home market sales of the foreign like product for both Filati and Rubberflex is greater than five percent of the aggregate volume of U.S. sales for these companies. Thus, we determined that both Filati and Rubberflex had viable home markets during the POR. Consequently, we based NV on home market sales.

Pursuant to section 773(b) of the Act, there were reasonable grounds to believe or suspect that Rubberflex had made home market sales at prices below its COP in this review because the Department had disregarded sales below the COP for Rubberflex in a previous administrative review (see *Notice of Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia*, 61 FR 54767 (October 22, 1996)) and the petitioner submitted an adequate allegation that there were reasonable grounds to believe or suspect that Filati

had made home market sales at prices below its COP in this review. As a result, the Department initiated an investigation to determine whether the respondents made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

Where possible, we used the respondents' reported COP amounts, adjusted as discussed below, to compute weighted-average COPs during the POR. We compared the COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined (1) whether, within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

We deducted from CV weighted-average home market direct selling expenses incurred on sales made in the ordinary course of trade.

Company-specific calculations are discussed below.

A. Filati

We made the following adjustments to Filati's reported COP and CV data based on our findings at verification. For the cost of manufacturing (COM), in order to properly value the second quality merchandise and apply the appropriate manufacturing variance, we first valued the second quality merchandise at the standard cost of the first quality product that was intended to be produced. We then calculated the variance between the revised total standard cost and the total actual cost, and applied the variance proportionately to each per-unit standard cost. We also recalculated Filati's reported G&A expense ratio by excluding the direct selling, indirect selling, G&A expense, and financial expenses from the denominator of the ratio. The resulting ratio was applied to the per-unit COM. Finally, we recalculated Filati's reported interest expense to include only short-term interest income as an offset to total financial expense. For further discussion of these adjustments, see the cost calculation memorandum from Michael Martin to Christian Marsh, dated October 31, 1997.

Where NV was based on home market sales, we based NV on the gross unit price to unaffiliated customers. We made adjustments to Filati's reported sales data based on our findings at verification, and where appropriate, we made deductions for rebates.

For home market price-to-EP comparisons, we made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses and bank charges. Where applicable, in accordance with 19 CFR 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

For home market price-to-CEP comparisons, we made deductions for rebates and foreign inland freight, where appropriate, pursuant to section 773(a)(6)(B) of the Act. We also made deductions for credit expenses and bank charges.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. In addition, where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 353.57.

For CV–to–EP comparisons, we made circumstance of sale adjustments, where appropriate, for credit expenses, bank charges, and U.S. commissions, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act. Where applicable, in accordance with 19 CFR 353.56(b)(1), we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission.

For CV–to–CEP comparisons, we made deductions, where appropriate, for credit expenses and bank charges. We also deducted indirect selling expenses and inventory carrying costs, up to the amount of the U.S. commission deducted from the CEP.

B. Rubberflex

Where NV was based on home market sales, we based NV on the gross unit price to unaffiliated customers. We made adjustments to Rubberflex's reported sales data based on our findings at verification, and, where appropriate, we made deductions for discounts and rebates.

We also made deductions for foreign inland freight, foreign inland insurance and credit expenses. In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

For CV-to-CEP comparisons, we made deductions, where appropriate, for credit expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate

involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Malaysian Ringgit did not undergo a sustained movement.

Verification

As provided in section 782(i) of the Act, we verified information provided by Filati, Heveafil and Rubberflex by using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period October 1, 1995, through September 30, 1996:

Manufacturer/exporter	Review period	Margin (percent)
Filati Sdn. Bhd. ...	10/01/95–9/30/96	36.36
Heveafil Sdn. Bhd./ Filmax Sdn. Bhd. ...	10/01/95–9/30/96	54.31
Rubberflex Sdn. Bhd. ...	10/01/95–9/30/96	4.47
Rubfil Sdn. Bhd. ...	10/01/95–9/30/96	54.31

Interested parties may request a disclosure within 5 days of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of extruded rubber thread from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Filati, Heveafil, Rubberflex, and Rubfil will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 353.6, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate, as set forth below.

On March 25, 1993, the U.S. Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993), and *Federal-Mogul Corporation* v. *United States*, 822 F.Supp. 782 (CIT 1993), decided that once an ''all others'' rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement this decision, it is appropriate to reinstate the original ''all others'' rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the ''all others'' rate from the original investigation, the Department has determined that it is appropriate to adopt the ''new shipper'' rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the ''all others'' rate for the purposes of establishing cash deposits in all current and future administrative reviews. Because this proceeding is governed by an antidumping duty order, the ''all others'' rate for the purposes of this review will be 15.16 percent, the ''all others'' rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 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 assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 31, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29400 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Preliminary Results of Antidumping Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review of manganese metal from the People's Republic of China.

SUMMARY: In response to requests by Elkem Metals Company and Kerr-McGee Chemical Corporation and by China Hunan International Economic Development Corporation, China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation, Minmetals Precious & Rare Minerals Import & Export Corporation, and China National Electronics Import and Export Hunan Company, the Department of Commerce is conducting an administrative review of the antidumping duty order on manganese metal from the People's Republic of China. The period of review is June 14, 1995 through January 31, 1997.

We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the export price and NV on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Daniel Lessard or Greg Campbell, Antidumping/Countervailing Duty Enforcement, Office I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1778 or (202) 482–2239, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all references to the Department's regulations are to 19 CFR part 353 (April 1997).

Background

On February 6, 1996, the Department of Commerce (the Department) published in the **Federal Register** (61 FR 4415) the antidumping duty order on manganese metal from the People's Republic of China (PRC). On February 3, 1997, we published a notice of opportunity to request an administrative review of the order for the period June 14, 1995 through January 31, 1997 (62 FR 4978). In accordance with 19 CFR 353.22(a), Elkem Metals Company and Kerr-McGee Chemical Corporation (petitioners) and China Hunan International Economic Development Corporation (HIED), China Metallurgical Import & Export Hunan Corporation/ Hunan Nonferrous Metals Import & Export Associated Corporation (CMIECHN/CNIECHN), and Minmetals Precious & Rare Minerals Import & Export Corporation (Minmetals) requested that we conduct an administrative review. On March 18, 1997, in accordance with 19 CFR 353.22(c), we published a notice of initiation of this antidumping duty administrative review (62 FR 12793) for the period of review (POR).

The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this review is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this administrative review, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified factor information provided by Xiang Tan Manganese Mine (XTMM) and Hunan Special Metal Material Plant (Special), using standard verification procedures, including on-site inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Separate Rates

1. Background and Summary of Findings

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) *(Sparklers)*, as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) *(Silicon Carbide).* Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589. A *de facto* analysis of absence of government control over exports is based on four factors—whether the respondent: (1) Sets its own export prices independent from the government and other exporters; (2) can retain the proceeds from its export sales; (3) has the authority to negotiate and sign contracts; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587; *see also Sparklers* at 20589.

In our final determination of sales at less than fair value (LTFV), the Department determined that there was *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-

specific dumping margin. *See Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China,* 60 FR 56045 *(Manganese Metal).* For this period of review, HIED and CMIECHN/CNIECHN have responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final determination in the LTFV investigation and continues to demonstrate an absence of government control, both in law and in fact, with respect to their exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.*

For Minmetal and China National Electronics Import and Export Hunan Company (CEIEC), which had no sales during this POR, the company-specific rates of 5.88 percent and 11.77 percent, respectively, from the LTFV investigation remain unchanged.

Export Price

For sales made by HIED and CMIECHN/CNIECHN to the United States, we calculated an export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States.

We calculated export price based on the price to unrelated purchasers. We deducted an amount, when appropriate, for foreign inland freight, ocean freight, and marine insurance. Generally, the costs for these items were valued in the surrogate country. However, where transportation services were purchased from market economy carriers and paid for in market economy currency, we used the cost actually incurred by the exporter.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices or CV under section 773(a) of the Act. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market economy country which is a significant producer of comparable merchandise. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation.

In accordance with section 773(c)(4) of the Act and section 353.52(c) of our regulations, we determined that India is comparable to the PRC in terms of (1) per capita gross national product (GNP), (2) the growth rate in per capita GNP, and (3) the national distribution of labor. In addition, India is a significant producer of comparable merchandise. Therefore, for this review, we selected India as the surrogate on the basis of the above criteria, and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production. (*See* memorandum to Susan Kuhbach from Jeff May, dated May 28, 1997, ''Manganese Metal from the PRC: Nonmarket Economy Status and Surrogate Country Selection'' (attached to June 25, 1997 letters to interested parties), and memorandum to Richard W. Moreland from Team, dated October 24, 1997, which are in the file in the Central Records Unit (room B099 of the Main Commerce building).)

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. Where we could not obtain a POR-representative price for an appropriate surrogate value, we selected a value in accordance with the remaining criteria mentioned above and which was the closest in time to the POR. In accordance with this methodology, we valued the factors as follows:

- We valued manganese ore using a September 1993 export price quote from a Brazilian manganese mine for manganese carbonate lump ore. (For a further discussion of this issue, please refer to the October 24, 1997 memorandum to Richard W. Moreland from Team.) While it is our normal practice to apply an inflation adjustment to prices predating the period of review, in this case, we have information which indicates that prices for manganese ore have fallen over time. Therefore, we adjusted the price to account for declining manganese ore prices between September 1993 and the POR.
- For the value of process chemicals used in the production process of manganese metal, we used values obtained from the following Indian sources: *Indian Chemical Weekly* (June 95–May 1996); the *Monthly Trade Statistics of Foreign Trade of India,* Volume II—Imports, February 1996 (*Indian Import Statistics*); and the *Indian Minerals Yearbook: 1995.* Where necessary, we adjusted these values to reflect inflation up to the POR using wholesale price indices (WPI) published by the International Monetary Fund (IMF). Additionally, we adjusted to account for freight costs incurred between the suppliers and manganese metal producers.
- For labor values, we used data from the 1996 *Yearbook of Labor Statistics (YLS*) published by the United Nations. We adjusted these rates to reflect inflation up to the POR using the consumer price indices (CPI) published by the IMF. We used the CPI, rather than the WPI, for calculating the inflation adjustment for labor because the Department views the CPI as more representative of changes in wage rates, while the WPI is more representative of prices for material goods.
- For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, we used information from the January 1997 *Reserve Bank of India Bulletin* for the Indian industry group ''Processing and Manufacturing: Metals, Chemicals, and Products Thereof.'' To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of materials, labor, and energy. From the same source, we were able to calculate the selling, general & administrative (SG&A) expense as a percentage of the cost of manufacturing and profit as a percentage of the cost of production (*i.e.,* the cost of manufacturing plus SG&A).
- For most packing materials values, we used the per kilogram values obtained from the *Indian Import Statistics.* For one packing material, we used a price quote from an Indian manufacturer and adjusted the value to reflect inflation up to the POR using the WPI published by the IMF. We used this price quote rather than the *Indian Import Statistics* because the quoted

price was for the appropriate type of container used, whereas the *Indian Import Statistics* were aggregated over various types of containers. We made further adjustments to account for freight costs incurred between the PRC supplier and manganese metal producers.

- To value electricity, we used the average rate applicable to large industrial users throughout India as reported in the *1995 Confederation of Indian Industries Handbook of Statistics.* We adjusted the March 1, 1995 value to reflect inflation up to the POR using the WPI published by the IMF.
- To value rail freight, we relied upon rates quoted by a manganese mine in India. We adjusted the rate to reflect inflation up to the POR using WPI published by the IMF.
- To value truck freight, we used a rate derived from a newspaper article in the April 20, 1994 issue of The Times of India. We adjusted the rate to reflect inflation up to the POR using WPI published by the IMF.

Preliminary Results of the Review

As a result of our comparison of the EP to NV, we preliminarily determine that the following dumping margins exist for the period June 14, 1995, through January 31, 1997:

Manufacturer exporter	Margin (percent)
HIED	11.00
CMIECHN/CNIECHN	6.43
Minmetals	5.88
CEIEC	11.77
Country-Wide Rate	143.32

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held approximately 44 days after the publication of this notice. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will issue a notice of final results of this administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of AD duties calculated for the examined sales made during the POR to the total value of subject merchandise entered during the POR. In order to estimate the entered value, we subtracted international movement expenses (*e.g.*, international freight and marine insurance) from the gross sales value. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies that have separate rates and were reviewed (HIED and CMIECN/CNIECN), the cash deposit rates will be the rates for these firms established in the final results of this review; (2) for Minmetals and CEIEC, which we determined to be entitled to a separate rate in the LTFV investigation but which did not have shipments to the United States during the POR, the rates will continue to be 5.88 percent and 11.77 percent, respectively, the rates which currently apply to these companies; and (3) for all other PRC exporters, the cash deposit rate will be 143.32 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 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 assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 31, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29494 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Natural Bristle Paintbrushes and Brush Heads From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of the antidumping duty administrative review of natural bristle paintbrushes and brush heads from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on natural bristle paintbrushes and brush heads (paintbrushes) from the People's Republic of China (PRC) in response to a request by petitioner, the Paint Applicator Division of the American Brush Manufacturers Association (the Paint Applicator Division). This review covers shipments of this merchandise to the United States during the period of February 1, 1996, through January 31, 1997.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between export price and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Eric Scheier, Elisabeth Urfer, or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 353, as of April 1, 1996.

Background

The Department published in the **Federal Register** an antidumping duty order on paintbrushes from the PRC on February 16, 1986 (51 FR 5580). On February 3, 1997, the Department published in the **Federal Register** (62 FR 4978) a notice of opportunity to request an administrative review of the antidumping order on paint brushes from the PRC covering the period February 1, 1996, through January 31, 1997.

On January 29, 1997, in accordance with 19 CFR 353.2(k)(1), Brenner Associates, a U.S. importer of the subject merchandise, requested that we conduct an administrative review of Hebei Animal By-Products I/E Corporation (Hebei). On February 24, 1997, the Hunan Provincial Native Produce & Animal By-Products I/E Corporation (Hunan) submitted a request for a review. We published a notice of initiation of this antidumping duty administrative review on March 18, 1997 (62 FR 12793). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of natural bristle paint brushes and brush heads from the PRC. Excluded from the order are paint brushes and brush heads with a blend of 40% natural bristles and 60% synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 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 merchandise is dispositive.

This review covers the period February 1, 1996, through January 31, 1997.

Verification

As provided in section 782(i) of the Act, we verified information provided by Hunan and its supplier by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

Facts Available

We premliinarily determine that, in accordance with section 776(a) of the Act, the use of facts available is appropriate for Hebei because this firm did not respond to the Department's antidumping questionnaire. Hebei had requested and was granted an extension to file its questionnaire response with the Department. Hebei requested a second extension after the response was due, and was denied its request. (*See* letter from Edward Yang to Perry Gartner, June 10, 1997.) Because necessary information is not available on the record with regard to sales by Hebei, the use of facts available is warranted.

Where a respondent has failed to cooperate to the best of its ability, Section 776(b) of the Act authorizes the Department to use facts available that are adverse to the interests of that respondent, which include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As facts available, we are using the rate calculated the Hebei in the review covering the period from February 1, 1994, through January 31, 1995 (1994–1995 review), 351.92 percent.

Because information from prior proceedings constitutes secondary information, section 776(b) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administration Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department examines, to the extent practicable, the reliability and relevance of the information to be used. However, unlike other types of information, such as surrogate values, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. (*See, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 49567 (September 26, 1995), where the Department disregarded the highest margin as best information available because that margin was based on an uncharacteristic business expense, which resulted in the high margin.) In this case, we have used the highest rate from any prior segment of the proceeding, 351.92 percent, which was the rate calculated for Hebei in the 1994–1995 review. There is no information that indicates that this rate is not appropriate. Because Hebei is a part of the PRC entity, this rate becomes the PRC rate (*see Separate Rates* below).

Separate Rates

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of

a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

With respect to the absence of *de jure* government control over export activities, evidence on the record indicates that Hunan is a collectively-owned enterprise. The ''law of the People's Republic of China on Industrial Enterprises Owned by the Whole People'' identify rules and regulations pertaining to collectively-owned enterprises which give rural collective enterprise such rights as the right to act on their own behalf, adopt independent accounting, assume the sole responsibility for their profits and losses, and elect their own management. (*See* Exhibit 3 of Hunan's May 21, 1997, questionnaire response.) Additionally, paintbrushes do not appear on the ''Temporary Provisions for Administration of Export Commodities,'' approved on December 21, 1992, and are not, therefore, subject to the constraints of this provision. (*See* Questionnaire Response of May 21, 1997, at A–6 and *Memorandum to the File* dated October 10, 1997, ''Natural Bristle Paintbrushes and Brush Heads: Laws and Regulations Governing Exports from the PRC''.) At verification we confirmed that paintbrushes are not subject to export controls. *See* public version of *Verification Repot of Sales for Hunan Provincial Native Produce & Animal By-Products Corp.* dated September 25, 1997.

With respect to the absence of *de facto* control over export activities, Hunan's management is elected by Hunan's staff, and is responsible for all decisions such as the determination of its export prices, profit distribution to employee distributions, employee welfare funds and investments, employment policy, marketing strategy, and for negotiating contracts. At verification we found that the department heads negotiated sales of paint brushes, that Hunan planned to distribute unallocated profit, and that employees could be fired or reassigned, and salaries could be reduced. *See Separate Rate for Hunan Provincial Native Produce and Animal By-Products Im/Ex Corp. in the 1996–1997 Administrative Review of Paintbrushes and Brush Heads from the People's Republic of China* dated October 31, 1997, (*Separate Rates Memorandum)* and public version of *Verificaiton Report* dated September 25, 1997, which is on file in the Central Records Unit (room B099 of the Main Commerce Building).

Because evidence on the record demonstrates an absence of government control, both in law and in fact, over Hunan's export activities, the Department preliminarily grants Hunan a separate rate. For further discussion of the Department's preliminary determination that Hunan is entitled to a separate rate, *see Separate Rates Memorandum*.

In the administrative review covering the period from February 1, 1994 through January 31, 1995 (1994–95 review), we determined that Hebei merited a separate rate. However, because Hebei did not respond to the questionnaire in the present (1996–97) review, it will not be considered for a separate rate in this review.

United States Price

For sales made by Hunan, we based United States Price on export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States.

We calculated export price based on the price to unrelated purchasers. We deducted an amount for foreign inland freight, insurance, and brokerage and handling. We selected Indonesia for all surrogate values with the exception of inland insurance, for the reasons explained in the ''Normal Value'' section of this notice.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 353.52(c) of our regulations. We determined that Indonesia (1) is comparable to the PRC in terms of level of economic development, and (2) is a significant producer of comparable merchandise. *See Memorandum to the File* dated October 24, 1997, ''Natural Bristle Paint Brushes from the People's Republic of China—Significant Production in Indonesia of Comparable Merchandise.'' Therefore, for this review, we used publicly available information relating to Indonesia to value the various factors of production.

Additionally, we used publicly available information relating to India to value inland insurance, where Indonesian surrogate values for insurance were not available. *See Memorandum to the File from Eric Scheier,* dated October 24, 1997, ''Factor Values Used for the Final Results of the 1996–1997 Administrative Review of Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China.''

We valued the factors of production as follows:

- For brush handles, bristles, epoxy, wood, and packing materials, we used a per kilogram value obtained from the *Foreign Trade Statistical Bulletin* (*Indonesian Import Statistics*). Adjustments for inflation with respect to these four factors of production and with respect to packing materials were not necessary, as statistics were available for the entire POR. For transportation distances used for the calculation of freight expenses on raw materials, we added to surrogate values from Indonesia a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China,* 62 FR 51410 (October 1, 1997) (*Roofing Nails*).
- It is the Department's current policy to value an input purchased from a market economy in a market-economy currency by using the actual price paid for that input. Because the purchase of ferrule was made from a market-economy supplier and paid for in a market-economy currency, we have used the actual price paid by Hunan for ferrule to value ferrule inputs.
- We do not have information on Indonesian insurance rates, nor do we have information on inland insurance rates from any of our five possible surrogate countries. We have therefore

used the most recent figure available for Indian marine insurance, in place of inland insurance, as we did in *Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the People's Republic of China,* 62 FR 41347 (August 1, 1997). We adjusted this rate to reflect inflation through the end of the period of review (POR) using the Indian Wholesale Price Index (WPI) inflator derived from wholesale price indices published by the International Monetary Fund (IMF).

- For brokerage and handling, we used the publicly available information from a United States shipper that was used in the *Final Determination of Sales at Less Than Fair Value: Saccharin from People's Republic of China,* 59 FR 58818 (November 15, 1994). This value was adjusted to reflect inflation through the end of the POR using the Indonesian WPI published by the IMF.
- For unskilled, skilled and indirect labor, as well as for packing labor, we used the labor rates reported in the 1995 *Statistical Yearbook of Indonesia.* This source provides weekly labor rates and hours worked per week for unskilled labor only. Indonesian skilled labor rates were unavailable. We used this source to value unskilled, skilled and indirect labor. We used unskilled labor rates to value skilled labor in the 1994–1995 administrative review of this case. We adjusted these rates to reflect inflation through the end of the POR using Indonesian WPI published by the IMF.
- For factory overhead, selling, general and administrative expenses (SG&A), and profit, we used data provided by the respondent, from the *Large and Medium Manufacturing Statistics: 1995, Vol. II,* published by the Indonesian Bureau of Statistics. (*See* Hunan's submission dated July 28, 1997.) This source provides a cost breakdown for large and medium sized manufacturers of hand tools and cutlery, and was used in *Roofing Nails.* Petitioner did not contest the use of this data, but argued that we should add certain categories to our calculations, such as ''New and Second-Hand Purchases,'' and ''Construction Undertaken by the Establishment and by Others,'' and that we replace ''Value of Gross Output'' with ''Total Value of Gross Output.'' We made the petitioner's suggested adjustments because each of these items represent part of the costs incurred to produce the subject merchandise. We also subtracted ''Sale of Used Items'' from SG&A and ''Increase in Stock of Semifinished Goods'' from ''Total Value of Gross Output.'' We calculated factory overhead as a percentage of the total cost of manufacture. We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture. Lastly, we calculated a profit rate by dividing profit by the cost of production.
- To value electricity, we used a value found in *A Brief Guide for Investors: 1995,* published by the Indonesian Government's Investment Coordinating Board. We adjusted this value to reflect inflation through the end of the POR using Indonesian WPI published by the IMF. We then converted that figure to dollars using the exchange rate on the date of sale certified by the Federal Reserve Bank.
- To value truck and rail freight, we used the rates reported in a September 1991 cable from the U.S. Consulate in Indonesia submitted for the *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 58 FR 47859 (September 20, 1993). More recent information was not available in this review. We adjusted the rates to reflect inflation through the end of the POR using Indonesian WPI published by the IMF.

Currency Conversion

We made currency conversions pursuant to section 353.60 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Hunan Provincial Native Produce & Animal By-Products I/E Corp	02/01/96–01/31/97	0.01
PRC rate	02/01/96–01/31/97	351.92

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 353.22(c)(6). Any interested party may request a hearing within 10 days of publication in accordance with 19 CFR 353.38(b). Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 353.38(c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rate will be effective upon publication of the final results of this administrative review for all shipments of paintbrushes from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Hunan, which has a separate rate, the cash deposit rate will be zero, because the company-specific rate established in the final results of this administrative review is, in accordance with 19 CFR 353.6, de minimis, i.e., less than 0.5 percent; (2) for all other PRC exporters, the rate will be the PRC country-wide rate; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 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 assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1)

of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 31, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–29497 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke export trade certificate of review No. 92–00005.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to World International Investments Corp. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent World International Investments Corp.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on June 5, 1992 to World International Investments Corp.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (Sections 325.10(a) and 325.14(c) of the Regulations).

The Department of Commerce sent to World International Investments Corp. on May 23, 1997, a letter containing annual report questions with a reminder that its annual report was due on July 20, 1997. Additional reminders were sent on August 7, 1997, and on September 12, 1997. The Department has received no written response to any of these letters.

On November 3, 1997, and in accordance with Section 325.10(c)(1) of the Regulations, a letter was sent by certified mail to notify World International Investments Corp. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (Section 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (Section 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (Section 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (Sections 325.10(c)(4) and 325.11 of the Regulations).

Dated: November 3, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–29433 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an export trade certificate of review, application No. 97–00002.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Goff-Chem, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of l982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1997).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*

All products.

2. *Services*

All services.

3. *Technology Rights*

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)*

Export Trade Facilitation Services, including, but not limited to: professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

Goff-Chem, Inc. may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Market;
3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;
4. Enter into exclusive or non-exclusive licensing agreements regarding Products, Services, or Technology Rights with Suppliers, Export Intermediaries, or other persons in Export Markets;
5. Enter into exclusive or non-exclusive sales agreements with Suppliers, Export Intermediaries, or other persons for the transfer of title to Products, Services, and/or Technology Rights in Export Markets;
6. Enter into exclusive or non-exclusive pricing and/or consignment agreements for the sale and shipment of Products and Services to Export Markets;
7. Allocate the sales, export orders and/or divide Export Markets, among Suppliers, Export Intermediaries, or other persons for the sale, licensing and/or transfer of title to Products, Services, and/or Technology Rights;
8. Enter into exclusive or non-exclusive price and/or territorial agreements with U.S. suppliers;
9. Represent U.S. suppliers at trade shows and solicit agents and distributors for their Products in the Export Markets;
10. Enter into exclusive or non-exclusive agreements for the pooling of tangible property and other resources, the tying of Products and Services, the setting of prices, and/or the distribution, shipping or handling of Products or Services in the Export Markets; and
11. Enter into agreements to invest in overseas warehouses for the purpose of storing exported Products until transferred to the foreign purchaser, or to invest in overseas facilities for the purpose of making minor product or packaging modifications necessary to insure compatibility of the Product with the requirements of the foreign market.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, Goff-Chem, Inc. will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.
2. Goff-Chem, Inc. will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.
2. *Supplier* means a person who produces, provides, or sells a Product and/or Service.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, l4th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: October 31, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–29434 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102997D]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Law Enforcement Committee and Advisory Panel.

DATES: The meeting will be held from December 2-3, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (803) 571-1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

December 2, 1997, 1:30 p.m. to 5:00 p.m.

The Committee and Advisory Panel will hear a report on the status and scope of the NMFS/South Carolina cooperative enforcement agreement and discuss the potential for other states' participation in the future, and hear a report on the NMFS Enforcement fishing vessel monitoring systems.

December 3, 1997, 8:30 a.m. to 5:00 p.m.

The Committee and Advisory Panel will discuss the consolidated

regulations for the Southeast region, specifically the development of an index for the consolidated regulations and recommendations for revisions to the consolidated regulations; discuss standardization of measurements used for enforcement; hear the status of the NOAA General Counsel penalty schedule and summary settlement policy; review proposed management measures in Amendment 9 to the Fishery Management Plan for the Coastal Migratory Pelagics Resource; develop recommendations for targeting areas for recreational violations; discuss potential content and merits of a national marine law enforcement workshop; discuss how implementation of Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagics Resources will affect enforcement of illegal mackerel netting on the east coast of Florida; and discuss other business.

Although other issues not contained in this agenda may come before this Committee/Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Committee/Panel action during this meeting. Committee/Panel action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 25, 1997.

Dated: October 31, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–29505 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102497B]

Coral, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagic Resources, and Snapper-Grouper Fisheries of the South Atlantic

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Mr. Bruce Hecker, Director of Husbandry & Operations, South Carolina Aquarium (applicant). If granted, the EFP would authorize, over a period of 2 years, a collection for public display of an average of 25 specimens each of 76 species of marine invertebrates and 221 species of marine fish from Federal waters off South Carolina.

DATES: Written comments must be received on or before December 8, 1997.

ADDRESSES: Comments on the application must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

The application and related documents are available for review upon written request to the address above.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–570–5305.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600.745 concerning ''Scientific research activity, exempted fishing permits, and exempted educational activity.''

The South Carolina Aquarium (SCA), located in Charleston, is scheduled to open to the public in 1999. According to the applicant, SCA is a public, non-profit, self-supporting institution devoted to the understanding and conservation of South Carolina's natural aquatic habitats and will become a major educational and conservation institution with free admission to school children in groups and extensive field study and outreach programs. While the SCA is being built, specimens will be maintained in an off-site warehouse.

The applicant intends, over a period of 2 years, to collect for public display an average of 25 specimens each of 76 species of marine invertebrates and 221 species of marine fish from Federal waters off South Carolina, using a variety of fishing gears and the immobilizing chemical, quinaldine. A total of 25 specimens per species would be an average, and it may differ from species to species.

The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plans for Coral, Coral Reefs, and Live/Hard Bottom Habitats, Golden Crab, Shrimp, Spiny Lobster, Red Drum, Coastal Migratory Pelagics, and Snapper-Grouper Fisheries of the South Atlantic region. The applicant requires authorization to harvest and possess corals, live rock, golden crab, rock shrimp, red drum, wreckfish, Nassau grouper, and jewfish taken from Federal waters off South Carolina. In addition, authorization is required to use quinaldine in a coral area and to posses spiny lobster, bluefish, cobia, king and Spanish mackerel, groupers and snappers, greater amberjack, hogfish, and red porgy below the minimum size limit, in excess of established bag limits, or taken with prohibited gear.

The applicant also intends to collect a large number of species that either are not subject to Federal fishery management in the South Atlantic region or are included under a fishery management plan that contains no management measures restricting possession or harvest.

The applicant is also applying to NMFS for a separate authorization to collect highly migratory species, such as sharks and tunas, for public display purposes.

Based on a preliminary review, NMFS finds that this application warrants further consideration and intends to issue an EFP. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with South Carolina, the South Atlantic Fishery Management Council, and the U.S. Coast Guard.

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

Dated: November 3, 1997.

Bruce C. Morehead,

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

[FR Doc. 97–29506 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 20 November 1997 at 10:00 a.m. in the Commission's offices at the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral

statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C. on October 30, 1997.

Charles H. Atherton,

Secretary.

[FR Doc. 97–29435 Filed 11–6–97; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 3, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 351/651 is being increased for special shift, reducing the limit for Categories 342/642.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 61 FR 65375, published on December 12, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 7, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
342/642	206,074 dozen.
351/651	1,125,464 dozen.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29463 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

November 3, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

In a Memorandum of Understanding (MOU) dated October 28, 1997, the Governments of the United States and Thailand agreed, pursuant to Article 6 of the World Trade Organization Agreement on Textiles and Clothing (ATC), to establish limits for Category 603, produced or manufactured in Thailand and exported during the periods October 1, 1997 through December 31, 1997; January 1, 1998 through December 31, 1998; January 1, 1999 through December 31, 1999; and January 1, 2000 through September 30, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for Category 603 for the period October 1, 1997 through December 31, 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 58044, published on November 12, 1996; and 62 FR 49207, published on September 19, 1997.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and the MOU, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1996, by the

Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on November 12, 1997, you are directed to establish a limit for textile products in Category 603 at a level of 550,000 kilograms [1] for the period October 1, 1997 through December 31, 1997, pursuant to the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of Understanding dated October 28, 1997 between the Governments of the United States and Thailand.

Textile products in Category 603 which have been exported to the United States prior to October 1, 1997 shall not be subject to this directive.

Textile products in Category 603 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges for Category 603 will be provided as data become available.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–29465 Filed 11–6–97; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0001]

In the Matter of Yongxin International, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR § 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Yongxin International, Inc., a corporation, ''containing a civil penalty of $50,000.''

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 22, 1997.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: November 4, 1997.

Sadye E. Dunn,

Secretary.

United States of America Consumer Product Safety Commission

[CPSC Docket No. 98–C0001]

In the Matter of Yongxin International, Inc., a Corporation

Settlement Agreement and Order

1. Yongxin International, Inc. (hereinafter, ''Yongixin'' or ''Respondent''), a corporation, enters into this Settlement Agreement (hereinafter, ''Agreement''), and agrees to the entry of the Order incorporated herein. The purpose of this Agreement and Order is to settle the staff's allegations that Yongxin knowingly imported into the United States for sale and distribution in United States commerce cigarette lighters that are subject to and failed to comply with the Safety Standard For Cigarette Lighters (hereinafter, ''Standard''), 16 C.F.R. part 1210, in violation of section 19(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2068(a)(1).

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission (hereinafter, ''Commission'' or ''CPSC''), an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. § 2053.

3. Since 1992, Yongxin has been a corporation organized and existing under the laws of the State of California. Its principal corporate offices are located at 17870 Castleton Street, Suite 260, City of Industry, CA 91748. Yongxin is an importer, broker, and distributor of various consumer items including cigarette lighters.

II. Allegations of the Staff

4. On three occasions between October 21, 1994, and June 18, 1996, Yongxin knowingly imported into the United States for sale and distribution in United States commerce 83 kinds of disposable and novelty cigarette lighters (141,300 units). These cigarette lighters are identified and described as follows:

Collection date* entry date	Sample No.	Type of lighter, model No.	Number of lighters
10/21/94	T–867–8061	Disposable, No. 1	11,000
10/21/94	T–867–8062	Novelty, No. 5	2,400
10/21/94	T–867–8063	Disposable, No. 8	2,400
10/21/94	T–867–8064	Novelty, No. 9	1,000

[1] The limit has not been adjusted to account for any imports exported after September 30, 1997.

Collection date* entry date	Sample No.	Type of lighter, model No.	Number of lighters
10/21/94	T–867–8065	Novelty, No. 2	1,500
12/09/94*	T–867–8117	Novelty, No. 1	2,500
12/09/94*	T–867–8118	Disposable, No. 3	10,200
12/09/94*	T–867–8119	Disposable, No. 4	2,000
12/09/94*	T–867–8120	Novelty, No. 5	2,000
12/09/94*	T–867–8121	Disposable, No. 6	2,000
12/09/94*	T–867–8123	Disposable, No. 8	10,000
12/09/94*	T–867–8122	Disposable, No. 7	10,000
12/09/94*	T–867–8124	Disposable, No. 37	2,500
12/09/94*	T–867–8125	Novelty, No. 119	18,000
12/09/94*	T–867–8126	Novelty, No. 511	5,000
12/09/94*	T–867–8127	Novelty, No. 1410	8,000
06/18/96	96–860–6126	Novelty	500
06/18/96	96–860–6127	Novelty	500
06/18/96	96–860–6128	Novelty	500
06/18/96	96–860–6129	Novelty	1,000
06/18/96	96–860–6130	Novelty	500
06/18/96	96–860–6131	Novelty	540
06/18/96	96–860–6132	Novelty	3,600
06/18/96	96–860–6133	Novelty	50
06/18/96	96–860–6134	Novelty	20
06/18/96	96–860–6135	Novelty	20
06/18/96	96–860–6136	Disposable	20
06/18/96	96–860–6137	Disposable	20
06/18/96	96–860–6138	Disposable	20
06/18/96	96–860–6139	Disposable	50
06/18/96	96–860–6140	Disposable	7,200
06/18/96	96–860–6141	Disposable	300
06/18/96	96–860–6142	Disposable	55
06/18/96	96–860–6143	Disposable	200
06/18/96	96–860–6144	Disposable	250
06/18/96	96–860–6145	Novelty	500
06/18/96	96–860–6146	Novelty	500
06/18/96	96–860–6147	Novelty	100
06/18/96	96–860–6148	Novelty	2,000
06/18/96	96–860–6149	Novelty	1,200
06/18/96	96–860–6150	Disposable	864
06/18/96	96–860–6151	Novelty	1,056
06/18/96	96–860–6152	Novelty	1,000
06/18/96	96–860–6153	Novelty	2,000
06/18/96	96–860–6154	Novelty	10,000
06/18/96	96–860–6155	Novelty	500
06/18/96	96–860–6156	Novelty	500
06/18/96	96–860–6157	Novelty	1,000
06/18/96	96–860–6158	Disposable	200
06/18/96	96–860–6159	Disposable	200
06/18/96	96–860–6160	Disposable	600
06/18/96	96–860–6161	Disposable	500
06/18/96	96–860–6162	Disposable	500
06/18/96	96–860–6163	Disposable	1,500
06/18/96	96–860–6164	Novelty	500
06/18/96	96–860–6165	Novelty	20
06/18/96	96–860–6166	Novelty	2,000
06/18/96	96–860–6167	Novelty	2,600
06/18/96	96–860–6168	Novelty	100
06/18/96	96–860–6169	Novelty	20
06/18/96	96–860–6170	Novelty	80
06/18/96	96–860–6171	Disposable	500
06/18/96	96–860–6172	Novelty	500
06/18/96	96–860–6173	Novelty	300
06/18/96	96–860–6174	Disposable	300
06/18/96	96–860–6175	Disposable	300
06/18/96	96–860–6176	Disposable	300
06/18/96	96–860–6177	Disposable	300
06/18/96	96–860–6178	Disposable	300
06/18/96	96–860–6179	Disposable	300
06/18/96	96–860–6180	Disposable	500
06/18/96	96–860–6181	Novelty	200
06/18/96	96–860–6182	Disposable	200
06/18/96	96–860–6183	Disposable	500
06/18/96	96–860–6184	Disposable	100
06/18/96	96–860–6185	Disposable	50

Collection date* entry date	Sample No.	Type of lighter, model No.	Number of lighters
06/18/96	96–860–6186	Disposable	50
06/18/96	96–860–6187	Novelty	50
06/18/96	96–860–6188	Novelty	50
06/18/96	96–860–6189	Disposable	200
06/18/96	96–860–6190	Disposable	60
06/18/96	96–860–6191	Disposable	100
06/18/96	96–860–6192	Disposable	255

5. The cigarette lighters identified as disposable cigarette lighters in paragraph 4 above are subject to the Commission's Safety Standard For Cigarette Lighters at 16 CFR Part 1210, issued under section 9 of the CPSA, 15 U.S.C. § 2058 because they are fueled by butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75°F (24°C) exceeds a gage pressure of 15 psi (103kPA), and they have a customs valuation or ex-factory price under $2.00, as adjusted every 5 years, to the nearest $0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from June 1993.

6. The cigarette lighters identified as novelty cigarette lighters in paragraph 4 above are subject to the Commission's Safety Standard For Cigarette Lighters at 16 CFR Part 1210, issued under section 9 of the CPSA, 15 U.S.C. § 2058 because they have entertaining audio or visual effects, or they depict (logos, decals, art work, etc.) or resemble in physical form or function articles commonly recognized as appealing to or intended for use by children under 5 years of age.

7. The cigarette lighters identified in paragraph 4 above failed to comply with the child resistant requirements of the Standard at 16 CFR § 1210.3 because they lacked a child resistant mechanism.

8. The cigarette lighters identified in paragraph 4 above were not labeled in accordance with the labeling requirements of the Standard at 16 CFR § 1210.12(c).

9. The cigarette lighters identified in paragraph 4 above were not accompanied by a certificate of compliance as required by the Standard at 16 CFR § 1210.12(b).

10. The Respondent failed to submit to the Office of Compliance, Division of Regulatory Management written reports at least 30 days prior to the importation of the cigarette lighters identified in paragraph 4 above as required by the Standard at 16 CFR § 1210.17(b).

11. The Respondent knowingly committed the acts set forth in paragraphs 4 through 10 above, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1), for which a civil penalty may be imposed pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1).

III. Response of Respondent

12. Respondent denies the allegations of the staff set forth in paragraphs 4 through 11 above that it knowingly imported into the United States for sale and distribution in United States commerce disposable and novelty cigarette lighters that are subject to and failed to comply with the requirements of the Commission's Safety Standard For Cigarette Lighters, 16 CFR Part 1210, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1), for which a civil penalty may be imposed pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1).

IV. Agreement of the Parties

13. The Commission has jurisdiction over this matter under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

14. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by reference.

15. The Commission does not make any determination that the Respondent knowingly violated the CPSA. This Agreement is entered into for the purposes of settlement only.

16. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, the Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether the Respondent failed to comply with the CPSA as aforesaid, (4) to a statement of findings of facts and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

17. For purposes of section 6(b) of the CPSA, 15 U.S.C. § 2055(b), this matter shall be treated as if a complaint had issued; and the Commission may publicize the terms of this Settlement Agreement and Order.

18. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 C.F.R. §§ 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

19. The parties further agree that the Commission shall issue the attached Order; and that a violation of the order shall subject the Respondent to appropriate legal action.

20. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

21. The provisions of the Settlement Agreement and Order shall apply to Respondent and each of its successors and assigns.

Dated: September 16, 1997.
Respondent Yongxin International, Inc.

Jian Hong Yang,

Secretary, Yougxin International, Inc., 17870 Castleton Street, Suite 260, City of Industry, CA 91748.

Commission Staff

Eric L. Stone,

Director, Division of Administrative Litigation, Office of Compliance.

David Schmeltzer,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.

Dated: September 22, 1997.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Yongxin International, Inc.,

a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Yongxin International, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Yongxin International, Inc. shall pay the Commission a civil penalty in the amount of fifty thousand and 00/100 dollars ($50,000.00) in three (3) payments. The first payment sixteen thousand six hundred sixty-seven and 00/100 dollars ($16,667.00) shall be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the Settlement Agreement. The second payment of sixteen thousand six hundred sixty-seven and 00/100 dollars ($16,667.00) shall be made within 12 months after service of the Final Order upon Respondent. The third payment of sixteen thousand six hundred and sixty-six and 00/100 dollars ($16,666.00) shall be made within 24 months after service of the Final Order upon Respondent. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 11 of the Settlement Agreement that Yongxin International, Inc. knowingly violated the CPSA. Upon the failure by Yongxin International, Inc. to make a payment or upon the making of a late payment by Yongxin International, Inc. the entire amount of the civil penalty is due and payable, and the interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 4th day of November, 1997.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–29501 Filed 11–6–97; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–3082–000]

Ellen V. Futter; Notice of Filing

November 3, 1997.

On October 21, 1997, Ellen V. Futter, (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Trustee: Consolidated Edison Company of New York, Inc.

Director: J.P. Morgan & Co. Incorporated and Morgan Guaranty Trust Company of New York

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29431 Filed 11–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2004–073 and 11607–000]

Holyoke Water Power Company, Ashburnham Municipal Light Plant and Massachusetts Municipal Wholesale Electric Company; Notice of Project Site Visit for the Holyoke Hydroelectric Project on the Connecticut River

November 3, 1997.

The Federal Energy Regulatory Commission (Commission) is reviewing the Holyoke Water Power Company's application for a new license for the continued operation of the Holyoke Project on the Connecticut River, Massachusetts. The Commission is similarly reviewing a competing application for the Holyoke Project by Ashburnham Municipal Light Plant and the Massachusetts Municipal Wholesale Electric Company.

The Commission anticipates conducting public and agency scoping meetings for the Holyoke Project during the upcoming winter months. Given the uncertainty in weather conditions during the winter in Massachusetts, the applicant and Commission staff will conduct a site visit of the Holyoke Project prior to conducting any scoping meetings. The site visit will be held on November 18, 1997, beginning at 9:00 a.m. All interested individuals, organizations, and agencies are invited to attend. All participants are responsible for their own transportation to the site. For more details, interested parties should contact Mr. Jim Kearns of Northeast Utilities Service Company at (860) 665–5936 prior to the site visit date.

For further information, please contact Allan Creamer, at (202/219–0365) Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–29483 Filed 11–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–49–000]

K N Wattenberg Transmission Limited Liability Company; Notice of Application

November 3, 1997.

Take notice that on October 24, 1997, K N Wattenberg Transmission Limited Liability Company (K N Wattenberg), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed an abbreviated application in Docket No. CP98–49–000,[1] pursuant to Section 7(c) of the Natural Gas Act, as amended, and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing it to acquire, construct and operate, as necessary certain pipeline and related facilities designated as the Front Runner Pipeline, all as more fully set forth in the application on file with the

[1] K N Wattenberg states that this application is substantively identical to its application filed on August 25, 1997, in Docket No. CP97–707–000, which was dismissed without prejudice by the Commission on October 15, 1997, due to the lack of sufficient market data as required in Section 157.14 of the Commission's regulations.

Commission and open to public inspection.

In its filing, K N Wattenberg seeks authorization to: (1) Construct certain pipeline facilities, including a 45-mile segment of 24-inch of pipeline extending from the Rockport Hub to a location southwest of Greeley, Colorado, perform any necessary pipeline rerouting, and construct several gas supply receipt and delivery interconnects; (2) acquire from its affiliate, K N Gas Gathering Company (KNGG), approximately 34 miles of existing 16-inch and smaller pipeline which will be converted to interstate transportation service and incorporated into the Front Runner Pipeline; and (3) operate the Front Runner Pipeline. K N Wattenberg states that the Front Runner Pipeline will be approximately 109 miles long, including secondary laterals, and will stretch from the emerging Rockport Hub, located south of Cheyenne, Wyoming, to just north of the Denver metropolitan area near Brighton and the Denver International Airport. Approximately 77 miles of the Front Runner Pipeline will be constructed, with the remainder to be required from KNGG. Upon completion, K N Wattenberg claims that the Front Runner Pipeline will have a design capacity of approximately 254 MMcf per day flowing north to south into the Front Range of the Rocky Mountains in Northern Colorado, thus providing a competitive transportation alternative for growing markets in the area.

The estimated cost of constructing the Front Runner Pipeline is $31 million. K N Wattenberg proposes to charge incremental transportation rates as initial rates for service on the Front Runner Pipeline and is not requesting a pre-determination for authorization to charge rolled-in rates. K N Wattenberg plans to commence construction of the proposed facilities between September and December 1998, so that the system can be placed in interstate service for late winter 1998–99 operation. Thus, K N Wattenberg requests that the Commission approve the requested authorizations by June 1998.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 24, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's Rules require that protestors provide copies of their protests to the party or parties against whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An inrtervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N Wattenberg to appear or be represented at the hearing.

Linwood W. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29428 Filed 11–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–89–000]

Southern California Edison Company; Notice of Filing

November 3, 1997.

Take notice that on October 8, 1997, Southern California Edison Company (Edison) tendered for filing a Notice of Cancellation of Service Agreement No. 10, under FERC Electric Tariff, Original Volume No. 4, between Edison and San Diego Gas & Electric Company for Firm Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29429 Filed 11–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–99–000]

Southern California Edison Company; Notice of Filing

November 3, 1997.

Take notice that Southern California Edison Company on October 9, 1997, tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 248.38, and all supplements thereto.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 14, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29430 Filed 11–6–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

November 3, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Proposed Recreation Plan.

b. *Project No.:* 1494–148.

c. *Date Filed:* October 3, 1997.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The Pensacola Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Robert W. Sullivan, Jr. Grand River Dam Authority P.O. Box 409 Vinita, OK 74301 (918) 256–5545.

i. *FERC Contact:* Jon Cofrancesco, (202) 219–0079.

j. *Comment Date:* December 08, 1997.

k. *Description of Project:* Grand River Dame Authority, licensee for the Pensacola Project, filed a long-term recreation plan for the project under article 407 of the project license. The proposed recreation plan addresses existing and future recreation use and development, safe recreational boating, and shoreline development. Further, the licensee outlines its proposed management and maintenance practice for recreation uses at the project. As required under article 407, the licensee consulted with the Oklahoma Tourism and Recreation Department, the U.S. Fish and Wildlife Service, and the National Park Service in preparing the proposed plan.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Motions to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—The Commission invites Federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant). If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–29432 Filed 11–6–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed October 27, 1997 Through October 31, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970416, DRAFT EIS, FHW, HI, Saddle Road (HI–200) Improvements between Mamalahoa Highway HI–190) to Milepost 6 near Hilo, Funding, NPDES and COE Section 404 Permit, Hawaii County, HI, Due: December 22, 1997, Contact: Bert McCauley (303) 969–5924.

EIS No. 970417, FINAL EIS, BLM, CA, Castle Mountain Mine Open Pit Heap Leach Gold Mine Expansion Project, Plan of Operations Modification and Mine and Reclamation Plans Amendment, Approvals, San Bernardino County, CA, Due: December 08, 1997, Contact: George R. Meckfessel (619) 326–7000.

EIS No. 970418, DRAFT EIS, AFS, LA, Kisatchie National Forest Revision Land and Resource Management Plan, Implementation, Claiborne, Grant, Natchitoches, Rapides, Vernon, Webster and Winn Parishes, LA, Due: January 31, 1998, Contact: Danny W. Britt (318) 473–7160.

EIS No. 970419, FINAL EIS, FHW, NY, NY–17 Highway Conversion from a Partial to a Full Access Control Facility, Five-Mile Point to Occanum and NY–17 Rehabilitation or Reconstruction, Funding and COE Section 404 Permit Issuance, Towns of Kirkwood and Windsor, Broome County, NY, Due: December 08, 1997, Contact: Harold J. Brown (518) 431–4127.

EIS No. 970420, FINAL EIS, DOA, HI, Waimea-Paauilo Watershed Project, To Alleviate the Agricultural Water Shortage, Watershed Protection and Flood Prevention, COE Section 404 Permit. Hawaii County, HI, Due: December 08, 1997, Contact: Kenneth M. Kaneshiro (808) 541–2600.

EIS No. 970421, FINAL EIS, FHW, MO, MO–5 Corridor Transportation

Improvement, Funding, NPDES Permit, U.S. Coast Guard Permit, COE Section 10 and 404 Permits, Gravois Mills, Morgan, Camden and Laclede Counties, MO, Due: December 08, 1997, Contact: Don Neumann (573) 636–7104.

EIS No. 970422, FINAL EIS, CGD, NY, NJ, Staten Island Bridges Program—Modernization and Capacity Enhancement Project, Construction and Operation, Funding, Right-of-Way Grant, COE Section 404 Permit and NPDES Permit, Staten Island, NY and Elizabeth, NJ, Due: December 08, 1997, Contact: Gary Kassof (212) 668–7995.

EIS No. 970423, DRAFT EIS, AFS, MI, Porter Creek Recreational Lake and Complex, Implementation, Homochitto National Forest, Homochitto Ranger District, Franklin County, MI, Due: December 22, 1997, Contact: Gary W. Bennett (601) 384–5876.

EIS No. 970424, DRAFT EIS, IBR, CA, East Bay Municipal Utility District, Supplemental Water Supply Project, American River Division of the Central Valley Project (CVP), Sacramento County, CA, Due: January 05, 1998, Contact: Roderick Hall (919) 989–7279.

EIS No. 970425, DRAFT EIS, SFW, MO, Big Muddy National Fish and Wildlife Refuge (Big Muddy Refuge) Expansion and Land Acquisition, Missouri River Basin, Several Counties, MO, Due: January 07, 1998, Contact: Ms. Judy McClendo (1–800) 686–8339.

EIS No. 970426, DRAFT EIS, AFS, KY, Daniel Boone National Forest Off-Highway Vehicle (OHV) Management Policy, Modification, Several Counties, KY, Due: January 05, 1998, Contact: Kevin Lawrence (606) 745–3100.

EIS No. 970427, DRAFT EIS, AFS, AK, Crystal Creek Timber Harvest, Implementation the 1997 Tongass Land Management Plan, Stikine Area, Tongass National Forest, AK, Due: December 23, 1997, Contact: Bruce Sims (907) 772–3841.

Dated: November 4, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–29503 Filed 11–6–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5485–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 29, 1997 through October 03, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the OFFICE OF FEDERAL ACTIVITIES AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–GSA–K40228–CA Rating EC2, United States Border Facility, Tecate Port of Entry (POE) Realignment and Expansion, NPDES Permit, City of Tecate, San Diego County, CA.

Summary: EPA expressed environmental concerns regarding potential impacts to the Campo-Cottonwood sole source aquifer and impacts relative to traffic increases through Tecate POE. EPA requested that these issues be further addressed in the final EIS.

ERP No. D–IBR–K39028–NV Rating EC2, Clark County Wetlands Park Master Plan, Construction and Operation, Erosion Control Structures in Las Vegas Wash, COE Section 404 Permit, Right-of-Way Permit and Endangered Species Act Section 4, Clark County, NV.

Summary: EPA supported proposal to reduce erosion, restore wetlands and riparian areas to create wildlife habitat. EPA expressed concern over the potential for contaminant accumulation within the sediments and recommended that extenstive monitoring should be implemented to track the progress of the project.

ERP No. D–USN–K11081–NV Rating EC2, Fallon Naval Air Station (NAS) Range Training Complex, Withdrawal of Federally Administered Public Lands for Range Safety and Training Purposes, Great Basin, City of Fallon, Churchill County, NV.

Summary: EPA expressed environmental concern regarding potential noise impacts and impacts from chaff and ordnance. EPA also requested that impacts to the Walker River Indian Reservation be more fully analyzed.

Final EISs

ERP No. F–COE–K36114–CA, Magpie Creek Channel Section 205 Flood Control Investigation Project, Improvements, Implementation, National Economic Development Plan and Levee Plan, NPDES Permit Issuance, McCellan Air Force Base, City of Sacramento, Sacramento County, CA.

Summary: EPA expressed environmental concern over the propose project, and requested that the Corps' Record of Decision address EPA's recommendations regarding the practicability of a combination of structural and nonstructural alternatives; provide data on emissions of carbon monoxide from construction equipment address need for mitigation measures to reduce construction-related emissions of carbon monoxide and oxides of nitrogen; integrate pollution prevention features in the project's design, construction and operation; indicate to agencies and the public whether the concerns previously raised by the Interior Department on the project's fish and wildlife impacts were satisfactorily resolved or remain unresolved; and clarify the role of the Air Force in the proposed project.

Dated: November 4, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–29504 Filed 11–6–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5919–2]

Announcement of Stakeholder Meeting on Possible Revisions to National Primary Drinking Water Regulations for Radionuclides

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of Public Meeting.

SUMMARY: On December 11 and 12, 1997, the Environmental Protection Agency (EPA) will hold a public meeting in Washington, D.C., to discuss issues concerning development and revisions of National Primary Drinking Water Regulations (NPDWRs) for radionuclides. The radionuclides, for purposes of this meeting, include alpha emitters, beta and photon emitters, radium and uranium, but do not include radon. Under a court order on stipulated agreement by the parties, EPA agreed to publish final regulations for uranium, and revise as necessary the current alpha, beta and photon emitters, and

radium NPDWRs by November 2000. The Agency is in the process of reviewing current scientific information, new technologies, cost factors, implementation issues, and other considerations relating to these contaminants in light of the Safe Drinking Water Act Amendments of 1996. Before deciding on any course of action, EPA is interested in obtaining the views of individuals, agencies, and organizations, who have a stake in possible revisions to the drinking water regulations for radionuclides. The meeting is open to all members of the public at no cost.

DATES AND TIMES: The stakeholder meeting will be held on Thursday, December 11, 1997, from 9:00 a.m to 5:00 p.m. EDT and Friday, December 12, 1997, from 9:00 a.m. to 4:00 p.m EDT.

LOCATION: Washington D.C. area.

REGISTRATION: To register, call the Safe Drinking Water Hotline toll free at 1–800–426–4791 between 9:00 am and 5:30 pm EDT. Individuals who register by December 2, 1997 will receive by mail an agenda, logistics sheet, and background materials prior to the meeting. These materials will also be distributed at the meeting.

ADDITIONAL INFORMATION: For members of the public unable to attend the meeting in person, a limited number of telephone conference lines will be available on a first-reserved, first-served basis. To register for a conference call line, call the Safe Drinking Water Hotline at 1–800–426–4791.

SUPPLEMENTARY INFORMATION:

A. Background

Under the Safe Drinking Water Act (SDWA), EPA established National Interim Primary Drinking Water Regulations (NIPDWRs) for radionuclides in 1976. At that time, the Agency set three different maximum contaminant levels (MCLs): an MCL for radium-226 and radium-228 combined (5pCi/l); an MCL level for all radionuclides that emit alpha particles (15 pCi/l); and an MCL for all radionuclides that emit beta particles and photon radiation, alone or combination in water (4 mrem). Radon and uranium were not included in these regulations.

The 1986 Amendments to the SDWA directed EPA to develop, or revise, regulations for 83 listed contaminants which included all the radionuclides above. The Amendments also finalized the regulations by eliminating the term ''interim''; interim rules became National Primary Drinking Water Regulations (NPDWRs). EPA was charged with promulgating health-based maximum contaminant level goals (MCLG) as well as MCLs. When EPA failed to meet the statutory schedules for promulgating the radionuclide NPDWRs, a lawsuit was brought which established a new schedule.

In 1991, the Agency proposed revisions to these regulations which, among other changes, included revised, separate MCLs for radium-226 (20 pCi/l) and radium-228 (20 pCi/l), and revised beta and photon limits (4 mrem-ede). EPA also proposed MCLs for uranium (20 ug/l or 30 pCi/l) and radon (300 pCi/l), and MCLGs for all radionuclides (zero). A final regulation based on the proposal was not promulgated.

The SDWA Amendments of 1996 directed EPA to withdraw the portion of the proposal dealing with radon (which has been done), and adopt the schedule from earlier consent decrees for the major radionuclide groups. The Amendments also direct EPA to review and revise the regulations every six years as appropriate to maintain or provide greater protection of health.

In 1996, the United States District Court for the District of Oregon issued an order on stipulated agreement with plaintiffs concerning uranium, radium, alpha, beta and photon emitters which updated the existing schedule. The Court directed EPA to take final action for uranium within four years (November 2000), and to either take final action on the proposal regarding radium, alpha, beta and photon emitters within four years, or state its reasons for not taking final action, thereby either reaffirming the current standard, or establishing a different one.

B. Meeting Issues and Request for Stakeholder Involvement

EPA intends to base any revisions to the NPDWRs for radionuclides on the best available health effects data, treatment technologies, occurrence data, implementation options and on stakeholder input. To realize these intentions, EPA will cover a broad range of issues at the meeting, including, but not limited to:

- Statutory provisions;
- Options for comprehensive regulation;
- Implementation strategies and considerations;
- Identification of costs and benefits; and
- Environmental equity issues.

EPA has announced this public meeting to hear from stakeholders on EPA's plans to develop the radionuclides rule. EPA invites all interested parties to share their views on this important topic.

Dated: November 4, 1997.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 97–29480 Filed 11–6–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–2300]

Private Land Mobile Radio

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 3, 1997, the Public Safety and Private Wireless Division released a public notice seeking comments on a request made by Amoco Production Company (Amoco) for an advisory opinion. The advisory opinion was requested to determine whether a proposed joint arrangement between Amoco and Shell Offshore Services Company (SOSCO) constitutes a ''not-for-profit, cost shared'' arrangement.

DATES: Comments are to be filed on or before December 10, 1997, and reply comments on or before December 24, 1997.

ADDRESSES: Federal Communications Commission, 1919 M St., N.W. Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James Moskowitz, Wireless Telecommunications Bureau, Public Safety & Private Wireless Division, (202) 418–0680, or via E-mail to ''jmoskowi@fcc.gov''.

SUPPLEMENTARY INFORMATION:

Released: November 3, 1997.

1. On January 8, 1997, Amoco Production Company (Amoco) filed a document captioned ''Request for an Advisory Opinion'' (Request) on the issue of whether a proposed joint arrangement between Amoco and Shell Offshore Services Company (SOSCO) constitutes a ''not-for-profit, cost-shared'' arrangement pursuant to § 90.603 of the Commission's Rules. The Commission now invites comment on the Request.

2. Amoco proposes to expand its existing 900 MHz Industrial/Land Transportation trunked two-way mobile communications system in the Gulf of Mexico and integrate that system with SOSCO's existing 6 GHz common carrier, point-to-point microwave network. Amoco states that this project will expand its 900 MHz system

considerably—from its current twelve channels trunked in three-channel groups at thirteen sites, to approximately thirty sites with ''a small number'' of additional channels. Amoco estimates that this system will serve as many as 200 ''participants,'' employing approximately 8,000 portable units.

3. This system will also incorporate the 6 GHz point-to-point microwave network that SOSCO currently operates in the Gulf of Mexico as a common carrier pursuant to § 101.701 of the Commission's Rules. Under the plan outlined in the Request, SOSCO is to be the principal point-to-point bandwidth provider to transport the 900 MHz traffic between sites in the Gulf to interconnection points with on-shore common carriers. Additionally, Amoco proposes to have SOSCO provide local exchange and long distance service to the ''participants'' in the 900 MHz system at a profit.

4. Interested parties may file comments on Amoco's Request no later than December 10, 1997. Parties interested in submitting reply comments must do so no later than December 24, 1997. All comments should reference Amoco's Request and the File No. DA 97–2300, and should be filed with the Office of Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. A copy of each filing should be sent to International Transcription Service, Inc. (ITS), 1231 20th Street, N.W.,Washington, DC 20036, (202) 857–3800 and to James Moskowitz, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, 2025 M Street, N.W., Room 8010, Washington, D.C. 20554.

5. The full text of the petition, comments, and reply comments may be obtained from International Transcription Service, Inc. (ITS), 1231 20th Street, N.W., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

David E. Horowitz,

Division Chief, Public Safety & Private Wireless Division.

[FR Doc. 97–29403 Filed 11–6–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER NUMBER: 97–28967.

PREVIOUSLY ANNOUNCED DATE AND TIME: Wednesday, November 5, 1997, 10:00 a.m., Meeting open to the public. The Public Hearing on Recordkeeping and Reporting Notice of Proposed Rulemaking has been CANCELLED.

DATE AND TIME: Wednesday, November 12, 1997 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, November 13, 1997 at 10:00 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 1997–22: Business Council of Alabama by William F. O'Connor, Jr., President.
Briefing: Status of Systems Development Project.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–29662 Filed 11–5–97; 3:06 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Notice.

Background:

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. 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. Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is, supporting statements, and the approved collection of information instruments will be placed into OMB's public docket files. The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimates of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before January 6, 1998.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs,

Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

For further information on the proposal concerning the FR Y-9C report, contact Robert T. Maahs, Supervisory Financial Analyst (202-872-4935).

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

1. Report title: Government Securities Dealers Reports
Agency form number: FR 2004A, FR 2004B, FR 2004C, FR 2004SI, FR 2004WI
OMB control number: 7100-0003
Frequency: weekly and on occasion
Reporters: primary dealers in U.S. government securities
Annual reporting hours: 11,817
Estimated average hours per response: 1.0 (FR 2004A, B, C, SI); 0.25 (FR 2004WI)
Number of respondents: 39
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2), 353-359, and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract:This group of reports is used to collect data on positions, transactions, and financing activity in the government securities market from primary dealers in U.S. government securities. The Federal Reserve uses the data to monitor the condition of the U.S. government securities market in its surveillance of the market and to assist the U.S. Department of the Treasury.

Three revisions are proposed for implementation in January 1998. On the FR 2004A and FR 2004B a line would be added to report position and transaction volumes with respect to Treasury Inflation-Index Securities. On the FR 2004A and FR 2004B four lines would be added to provide greater detail regarding the dealers' federal agency securities positions and transaction volumes. On the FR 2004C, two columns of matched-book financing transactions would be deleted. The revisions, on a net basis, would have no effect on the current annual reporting burden.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Domestic Branch Notification
Agency form number: FR 4001
OMB control number: 7100-0097
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 201
Estimated average hours per response: 30 minutes for expedited notifications; 1 hour for nonexpedited notifications
Number of respondents: 316 expedited, 43 nonexpedited
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 321) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to establish a domestic branch. There is no formal reporting form; banks notify the Federal Reserve by letter prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to obtain public comment on such proposals before acting on them, and to otherwise supervise state member banks.

2. Report title: Investment in Bank Premises Notification
Agency form number: FR 4014
OMB control number: 7100-0139
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 8
Estimated average hours per response: 30 minutes
Number of respondents: 15
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 371d) and is not given confidential treatment.

Abstract: The Federal Reserve System requires a state member bank to file a notification whenever it proposes to make an investment in bank premises that results in its total bank premises investment exceeding its capital stock and surplus or, if the bank is well capitalized and in good condition, exceeding 150 percent of its capital stock and surplus. There is no formal reporting form; banks notify the Federal Reserve by letter prior to making the proposed investment. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

3. Report title: Reports Related to Securities of State Member Banks as Required by Regulation H
Agency form number: N/A
OMB control number: 7100-0091
Frequency: On occasion
Reporters: State member banks
Annual reporting hours: 2,146
Estimated average hours per response: 5.11 hours
Number of respondents: 30
Small businesses are not affected.

General description of report: This information collection is mandatory (15 U.S.C. section 78l(i)) and is not given confidential treatment.

Abstract: The Federal Reserve's Regulation H requires certain state member banks to submit information related to their securities to the Board of Governors of the Federal Reserve System on the same forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission. The information is used primarily for public disclosure and is available to the public upon request.

Proposal to approve under OMB delegated authority the elimination of certain requested information, without extension, from the following reports:

1. Report title: Weekly Report of Assets and Liabilities for Large Banks
Agency form number: FR 2416
OMB control number: 7100-0075
Frequency: weekly
Reporters: U.S. commercial banks
Annual reporting hours: The proposal is estimated to reduce the annual reporting burden from 46,592 hours to 44,928 hours.
Estimated average hours per response: The proposal is estimated to reduce the burden per response from 7 hours to 6.75 hours.
Number of respondents: 128
Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. §§ 225(a) and 248(a)(2)) and is given confidential treatment (5 U.S.C. § 552(b)(4) and (8)).

Abstract: The Board proposes to eliminate two items from the FR 2416, the large domestic bank series of the three voluntary weekly condition/bank credit reports. The FR 2416 is a detailed balance sheet report that is collected as of each Wednesday from a sample of about 128 large U.S.-chartered commercial banks. All three reports, together with data from other sources, are used to construct weekly estimates of bank credit, sources and uses of bank funds, and a balance sheet for the

banking system as a whole. These estimates also are used in constructing the bank credit component of the domestic non-financial debt aggregate monitored by the Federal Open Market Committee.

The Board proposes to eliminate two items, ''Commercial paper outstanding issued by related institutions of the reporting bank, issued through commercial paper brokers and dealers'' (Memorandum item 7.a) and ''Commercial paper outstanding issued by related institutions of the reporting bank, issued directly'' (Memorandum item 7.b). The information collected in these two items is now obtained by the Federal Reserve from another source, eliminating the need to maintain them on the FR 2416. The revisions would be effective with data as-of January 7, 1998.

2. Report title: Consolidated Financial Statements for Bank Holding Companies
Agency form number: FR Y-9C
OMB control number: 7100-0128
Frequency: Quarterly
Reporters: Bank holding companies
Annual reporting hours: 196,462
Estimated average hours per response: Ranges from 5 to 1,250 hours
Number of respondents: 1,457
Small businesses are affected.

General Information: Under the Bank Holding Company Act of 1956, as amended, the Board is responsible for the supervision and regulation of all bank holding companies. The FR Y-9 series of reports has historically been, and continues to be, the primary source of financial information on bank holding company activities between on-site inspections. Financial information, as well as ratios developed from these reports, are used to detect emerging financial problems, to review performance for pre-inspection analysis, to evaluate bank holding company mergers and acquisitions, and to analyze holding companies overall financial condition and performance as part of the Federal Reserve System's overall supervisory responsibilities.

General description of report: The information collection is mandatory 12 U.S.C. 1844(b) and (c) and 12 CFR 225.5(b). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form.

Data reported on the FR Y-9C, Schedule HC-H, Column A, requiring information on ''assets past due 30 through 89 days and still accruing'' and memoranda item 2 are confidential pursuant to Section (b)(8) of the Freedom of Information Act 5 U.S.C. 552(b)(8).

The FR Y-9C consolidated financial statements are currently filed by top-tier bank holding companies with total consolidated assets of $150 million or more and by lower-tier bank holding companies that have total consolidated assets of $1 billion or more. In addition, all multibank bank holding companies with debt outstanding to the general public or engaged in certain nonbank activities, regardless of size, must file the FR Y-9C. The following bank holding companies are exempt from filing the FR Y-9C, unless the Board specifically requires an exempt company to file the report: bank holding companies that are subsidiaries of another bank holding company and have total consolidated assets of less than $1 billion; bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by section 211.23(b) of Regulation K.

The report includes a balance sheet, income statement, and statement of changes in equity capital with supporting schedules providing information on securities, loans, risk-based capital, deposits, average balances, off-balance sheet activities, past due loans, and loan charge-offs and recoveries.

On August 27, 1997, the Federal Reserve announced in the *Federal Register*[1] modifications to the prudential limits or firewalls that currently apply to bank holding companies engaged in securities underwriting and dealing activities through section 20 subsidiaries. The modifications are effective October 31, 1997.

The Federal Reserve announced that as one of its modifications to the firewalls, it was eliminating the required capital deductions that related to the section 20 subsidiary in determining capital adequacy. The Federal Reserve stated that ''the capital deductions (and resulting deconsolidation for regulatory capital purposes) are inconsistent with generally accepted accounting principles (GAAP) and have therefore created confusion and imposed costs by requiring bank holding companies to prepare financial statements on two bases.'' Therefore, the Federal Reserve is proposing to grant prompt reporting relief to bank holding companies with section 20 subsidiaries by eliminating Schedule HC-J from the FR Y-9C effective with the December 31, 1997, reporting date.

The estimated time per response is an average of all bank holding companies filing this report. The response time for a given bank holding company varies depending on the size and the types of activities in which they are engaged. The time per response for a bank holding company is estimated to range from 5 to 1,250 hours, depending on individual circumstances. Although the proposed revisions will provide significant reporting relief for the 26 bank holding companies with section 20 subsidiaries that must currently complete Schedule HC-J, the effect on the average burden of all FR Y-9C respondents is only an estimated reduction of 15 minutes per response.

Board of Governors of the Federal Reserve System, November 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–29437 Filed 11–6–97; 8:45AM]

Billing Code 6210–01–F

[1] 62 *FR* 45295 (1997).

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks 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 offices 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 November 21, 1997.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Paul H. and Neva M. Johnson, Algona, Iowa; to acquire voting shares of Mid-Iowa Bancshares Company, Algona, Iowa, and thereby indirectly acquire Iowa State Bank, Algona, Iowa.

Board of Governors of the Federal Reserve System, November 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29406 Filed 11–6–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 1, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Citizens Bancshares, Inc., Salineville, Ohio; to acquire 100 percent of the voting shares of UniBank, Steubenville, Ohio.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community First Banking Company, Carrollton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Carrollton Federal Bank, FSB, Carrollton, Georgia (following conversion from a thrift to a commercial bank).

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Hillister Enterprises II, Inc., Beaumont, Texas; Umphrey II Family Limited Partnership, Beaumont, Texas; Southeast Texas Bancshares, Inc., Beaumont, Texas; and Texas Community Bancshares of Delaware, Inc., Wilmington, Delaware; to acquire 58.64 percent of the voting shares of Silsbee Financial Corporation, Silsbee, Texas, and thereby indirectly acquire Silsbee Delaware Corporation, Wilmington, Delaware, and Silsbee State Bank, Silsbee, Texas.

Board of Governors of the Federal Reserve System, November 3, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–29407 Filed 11–6–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1

Applicant Background Survey—0990–0208—Extension—This form will be used to ask applicants for employment how they learned about a vacancy, to make sure that recruitment sources yield qualified women, minority and handicapped applicants in compliance with EEOC Management Directives. *Respondents:* Individuals; *Annual Number of Respondents:* 310,000; *Annual Frequency of Response:* one time; *Average Burden per Response:* 2 minutes; *Total Annual Burden:* 10,333 hours.

Proposed Project 2

HHS Procurement—Solicitations and Contracts—Extension—0990–0115—This clearance request covers general information collection requirements of the procurement process such as technical proposals and statements of work.—*Respondents:* State or local governments, businesses or other for-profit, non-profit institutions, small businesses; *Annual Number of Respondents:* 8415; *Frequency of Response:* one time; Average *Burden per Response:* 249.68 hours; *Estimated Annual Burden:* 2,101,005 hours.

OMB Desk Officer: Allison Eydt.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: October 30, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–29470 Filed 11–6–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Bioethics Advisory Commission; Meetings

Notice of two meetings of the National Bioethics Advisory Commission (NBAC): One each of its genetics and human subjects subcommittees, including a brief joint session of the full Commission.

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of two meetings of subcommittees of the National Bioethics Advisory Commission and a brief joint session of the full Commission. Commission members will discuss the protection of the rights and welfare of human subjects in research including decisionally and/or cognitively impaired populations and will address the use of genetic information involved in tissue storage. All meetings are open to the public and opportunities for statements by the public will be provided.

Dates/times	Locations
Human Subjects Subcommittee, November 23, 1997, 7:30 am–5:00 pm.	National Institutes of Health, 9000 Rockville Pike, Building 31, 6th Floor, Conference Room 10, Bethesda, Maryland 20892.
11:30 am–1:30 pm	Full Commission Meeting, Conference Room 10.
Genetics Subcommittee, November 23, 1997, 7:30 am–4:30 pm.	National Institutes of Health, 9000 Rockville Pike, Building 31, 6th Floor, Conference Room 9, Bethesda, Maryland 20892.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995 for an initial two years. An amendment to Executive Order 12975, dated May 16, 1997, extended the term of the Commission for an additional two years. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical applications.

Public Participation

All meetings are open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below prior to the meeting as soon as possible. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC staff office for distribution to the subcommittee or Commission members and inclusion in the public record. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, Acting, National Bioethics Advisory Commission.

[FR Doc. 97–29493 Filed 11–6–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Survey of Assisted Reproductive Technology Embryo Laboratory Procedures and Practices—New

In October 1992, Congress passed the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA). In accordance with this statute, the CDC has been tasked with developing a model certification program for assisted reproductive technologies (ART) embryo laboratories that are providing services to human fertility specialists in the U.S. This model certification program is to be voluntarily implemented by States or by independent certifying agencies such as the College of American Pathologists (CAP) which are approved by the State. The model certification program is to include a set of quality standards for the performance of laboratory procedures, maintenance of records, qualifications of laboratory personnel, and criteria for the inspection and certification of embryo laboratories. Other than a General Accounting Office Survey conducted in 1988, no current survey of ART laboratory procedures and practices is available. The proposed information collection will use a paper survey to provide an enumeration of these ART laboratory procedures, equipment maintenance practices, and personnel qualifications. This information is required to finalize the development of the model certification program and also provide a baseline study for evaluating its impact and effectiveness.

The intended population is ART laboratory directors at all facilities with human embryo laboratories in the U.S. The estimated time for completion of this survey is expected to be approximately one hour per response. This estimate includes the time needed to review instructions, gather the relevant information, complete the form, and review the collected data. The total estimated cost to respondents is $15,750.

Respondents:	
ART Laboratory Directors:	
No. of Respondents	300
No. of Responses/Respondent	1
Average Burden/Response (in hrs.)	1
Total Burden (hrs.)	300

Dated: October 30, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–29438 Filed 11–6–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Head Start Program Information Report (PIR).

OMB No.: 0980–0017.

Description: The Head Start Act requires that the Program Information Report (PIR) information is collected from Head Start grantees and delegate agencies. Data elements are primarily in the areas of management, class activity, health profile and home environment. Principle user of the date include local program management, ACF regional management, ACYF central office management, management of services to children with disabilities, and dissemination to other interested parties.

Respondents: Head Start Grantees and Delegate Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PIR	2,078	4	3.35	6,691

Estimated Total Annual Burden Hours: 6,691.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 3, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–29468 Filed 11–6–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Collection of Child Welfare data under the Voluntary Cooperative Information System (VCIS).

OMB No.: 0970–0129.

Description: The objective of VCIS is to provide current data on the characteristics of children in, and the flow of children through, State foster care and adoption systems. These data also are utilized to identify State and national trends for the types of children in care, the settings in which children receive care, and the outcomes of substitute care episodes.

The VCIS data are used to respond to requests for current data on children in foster care as well as those awaiting adoption and recently adopted. These data are also used for preparing Congressional testimony and reports, proposing policy and legislative changes, determining foster care and adoption trends and projections, and making budget forecasts. In addition, the VCIS data are made available to researchers and evaluators as well as the media. These data also appeared in the 1996 Green Book, which contains background material and data on programs within the jurisdiction of the Congressional Committee on Ways and Means.

Respondents: State Governments, Guam, Virgin Islands, Puerto Rico and District of Columbia.

Annual burden estimates

Instrument:	
VCIS Survey:	
Number of Respondents ..	54
Number of Responses per Respondent	1
Average Burden Hours per Response	3
Total Burden Hours	162

Estimated Total Annual Burden Hours: 162.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: November 3, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–29469 Filed 11–6–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N–0451]

James Michael Anthony; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring James Michael Anthony, M.D., 130 North McLean, Memphis, TN 38104, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Anthony was convicted of a felony under Federal law for

conduct relating to the regulation of a drug product under the act. Dr. Anthony has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: November 7, 1997.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On July 26, 1993, the U.S. District Court for the Western District of Tennessee accepted Dr. Anthony's plea of guilty and entered judgment against him for, among other counts, one count of trading prescription drug samples, a Federal felony offense under section 503(c)(1) of the act (21 U.S.C. 353(c)(1)). This felony conviction was based on the unlawful trade of a drug sample of Ansaid Tablets, which was not intended to be sold but rather was intended to promote the sale of the drug, in exchange for the drug Rocephin.

As a result of this conviction, FDA served Dr. Anthony by certified mail on October 12, 1994, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application, and offered him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Dr. Anthony was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Dr. Anthony was given 30 days to file objections and request a hearing. Dr. Anthony did not file objections or request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Director of the Center for Drug Evaluation and Research, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.99(b)), finds that Dr. James Michael Anthony has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing finding, Dr. James Michael Anthony is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective November 7, 1997 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Anthony, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Dr. Anthony, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications or abbreviated antibiotic drug applications submitted by or with the assistance of Dr. Anthony during his period of debarment.

Any application by Dr. Anthony for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 93N–0451 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 29, 1997,

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–29399 Filed 11–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body are scheduled to meet during the month of December 1997:

Name: HRSA Aids Advisory Committee.

Time: December 2–3, 1997 9:00 a.m.

Place: Loews L'Enfant Hotel, 80 L'Enfant Plaza, S.W., Washington, D.C. 20024.

The meeting is open to the public.

Agenda: The topics to be discussed include the reorganization of the Ryan White CARE Act programs; Clinical Guidelines; and Access to Combination Therapies and Adherence Issues.

Anyone requiring information regarding the subject Committee should contact Joan Holloway, HIV/AIDS Bureau, Health Resources and Services Administration, Room 7–13, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–9530.

Agenda Items are subject to change as priorities dictate.

Dated: November 3, 1997.

Jane M. Harrison,

Advisory Committee Management Office, HRSA.

[FR Doc. 97–29482 Filed 11–6–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of Sep: Initiation of Human Labor: Prevention of Prematurity.

Date: November 6–7, 1997.

Time: November 6—7:30 p.m.–10 p.m.; November 7—8:30 a.m.—adjournment.

Place: University of South West Medical Center/Dallas, 5323 Harry Hines Boulevard, Dallas, Texas 75235.

Contact Person: Gopal M. Bhatnagar, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review a research grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institute of Health, HHS)

Dated: October 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 97–29409 Filed 11–6–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

The meeting will be open to the public to provide concept review of proposed contract solicitations.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

Name of Sep: ''A Study on the Evaluation of a Community-Based Intervention to Improve Pregnancy Outcomes and Reduced Perinatal Mortality In a Rural District of Balochistan, Pakistan'' (Teleconference).

Date: November 19, 1997.

Time: 1 p.m. (ET)–adjournment.

Place: 6100 Executive Boulevard, Room 5E01 Rockville, Maryland 29852.

Contact Person: Hameed Khan, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Telephone: 301–496–1485.

Agenda: To provide concept review of proposed contract solicitations.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: October 31, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, National Institute of Health.

[FR Doc. 97–29410 Filed 11–16–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4180–N–03]

Announcement of Funding Awards; Community Development Block Grant Program for Indian Tribes and Alaska Native Villages Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1997 for the Community Development Block Grant (CDBG) Program for Indian Tribes and Alaska Native Villages. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian Tribes and Alaska Native Villages.

FOR FURTHER INFORMATION CONTACT: Robert Barth, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, P.O. Box 36003, 450 Golden Gate Avenue, San Francisco, CA 94102; telephone (415) 436–8122 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CDBG Program for Indian Tribes and Alaska Native Villages is authorized by Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR part 953.

This Notice announces FY 1997 funding to be used to assist in the development of viable Indian and Alaska Native communities, including decent housing, a suitable living environment, and economic opportunities. The FY 1997 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability (NOFA) published in the **Federal Register** on April 11, 1997 (62 FR 17976) and the amendment notice published on July 21, 1997 (62 FR 39006).

The Catalog of Federal Domestic Assistance number for the CDBG Program for Indian Tribes and Alaska Native Villages is 14.862.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: October 31, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

APPENDIX A.—FISCAL YEAR 1997; CDBG PROGRAM FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES; RECIPIENTS OF FUNDING DECISIONS

Funding recipient (Name and Address)	Amount approved
Eastern/Woodlands ONAP	
Bad River Band of Lake Superior Chippewa Indians, P.O. Box 39, Odanah, WI 54861	$231,888
Boise Forte Band of the Minnesota Chippewa Tribe, P.O. Box 16, Nett Lake, MN 55772	300,000
Eastern Band of Cherokee Indians of North Carolina, P.O. Box 455, Cherokee, NC 28719	300,000
Forest County Potawatomi Community of Wisconsin Potawatomi Indians, P.O. Box 340, Crandon, WI 54520	300,000
Fond du Lac Band of the Minnesota Chippewa Tribe, 1720 Big Lake Road, Cloquet, MN 55720	300,000
Ho-Chunk Nation of Wisconsin, W9814 Airport Road, P.O. Box 667, Black River Falls, WI 54615	300,000
Houlton Band of Maliseet Indians of Maine, RR 33 Box 450, Houlton ME 04730	300,000
La Courte Oreilles Band of Lake Superior Chippewa Indians, Route 2, Box 2700, Hayward, WI 54843	300,000
Lac du Flambeau Band of Lake Superior Chippewa Indians, P.O. Box 667, Lac du Flambeau, WI 54538	600,000
Leech Lake Band of the Minnesota Chippewa Tribe, RR 3 Box 100, Cass Lake, MN 56633	300,000
Oneida Nation of New York, 223 Genesee Street, Oneida, NY 13421	299,904
Passamaquody Indian Tribe at Indian Township, P.O. Box 301, Princeton, ME 04668	300,000

APPENDIX A.—FISCAL YEAR 1997; CDBG PROGRAM FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES; RECIPIENTS OF FUNDING DECISIONS—Continued

Funding recipient (Name and Address)	Amount approved
Poarch Band of Creek Indians of Alabama, 5811 Jack Springs Road, Atmore, AL 36502	300,000
Red Cliff Band of Lake Superior Chippewa Indians, P.O. Box 529, Bayfield, WI 54814	115,000
St. Croix Chippewa Indians of Wisconsin, P.O. Box 287, Hertel, WI 54845	300,000
Stockbridge-Munsee Community of Mohican Indians of Wisconsin, N8476 Moh He Con Nuck Road, Bowler, WI 54416	300,000
Upper Sioux Indian Community, P.O. Box 147, Granite Falls, MN 56241	300,000
Southern Plains ONAP	
Alabama-Coushatta Tribe of Texas, Rt 3, Box 640, Livingston, TX 77351	286,589
Caddo Tribe, P.O. Box 487, Binger, OK 73009	750,000
Cheyenne-Arapaho Business Committee, P.O. Box 38, Concho, OK 73022	389,255
Chickasaw Nation, P.O. Box 1548, Ada, OK 74820	750,000
Chitimacha Tribe, P.O. Box 661, Charenton, LA 70523	643,595
Choctaw Nation, P.O. Drawer 1210, Durant, OK 74702	750,000
Citizen Potawatomi Nation, 1901 S. Gordon Cooper Drive, Shawnee, OK 74801	750,000
Comanche Tribe, P.O. Box 908, Lawton, OK 73502	736,000
Creek Nation, P.O. Box 580, Okmulgee, OK 74447	256,674
Delaware Tribe, 108 S. Seneca, Bartlesville, OK 74003	170,980
Delaware Tribe of Western Oklahoma, P.O. Box 825, Anadarko, OK 73005	750,000
Iowa Tribe of KS & NE, Rt 1, Box 58–A, White Cloud, KS 66094	375,000
Iowa Tribe of OK, Rt. 1, Box 721, Perkins, OK 74059	399,493
Osage Tribe of Oklahoma, P.O. Box 53, Pawhuska, OK 74056	187,227
Pawnee Business Council, P.O. Box 470, Shawnee, OK 74058	750,000
Ponca Tribal Business Committee, 20 White Eagle Drive, Ponca City, OK 74601	618,208
Prairie Band of Potawatomi, 14880 ''K'' Road, Mayetta, KS 66509	750,000
Sac & Fox Tribe of MO, RR 1, Box 60, Reserve, KS 66434	750,000
Seneca-Cayuga Tribe, P.O. Box 1283, Miami, OK 74355	388,400
Tunica-Biloxi Indian Tribe, P.O. Box 331, Marksville, LA 71351	750,000
United Keetoowah Band of Cherokees, P.O. Box 746, Tahlequah, OK 74465–0746	240,000
Wyandotte Tribe, P.O. Box 250, Wyandotte, OK 74370	750,000
Northern Plains ONAP	
Arapaho Tribe of the Wind River Reservation, POB 396, Ft. Washakie, WY 82514	800,000
Assiniboine & Sioux Tribes of the Fort Peck Reservation, POB 1027, Poplar, MT 59255	300,000
Blackfeet Tribe, POB 850, Browning, MT 59417	450,000
Cheyenne River Sioux Tribe, POB 590, Eagle Butte, SD 57625	800,000
Confederated Salish & Kootenai Tribes of the Flathead Reservation, POB 278, Pablo, MT 59855	666,592
Crow Creek Sioux Tribe, POB 50, Ft. Thompson, SD 57339	268,449
Ft. Belknap Indian Community, RR 1, POB 66, Harlem, MT 59526	800,000
Paiute Indian Tribe of Utah, 665 North, 100 E. Paiute, Cedar City, UT 84720	273,850
Ponca Tribe of Nebraska, 3610 Dodge, Omaha, NE 68131	612,800
Rosebud Sioux Tribe, POB 430, Rosebud, SD 57570	800,000
Santee Sioux Tribe, Route 2, Box 183, Niobrara, NE 68760	290,864
Shoshone Tribe of the Wind River Reservation, POB 538, Ft. Washakie, WY 82514	800,000
Sisseton-Wahpeton Sioux Tribes, POB 509, Agency Village, SD 57262	800,000
Standing Rock Sioux Tribe, POB D, Fort Yates, ND 58538	800,000
Three Affiliated Tribes of the Ft. Berthold Reservation, HC 3, Box 2, New Town, ND 58763	320,000
Turtle Mountain Band of Chippewa Indians of North Dakota, POB 900, Belcourt, ND 58316	357,007
Ute Mountain Ute Tribe, POB 248, Towaoc, CO 81334	800,000
Southwest ONAP	
Alturas Rancheria, Post Office Box 360, Alturas, CA 96101	449,766
Berry Creek Rancheria, 5 Tyme Way, Oroville, CA 95966	450,000
Big Lagoon Rancheria, Post Office Box 3060, Trinidad, CA 95570	69,698
Blue Lake Rancheria, Post Office Box 428, Blue Lake, CA 95525	202,630
Campo Band of Mission Indians, 36190 Church Road, Campo, CA 91906	450,000
Chemehuevi Indian Tribe, Post Office Box 1976, Havasu Lake, CA 95403	450,000
Cloverdale Rancheria, 2013 Long Leaf Court, Santa Rosa, CA 95403	450,000
Colusa Rancheria, 50 Wintun Road Dept D, Colusa, CA 95932	344,412
Death Valley Timbi-Sha Shoshone Tribe, Post Office Box 748, Death Valley, CA 92328	181,116
Dry Creek Rancheria, Post Office Box 607, Geyserville, CA 95441	450,000
Ely Indian Colony, 16 Shoshone Circle, Ely, NV 89301	295,201
Fort Bidwell Indian Reservation, Post Office Box 129, Fort Bidwell, CA 96112	450,000
Fort Mojave Indian Reservation, 500 Merriman Avenue, Needles, CA 92363	450,000
Gila River Indian Community, Post Office Box 97, Sacaton, AZ 85247	1,500,659
Hopland Band of Pomo Indians, Post Office Box 610, Hopland, CA 95449	405,590
Hualapai Indian Tribe, Post Office Box 179, Peach Springs, AZ 86434	550,000
Kaibab-Paiute Tribe, H.C. 65, Box #2, Fredonia, AZ 86022	450,000

APPENDIX A.—FISCAL YEAR 1997; CDBG PROGRAM FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES; RECIPIENTS OF FUNDING DECISIONS—Continued

Funding recipient (Name and Address)	Amount approved
Karuk Tribe, Post Office Box 1016, Happy Camp, CA 86039	565,600
LaJolla Band of Mission Indians, Star Route Box 158, Valley Center, CA 92082	450,000
LaPosta Band of Mission Indians, Post Office Box 1048, Boulevard, CA 91905	450,000
Lytton Rancheria, 1250 Coddingtown Center Suite 1, Santa Rosa, CA 95401	450,000
Middletown Rancheria, Post Office Box 1035, Middletown, CA 95461	450,000
Navajo Nation, Post Office Box 9000, Window Rock, AZ 86515	4,834,399
Pala Band of Mission Indians, Post Office Box 43, Pala, CA 92059	442,164
Picuris Pueblo, Post Office Box 127, Penasco, NM 87553	345,585
Pojoaque Pueblo, Route 11 Box 71, Santa Fe, NM 87501	450,000
Pueblo of Acoma, Post Office Box 309, Acoma, NM 87034	550,000
Pueblo de Cochiti, Post Office Box 70, Cochiti, NM 87072	432,693
Pyramid Lake Paiute Tribe, Post Office Box 256, Nixon, NV 87424	450,000
Quechan Indian Tribe, Post Office Box 11352, Yuma, AZ 85366	550,000
Ramona Band of Mission Indians, Post Office Box 391670, Anza, CA 92539	340,620
Redding Rancheria, 2000 Rancheria Road, Redding, CA 96001	450,000
Reno Sparks Indian Colony, 98 Colony Road, Reno, NV 89502	450,000
Robinson Rancheria, Post Office Box 1119, Nice, CA 95464	449,540
Round Valley Indian Tribes, Post Office Box 448, Covelo, CA 95428	450,000
San Carlos Apache Tribe, Post Office Box ''O'', San Carlos, AZ 85550	400,000
San Pasqual Indian Reservation, Post Office Box 365, Valley Center, CA 92082	448,343
Santa Ysabel Indian Reservation, Post Office Box 130, Santa Ysabel, CA 92070	449,922
Scotts Valley Rancheria 149 N. Main Street, Suite 200, Lakeport, CA 95453	142,992
Soboba Indian Reservation, Post Office Box 487, San Jacinto, CA 92581	450,000
Susanville Rancheria, Post Office Box ''U'', Susanville, CA 96130	344,000
Tohono O'odham Nation, Post Office Box 837, Sells, AZ 85634	1,976,694
Trinidad Rancheria, Post Office Box 630, Trinidad, CA 95570	174,982
Tuolumne Band of Me-Wuk Indians, Post Office Box 699, Tuolumne, CA 95379	450,000
Yavapai Apache Tribe, Post Office Box 1188, Camp Verde, AZ 86322	450,000
Ysleta Del Sur Pueblo, 119 S. Old Pueblo Road, Post Office Box 17579—Ysleta Stn., El Paso, TX 79917	450,000
Zuni Pueblo, Post Office Box 339, Zuni, NM 87327	1,999,600
Northwest ONAP	
Confederated Tribes of the Chehalis Reservation, P.O. Box 536, Oakville, WA 98568–9616	320,000
Confederated Tribes of the, Colville Reservation, P.O. Box 150, Nespelem, WA 99155–0150	155,760
Confederated Tribes of Coos Lower Umpqua & Siuslaw Indians, 338 Wallace Ave, Coos Bay, OR 97420	295,126
Confederated Tribes of the Siletz Indian Reservation, P.O. Box 549, Siletz, OR 97380–0549	320,000
Confederated Tribes of the Umatilla Indian Reservation, P.O. Box 638, Pendleton, OR 97801–0638	320,000
Couer d'Alene Tribe of the Couer d'Alene Reservation, 850 A Street, Plummer, ID 83851–9704	164,000
Hoh Indian Tribe of the Hoh Reservation, 2464 Lower Hoh Road, Forks, WA 98550	300,000
Kalispel Indian Community of the Kalispel Reservation, P.O. Box 39, Usk, WA 99180–0039	85,690
Klamath Indian Tribe, P.O. Box 436, Chiloquin, OR 97624–0436	320,000
Muckleshoot Indian Tribe of the Muckleshoot Reservation, 39015—172nd S.E., Auburn, WA 98092–9763	320,000
Nez Perce Tribe, P.O. Box 305, Lapwai, ID 83540–0305	320,000
Port Gamble S'Klallam Tribe of the Port Gamble Reservation, 31912 Little Boston Rd. NE, Kingston, WA 98346	320,000
Puyallup Tribe of the Puyallup Reservation, 2002 E 28th St., Tacoma, WA 998404–4996	320,000
Skokomish Indian Tribe of the Skokomish Reservation, A.B. 80, Tribal Center Road, Shelton, WA 98584–9748	320,000
Squaxin Island Tribe of the Squaxin Island Reservation, SE 70, Squaxin Lane, Shelton, WA 98584–9200	320,000
Alaska ONAP	
Akiachak Native Community, P.O. Box 70, Akiachak, AK 99551	500,000
Akiak Native Community, P.O. Box 52165, Akiak, AK 99552	500,000
Arctic Village Council, P.O. Box 50, Arctic Village, AK 99722	500,000
Chefornak Traditional Council, P.O. Box 110, Chefornak, AK 99561	500,000
Native Village of Eyak Tribal Council, P.O. Box 1388, Cordova, AK 99574	499,800
Native Village of Kwinhagak (Quinhagak), P.O. Box 149, Quinhagak, AK 99655	500,000
Native Village of Napakiak, Pouch 2, Napakiak, AK 99634	230,008
Native Village of Shaktoolik, Box 100, Shaktoolik, AK 99771	318,558
Native Village of St. Michael, P.O. Box 59058, St. Michael, AK 99659	500,000
Nenana Native Association, P.O. Box 356, Nenana, AK 99760	500,000
Nunapitchuk IRA Council, Box 130, Nunapitchuk, AK 99641	200,000
Orutsararmuit Native Council, P.O. Box 927, Bethel, AK 99559	500,000
Tuluksak Native Community, P.O. Box 95, Tuluksak, AK 99679	231,660

[FR Doc. 97–29425 Filed 11–6–97; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–28]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 7, 1997.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 30, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 97–29265 Filed 11–6–97; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Notice of Intent To Negotiate a Contract Among Ouray Park Irrigation Company, the Central Utah Water Conservancy District, and the Department of the Interior for Temporary Storage of Project Water in the Proposed Lower Uintah Reservoir as Part of the Uintah Unit Replacement Project of the Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract among Ouray Park Irrigation Company (Ouray Park), the Central Utah Water Conservancy District (District), and Department of the Interior for temporary storage of non-project water in the proposed Lower Uintah Reservoir as part of the Uintah Unit Replacement Project (Uintah Unit) under the Central Utah Project Completion Act.

SUMMARY: Pub. L. 102–575, Central Utah Project Completion Act, Section 201(c), allows for the construction of the Uintah Unit Project as part of the Central Utah Project. As part of this project, the United States plans to temporarily store a portion of the Ouray Park storage right during the non-irrigation season and release it at a flow rate in the Uinta River that will enhance stream fishery. The water will be recaptured in the existing Ouray Park storage facilities through a new diversion and pipeline system to be located lower on the Uinta River and built by the District as part of the Uintah Unit.

The purpose of the negotiation sessions will be to determine the terms of the temporary storage and the release pattern that will provide Ouray Park with the same amount of water they have received historically and at the time they need it for irrigation use. It will also address the responsibility for operation and maintenance for the Lower Uintah Reservoir, the new diversion, and pipeline.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Michael Hansen, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1194, E-Mail address: mhansen@uc.usbr.gov.

Dated: October 31, 1997.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 97–29441 Filed 11–6–97; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Notice of Intent To Negotiate a Contract Between the Bureau of Indian Affairs, Uintah and Ouray Agency and the Department of the Interior for Storage of Project Water in the Proposed Lower Uintah Reservoir and Delivery of Project Water to Irrigated Lands Held in Trust for the Ute Tribe, Uintah and Ouray Reservation, and Tribal Members, as Part of the Uintah Unit Replacement Project of the Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract between the Bureau of Indian Affairs, Uintah and Ouray Agency (BIA) and the Department of the Interior for storage of project water in the proposed Lower Uintah Reservoir and delivery of project water to lands held in trust for the Ute Tribe, Uintah and Ouray Reservation (Ute Tribe), and Tribal members, as part of the Uintah Unit Replacement Project (Uintah Unit) under the Central Utah Project Completion Act.

SUMMARY: Pub. L. 102–575, Central Utah Project Completion Act, Section 201(c), allows for the construction of the Uintah Unit as part of the Central Utah Project. As part of the this project, the United States plans to develop water storage for use by the Ute Tribe for irrigation. As the trustee for the Ute Tribe, BIA will contract for the delivery of the project water to the Ute Tribe and Tribal members and will deliver the water through the existing United States developed Uintah Indian Irrigation Project facilities.

The purpose of the negotiation sessions will be to determine the terms of the storage and delivery of Uintah Unit project water to the Ute Tribe and Tribal members for irrigation use. It will also address the responsibility for management, operation and maintenance, repayment, and assessments for the Indian portions of the Uintah Unit.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this

Federal Register notice can be obtained at the address and telephone number set forth below:

Mr. Michael Hansen, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1194, E-Mail address: mhansen@uc.usbr.gov

Dated: October 31, 1997.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 97–29442 Filed 11–6–97; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Notice of Intent to Negotiate a Contract Among Wasatch County Special Service Area #1, Central Utah Water Conservancy District, and Department of the Interior for Carriage of Non-Project Water Through the Timpanogos Canal as Part of the Wasatch County Water Efficiency Project and Daniel Replacement Project of the Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a contract among Wasatch County Special Service Area #1 (WCSSA), Central Utah Water Conservancy District (District), and Department of the Interior for carriage of non-project water through the Timpanogos Canal as part of the Wasatch County Water Efficiency Project and Daniel Replacement Project (WCWEP and DRP) under the Central Utah Project Completion Act.

SUMMARY: Pub. L. 102–575, Central Utah Project Completion Act, Sections 202(a)(3), 207(e), and 303(b), allows for the construction of the WCWEP and DRP as part of the Central Utah Project. The WCWEP and DRP Projects provide for increasing irrigation efficiency in the Heber Valley, conserving water, and eliminating the diversion of water from the upper Strawberry River tributaries to Heber Valley. As part of the these projects, the United States plans to acquire, and the District intends to improve, the Timpanogos Canal, a feature which has historically been used to convey Provo River water to irrigators. The canal will be used to convey project water and non-project water for irrigation purposes.

The purpose of the negotiations sessions will be to determine the amount of non-project water which will be conveyed through the Timpanogos Canal and the price to be paid by WCSSA to the Department for conveying the non-project water.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov.

Dated: October 31, 1997.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 97–29440 Filed 11–6–97; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment

AGENCY: Bureau of Indian Affairs—Office of Indian Education Programs.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Student Transportation Mileage Form OMB # 1076–0134 requires renewal. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 350 (c) (2) (A). The Bureau is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before January 6, 1998.

ADDRESSES: Comments are to be mailed to Director, Office of Indian Education Programs, Department of the Interior, Bureau of Indian Affairs, 1849 C St. NW, Mail Stop 3512–MIB, Washington, DC 20240, or hand delivered to room 3512 at the above address.

All written comments will be available for public inspection in Room 3543 of the Main Interior Building, 1849 C Street, NW, Washington, D.C. from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Dalton J. Henry or Keener Cobb, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS 3512, Washington, D.C. 20240, 202–208–3550.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to collect transportation mileage for Bureau funded schools for the purpose of allocating transportation funds.

II. Method of Collection

The Student Transportation regulations under 25 CFR Subpart H contain the program eligibility and criteria which govern the allocation of transportation funds. Information collected from the schools will be used to determine rate per mile.

III. Data

(1) *Title of the Collection of Information:* Office of Indian Education Programs Indian School Equalization Program—Student Transportation. OMB Number: 1076–0134; Expiration Date: September 31, 1997; Type of Review: Renewal of a currently approved information collection.

(2) *Summary of the Collection of Information:* The collection of information provides pertinent data concerning the schools' bus transportation mileage to determine funding for school transportation.

(3) *Affected Entities:* Contract and Grant Schools and Bureau operated schools.

(4) *Description of the need for the information and proposed use of the information:* Submission of this information is required in order to receive funds for student transportation. The information is collected to determine rate per mile from 185 schools and to allocate funds.

(5) *Description of likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:* Description of likely respondents: Tribal schools administrators; Estimated number of respondents: 105; Proposed frequency of responses: Annually, during student count week.

(6) *Estimate of total annual reporting and record keeping burden that will result from the collection of information: 263 hours;* Reporting 2.5 hours/response×105 respondents=263 hours.

Estimated Total Annual Burden Hours=263 hours.

Estimated Annual Costs: $5,450.00 (2.5 hours×105×$20.00).

IV. Request for Comments

The Department of the Interior invites comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

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 Office of Management and Budget control number.

Dated: October 17, 1997.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

OMB # 1076–0134
Expiration Date ( )

Office of Indian Education Programs Indian School Equalization Program (ISEP) Student Transportation

Transportation forms must be certified (signed and dated) by the school principal and education line officer. Do not forward to Washington, DC, without the two required signatures. All transportation forms are due in Washington, DC, on or before the first week in November after the count week.

For each School Year, student transportation funds will be allocated to schools based on the following guidelines. Although, all transportation forms are due in Washington, DC, during the first week in November, after the count week, schools are to forward transportation forms to their respective Education Line Officer by Friday the first week in October after the count week. The Education Line Officer will certify the Transportation Program during the certification of the student membership count.

Rates Per Mile

A single rate will be used for all ground transportation miles. Since we are limited by the amount reflected in the Budget Fiscal Year (BFY) budget request, the rate per mile cannot be ascertained until we know the actual total miles reported for the School Year after the count week. The rate in BFY 1996–97 was $1.60 per mile.

Mileage for after school programs such as athletics, band, detention and/or study hall, and extra curricular activities, such as arts and crafts programs, are considered part of the instructional program and not eligible for ISEP transportation funding.

Mileage for all day and boarding students to attend instructional programs less than full time at locations other than the school reporting the transportation mileage are considered part of the instructional program and are not eligible for ISEP transportation funding.

Day School Students

Do not use transportation time as instruction time to meet the minimum required hours for academic funding.

For each vehicle, report the following:

1. The total mileage separately by vehicle number.
2. Mileage from point of origin (school, home of bus driver, etc.) to students' homes or pick up points and return to school.
3. Mileage for vehicles that are used for several routes during one morning or afternoon, with no break in service, by recording only the beginning and ending odometer reading.
4. Mileage for each of the five days of count week, rounded to one decimal point. Funding will be based on the average of the Tuesday, Wednesday, and Thursday mileage.

Funds shall be allocated to each school which provides daily transportation of students between the students' residences (or other traditional pick up points on the reservation) and the school site. The following formula was used for the computation of funds in BFY 1996–97 and will apply for BFY 1997–98 funding computation.

Average number of miles traveled by all buses on one day (including pick up and return, excluding field trips and extra curricular activities).

×*180 days of school*
=Annual student transportation miles.
×*Rate per mile*
=Transportation funding for day school students

A route, is from point of origin (school, home of bus driver, etc.) to students' homes or pick up points and return to school.

A run is one or more routes by a vehicle in the morning or the afternoon when there is no break in the transportation of students to and from school. Vehicle transportation size means the number of passengers the bus holds.

Boarding School Students

Funds shall be allocated to each boarding school to provide for students' arrival at school in the Fall, round trip home at Christmas, and their return home at the end of the school year, using the following formula:

Actual number of miles traveled by all buses or other vehicles to get students to school at the beginning of the year.
×*4 one way trips per year*
= Annual student transportation miles
×*Rate per mile*
= Transportation funding for boarding school students.

Note that the rate is calculated against vehicle miles rather than miles per student. DO NOT REPORT ONE-WAY MILEAGE BY FOUR. To receive funding, a school must transport students.

Peripheral Dormitory Students

If OIEP provides transportation to the public school, the day school student calculation may be used. Additionally, the boarding school student calculation shall be used to provide the student's transportation between home and peripheral dormitory, but the dormitory must transport students to receive funding.

Air Miles

A student may be flown to and from school, at the discretion of the Education Line Officer, and the school will be reimbursed on the following formula:

Actual one way air fare at the most economical rate to the Government
×*Actual one way trips per year (not to exceed four)*
= Transportation funding for air miles

Ground mileage from airport arrival to school may be added to boarding school student mileage.

Schools may be reimbursed for actual chaperon expenses, excluding salaries, during the transportation of students to and from home at the beginning of school year, Christmas, and end of the school year.

Unimproved Roads

Because of road conditions, annual student transportation miles on unimproved roads reported by schools are weighted by a factor of 1.2 before multiplying by the standard rate per mile.

For ISEP funding, unimproved roads are dirt roads that have not had sand, gravel, shale, or other materials applied, and do not have drainage ditches and/or shoulders.

Paper Reduction Act: The Student Transportation information is being collected to obtain a benefit, and will be used to determine funding. Response to this request is required to obtain a benefit in accordance with Public Law 95–531. Public reporting burden for this collection is estimated to average 2.5 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form.

Billing Code 4310–02–P

OMB # 1076-0134 Expiration Date ( )

BUREAU OF INDIAN AFFAIRS
OFFICE OF INDIAN EDUCATION PROGRAMS
INDIAN SCHOOL EQUALIZATION PROGRAM (ISEP)
DAY STUDENT TRANSPORTATION

SCHOOL:_____ LOCATION CODE:_____

For each additional vehicle, please photocopy this page. Report mileage for each day. Only mileage on Tuesday, Wednesday, and Thursday will be used for calculation of average. A map to illustrate and document this route must be maintained at the school's Principal's or Transportation Director's Office. Do not submit the maps to Washington, DC.

VEHICLE IDENTIFICATION NO.: _____ VEHICLE TRANSPORTATION SIZE:_____

MORNING BUS ROUTE(S)

---1st Route -- Route Name:				---Additional Route--- Route Name:		
Day Date September	Odometer Begin	End	No. Of Miles	Odometer Begin	End	No. Of Miles
Mon 9/ /						
Tue 9/ /						
Wed 9/ /						
Thu 9/ /						
Fri 9/ /						
Total Miles (Tue Wed, Thu):						

AFTERNOON/EVENING BUS ROUTE(S)

---1st Route -- Route Name:				---Additional Route--- Route Name:		
Day Date September	Odometer Begin	End	No. Of Miles	Odometer Begin	End	No. Of Miles
Mon 9/ /						
Tue 9/ /						
Wed 9/ /						
Thu 9/ /						
Fri 9/ /						
Total Miles (Tue Wed, Thu):						

Total morning and afternoon miles for this vehicle (Tue., Wed., Thur.):__divided by 3 = ____

OMB # 1076-0134 Expiration Date ( )

BUREAU OF INDIAN AFFAIRS
OFFICE OF INDIAN EDUCATION PROGRAMS
INDIAN SCHOOL EQUALIZATION PROGRAM (ISEP)
SUMMARY DAY STUDENT TRANSPORTATION
GRAND TOTAL FOR ALL VEHICLES

If additional pages are required, please photocopy, but all totals must be recorded on a single form/page.

SCHOOL:_____ LOCATION CODE:_____

Vehicle ID. No.	Average Day's Mileage	Road Conditions: Unimproved Miles	Improved Miles
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____
11. _____	_____	_____	_____
12. _____	_____	_____	_____
TOTAL MILES	_____	_____	_____

DAY STUDENT TRANSPORTATION CERTIFICATION

_____ _____
Principal's Signature **Education Line Officer's Signature**

_____ _____
Date **Date**

OMB # 1076-0134 Expiration Date ( )

BUREAU OF INDIAN AFFAIRS
OFFICE OF INDIAN EDUCATION PROGRAMS
INDIAN SCHOOL EQUALIZATION PROGRAM (ISEP)
BOARDING/DORMITORY STUDENT TRANSPORTATION

SCHOOL:_____ LOCATION CODE:_____

If Bureau-owned or leased vehicles are used, report actual miles traveled by each vehicle. If additional pages are required, please photocopy this page, but all totals must be recorded on a single form/page.

Vehicle I.D. No.& Vehicle Transp.. Size	Total Miles Traveled	Road Conditions: Unimproved Miles	Improved Miles
1. _____	_____	_____	_____
_____	_____	_____	_____
2. _____	_____	_____	_____
_____	_____	_____	_____
3. _____	_____	_____	_____
_____	_____	_____	_____
4. _____	_____	_____	_____
_____	_____	_____	_____
5. _____	_____	_____	_____
_____	_____	_____	_____
6. _____	_____	_____	_____
_____	_____	_____	_____
TOTAL MILES	_____	_____	_____

BOARDING/DORMITORY STUDENT TRANSPORTATION CERTIFICATION

_____ _____
Principal's Signature **Education Line Officer's Signature**

_____ _____
Date **Date**

OMB # 1076-0134 Expiration Date ( )

BUREAU OF INDIAN AFFAIRS
OFFICE OF INDIAN EDUCATION PROGRAMS
INDIAN SCHOOL EQUALIZATION PROGRAM (ISEP)
BOARDING/DORMITORY STUDENT TRANSPORTATION CONTINUED

CHARTER/COMMERCIAL BUS TRANSPORTATION

If chartered buses are used, report actual cost of each charter. If commercial bus transportation is used, report actual cost of the ticket. If additional pages are required, please photocopy this page, but all totals must be recorded on a single page. Records for vehicles, charters, and air trips need not be submitted, but must be available for an audit.

	FROM/TO	COST
1.	_____	$_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
	TOTAL COST:	$_____

AIR TRANSPORTATION

	STUDENT'S NAME, GRADE, FROM/TO	ONE WAY AIR FARE
1.	_____	$ _____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
	TOTAL COST:	$ _____

CHARTER/COMMERCIAL and/or AIR TRANSPORTATION CERTIFICATION

_____	_____
Principal's Signature	**Education Line Officer's Signature**
_____	_____
Date	**Date**

[FR Doc. 97–29401 Filed 11–6–97; 8:45 am]
BILLING CODE 4310–02–C

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment

AGENCY: Bureau of Indian Affairs—Office of Indian Education Programs.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Adult Education Annual Report Form OMB #1076–0120 requires renewal. The proposed information collection requirement, with no appreciable changes, described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 350(c)(2)(A). The Bureau is soliciting public comments on the subject proposal.

DATES: Written comments must be submitted on or before January 6, 1998.

ADDRESSES: Comments are to be mailed to Director, Office of Indian Education Programs, Department of the Interior, Bureau of Indian Affairs, 1849 C St. NW, Mail Stop 3512–MIB, Washington, DC 20240, or hand delivered to room 3512 at the above address. All written comments will be available for public inspection in Room 3543 of the Main Interior Building, 1849 C Street, NW, Washington, D.C. from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Dalton J. Henry or Keener Cobb, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS 3512, Washington, D.C. 20240, 202–208–3550.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is necessary to assess the need for adult education programs in accordance with 25 CFR Part 46, Subpart A, Sections 46.20 Program Requirements and 46.30 Records and Reporting Requirements of Adult Education Program.

II. Method of Collection

The Adult Education Program regulations under 25 CFR Part 46 Subpart A contain the program requirements which govern the program. Information collected from the contractors will be used for administrative planning, setting long and short term goals, and analyzing and monitoring the use of funds.

III. Data

(1) *Title of the Collection of Information:* Bureau of Indian Affairs Adult Education Program Annual Report Form. OMB Number: 1076–0120; Expiration Date: October 31, 1997; Type of Review: Renewal of a currently approved information collection.

(2) *Summary of the Collection of Information:* The collection of information provides pertinent data concerning adult education programs.

(3) *Affected Entities:* Tribal adult education contractors.

(4) *Description of the need for the information and proposed use of the information:*
Submission of this information is necessary to assess the need for adult education programs. The information is needed for the utilization and management of program resources to provide education opportunities for adult American Indians and Alaska Natives to complete high school requirements, and to gain new skills and knowledge for individual student self enhancement. The information collected with the annual report will be used by the Bureau or tribal programs for fiscal accountability and appropriate direct services documentation. The results of the data are used for administrative planning.

(5) *Description of likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:* Description of likely respondents: Tribal adult education program administrators; Estimated number of respondents: 70; Proposed frequency of responses: Annually.

(6) *Estimate of total annual reporting and record keeping burden that will result from the collection of information:* 280 hours; Reporting 4.0 hours/response × 70 respondents = 280 hours.

Estimated Total Annual Burden Hours = 280 hours. Estimated Annual Costs: $5,040.00 (4.0 hours × 70 × $18.00)

IV. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

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 Office of Management and Budget control number.

Dated: October 17, 1997.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

BILLING CODE 4310–02–P

BIA Form 62123

BUREAU OF INDIAN AFFAIRS
ADULT EDUCATION PROGRAM ANNUAL REPORT FORM
FY _____
(Reporting Period: August 30 - July 1)

ADMINISTERING OFFICE:

Program Site	Contact Person	BIA Area
Mailing Address	Telephone No.	BIA Agency
City, State & ZIP	Fax or E-Mail No	Tribal Contract

SECTION I: GED PROGRAM

1. Number students enrolled in the GED Program.	
2. Number of students receiving the GED Certificate	
3. Number of students enrolled not completing the program	
4. Number of students entering college as a result of completing the GED Program	
5. Number of students entering employment as a result of completing the GED Program.	

SECTION II: ADULT BASIC EDUCATION (ABE)

1. Number of ABE courses offered.	
2. Number of students enrolled in ABE courses	
3. Number of students enrolled completing ABE course work.	
4. Number of students in GED, training or employment resulting from ABE courses.	

SECTION III: PROGRAM COSTS (Administrative Costs + Direct = TPA Allocations)

TRIBAL PRIORITY ALLOCATIONS (TPA)	ADMINISTRATIVE COST	DIRECT PROGRAM COST

SECTION IV: ACCOMPLISHMENTS, NARRATIVES As an attachment, this section can include program accomplishments and other pertinent information about your program (news articles, pictures, video, highlights, etc.)

[FR Doc. 97–29402 Filed 11–6–97; 8:45 am]
BILLING CODE 4310–02–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1220–00]

Front Range Resource Advisory Council (Colorado); Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on November 20, 1997 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holycross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. The meeting will include the election of Officers for the Council, presentation of a Hammer Award to Council members by Colorado State Director Ann Morgan and an update on current issues. The Council will also continue working on the development of recreation guidelines. The Guidelines are intended to help achieve the statewide standards for public land health which were approved earlier this year.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday, November 20, 1997, from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City, Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Ken Smith at (719) 269–8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Donnie R. Sparks,

District Manager.

[FR Doc. 97–29477 Filed 11–6–97; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cuyahoga Valley National Recreation Area

AGENCY: National Park Service, Interior Department.

ACTION: Notice of temporary closure of park.

SUMMARY: For further information contact: Superintendent John P. Debo, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141 or call (440) 546–5903.

SUPPLEMENTARY INFORMATION: Cuyahoga Valley National Recreation Area will temporarily close its lands to all public entry and use, for a portion of each week, between November 1, 1997 and March 15, 1998. The closure will apply to all Federal lands held in fee, and all less-than-fee lands where the park has easements for visitor use. The closure days and times each week will be Sunday night through Friday morning, from 5 p.m. to 6 a.m. only. Park lands will remain open during daylight hours seven days a week, plus Friday and Saturday nights. The reason for the closure is for public safety during a necessary wildlife reduction of some of the park's white-tailed deer. Public notice of the closure will be in a variety of ways: news releases, this notice, signs at points of entry, signs on bulletin boards/kiosks, signs on gates, personal contact and other methods as well. Interested persons may obtain a copy of the closure Determination by writing to: Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141.

Dated: October 30, 1997.

John P. Debo,

Superintendent, Cuyahoga Valley National Recreation Area.

[FR Doc. 97–29454 Filed 11–6–97; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Yosemite Valley Implementation Plan and Draft Supplemental Environmental Impact Statement; Yosemite National Park, California; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Supplemental Environmental Impact Statement (DSEIS) assessing the potential impacts of a proposed Yosemite Valley Implementation Plan for Yosemite National Park, California. The DSEIS identifies and analyzes a proposed action and three alternatives for carrying out certain provisions of the 1980 General Management Plan (GMP). Those provisions call for removing unnecessary structures, restoring and protecting recovered land, relocating facilities out of sensitive or hazardous areas, and reducing traffic congestion in Yosemite Valley. This DSEIS also incorporates the 1992 Concession Services Plan and pertinent information from the 1996 Draft Yosemite Valley Housing Plan with the GMP into a comprehensive implementation plan. Each alternative describes a proposal for the management and use of Yosemite Valley and discusses changes in the valley's developed areas, cultural and natural resource management, interpretation and visitor services, and park operations. The environmental consequences of the proposed action and the three alternatives are fully documented in the DSEIS, and appropriate mitigation measures to reduce or eliminate impacts are identified. Once approved, the plan will provide implementation guidance for carrying out provisions of the GMP.

Proposal

Under Alternative 2 (the proposed action), the National Park Service (NPS) would emphasize a comprehensive approach to carrying out the provisions of the GMP and subsequent plans. Implementation of the proposed action would allow for approximately 147 acres in the east end of the valley to be restored to natural conditions, 82 acres redesigned, and 38 acres developed to accommodate relocated facilities or functions. An orientation/transfer facility would be located in the west end of the valley at Taft Toe. Day use visitors and out-of-park transit bus riders would be intercepted there and would use the valley shuttle bus system

to access other destinations in Yosemite Valley. Day use vehicles and parking would be removed from the east end of the valley. Changes to circulation and campgrounds are also proposed. Alternative 2 proposes an increase in interpretive and educational programs through partnerships with supporting organizations. Some cultural resources would be affected by the proposed actions.

Alternatives

In addition to the proposed action, three other alternatives are presented and analyzed. Alternative 1 (no action), continues implementation of the GMP, but without a comprehensive approach. Implementing this alternative would allow for approximately 41 acres to be restored to natural conditions and 15 acres redesigned to accommodate relocated facilities or functions. Alternative 3 is similar to the proposed action but provides an orientation/transfer facility with some interpretive functions in the west end of the valley at Pohono Quarry. Implementing this alternative would allow for approximately 143 acres to be reclaimed and restored to natural conditions, 93 acres redesigned, and 38 acres developed to accommodate relocated facilities or functions. Alternative 4 (minimum requirements) would provide for implementation of the GMP in a manner more comprehensive than the no action alternative but with less habitat restoration and fewer improvements than Alternative 2 and Alternative 3. Implementing Alternative 4 would allow for approximately 118 acres to be reclaimed and restored to natural conditions, 95 acres redesigned, and 36 acres developed to accommodate relocated facilities or functions. Under this alternative, there would be no orientation/transfer facility and day use vehicles would continue to park in the east end of the valley.

Public Meetings

A series of informational Open Houses will be held to provide members of the public with an informal opportunity to learn about the Draft Yosemite Valley Implementation Plan, the major issues, and the results of impact and mitigation analyses. NPS staff will be available to discuss the alternatives and answer questions, and exhibits illustrating elements of the proposal and alternatives will be displayed. The Open House sessions have been scheduled as follows:

Nov. 13—Yosemite Valley 3:00–8:00 p.m.
Nov. 17—Fresno area 4:00–9:00 p.m.
Nov. 18—Los Angeles area 2:00–8:00 p.m.
Nov. 20—San Francisco 2:00–8:00 p.m.
Nov. 22—Mammoth Lakes 4:00–9:00 p.m.

In addition, a series of Public Workshops will be held to provide NPS staff an opportunity to hear concerns and suggestions from the public. In contrast to a formal public hearing, the workshops will afford interested individuals and organization representatives the opportunity to verbally offer input and engage in dialog about the range of alternatives, elements of alternatives, and issues involved. This dialog is intended to provide additional guidance to the NPS in preparing a Final Yosemite Valley Implementation Plan. This series of Workshops has been scheduled as follows:

Dec. 1—Fresno area 7:00–9:00 p.m.
Dec. 2—Los Angeles area 7:00–9:00 p.m.
Dec. 4—San Francisco 7:00–9:00 p.m.
Dec. 6—Mammoth Lakes 7:00–9:00 p.m.
Dec. 10—Yosemite Valley 2:00–4:00 p.m.

For directions to public meeting locations or information about other activities (including site visits), please contact the Superintendent's office as noted below.

SUPPLEMENTARY INFORMATION: Copies of the DSEIS will be available for public inspection at the park and area libraries, and at the Office of Public Affairs, National Park Service, Department of the Interior, 1849 C Street NW, Washington DC; and Pacific West Regional Office, 600 Harrison Street, Suite 600, San Francisco, CA. Requests for copies of the document should be directed to: Superintendent, Attn: VIP–PIO, Yosemite National Park, P.O. Box 577, Yosemite, CA 95389, or by telephone at (209) 372–0265. The draft document will also be available on the Internet at http://www.nps.gov/planning. All comments should be directed to the Superintendent at the above address. Written comments must be postmarked no later than January 23, 1998; comments also will be accepted via the Internet (per above) if transmitted no later than January 23, 1998.

Decision

After the formal DSEIS review period has concluded, all comments and suggestions received will be considered in preparing a final plan. Currently the final SEIS and plan are anticipated to be completed during spring or summer, 1998; their availability will be similarly announced in the **Federal Register**. Subsequently a Record of Decision would be executed no sooner than 30 (thirty) days after release of the final SEIS. The responsible officials are John J. Reynolds, Regional Director, Pacific West Region and Stanley T. Albright, Superintendent, Yosemite National Park.

Dated: October 31, 1997.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 97–29458 Filed 11–6–97; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park; Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Death Valley National Park Advisory Commission will be held November 20 and 21, 1997; assemble at 9:00 AM at the Furnace Creek Inn, Death Valley, California.

The main agenda will include:

1. General Park Orientation
2. Park Updates on Issues and Projects
3. Commission Organization
4. Northern and Eastern Mojave Planning Update
5. Wilderness and Backcountry Planning Update

The Advisory Commission was established by PL #03–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission include Michael Prather and Michael Dorame of Lone Pine, California; Joan Lolmaugh and Alan Peckham of Las Vegas, Nevada; Gilbert Zimmerman of Rancho Mirage, California; Stanley Haye of Ridgecrest, California; Wayne Schulz of Mariposa, California; Sue Hickman of Yermo, California; Mark Ellis of Santa Clarita, California; Janice Allen of Olancha, California; Calvin Jepson and Pauline Esteves of Death Valley, California; Gary O'Connor of Goldfield, Nevada, Robert Revert of Beatty, Nevada; and Kathy Davis of Apple Valley, California.

This meeting is open to the public.

Richard H. Martin,

Superintendent, Death Valley National Park.

[FR Doc. 97–29457 Filed 11–6–97; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, California

AGENCY: Bureau of Reclamation, Department of the Interior

ACTION: Notice of availability of the draft programmatic environmental impact statement (DPEIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) as lead agency has prepared a DPEIS for the Central Valley Project Improvement Act (CVPIA). The proposed alternatives provide a means for implementing the CVPIA. The proposed alternatives exercise the provisions of several federal laws as applicable to Reclamation. Public hearings will be held in a number of sessions to receive written or verbal comments on the DPEIS from interested organizations and individuals on the environmental impacts of the proposal.

DATES: Public comments on the DPEIS should be submitted on or before February 6, 1998. Public hearings to receive comments on the PDEIS will be held as follows:

- January 7, 1998 at 7:00 p.m. at the Elks Lodge, 355 Gilmore Road, Red Bluff, California.
- January 8, 1998 at 7:00 p.m. at the Tradewinds Lodge, 400 South Main Street, Fort Bragg, California.
- January 13, 1998 at 7:00 p.m. at the Holiday Inn, 2233 Ventura Street, Fresno, California.
- January 14, 1998 at 7:00 p.m. at the Oakland Federal Building, 1301 Clay Street, Oakland, California.
- January 15, 1998 at 7:00 p.m. at the Sacramento Inn, Yosemite Room, 1401 Arden Way, Sacramento, California.

ADDRESSES: Written comments on the DPEIS should be addressed to Mr. Alan Candlish, Bureau of Reclamation, 2800 Cottage Way, MP–120, Sacramento CA 95825. Requests for either a printed copy or a compact disk version of the DPEIS should be addressed to Ms. Alisha Sterud, Bureau of Reclamation, 2800 Cottage Way, MP–120, Sacramento CA 95825, telephone: (916) 978–5190.

Copies of the DPEIS are also available for public inspection and review at the following locations:

- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW, Washington DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 236–6963.
- Bureau of Reclamation, Regional Director, Attention: MP–140, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone: (916) 978–5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240–0001.

Copies will also be available for inspections at the following public libraries: Alum Rock Library, Alturas Public Library, Amador County Library, Auburn-Placer County Library, Bakersfield Library, Burbank Public Library, Butte County Library, Calaveras County Library, California State Library, College of the Redwoods, Colusa County Free Library, Concord Library, Contra Costa Library, CSU—Chico, Meriam Library-Government Publications, CSU Long Beach, Library-Government Documents, CSU—Stanislaus, Del Norte County Library District, Dixon Unified School District Library, E.P. Foster and H.P. Wright Library, El Dorado County Library, Fresno County Public Library, Grass Valley-Sierra County Library, Humboldt County Library, Kern County Public Library, Kings County Library, Lake County Library, Lassen County Free Library, Lodi Public Library, Los Angeles Public Library, Los Banos City Library, Madera County Library, Marin County Civic Center Library, Mariposa County Library, Mendocino County Library, Mendota Unified School District, Merced Library, Modesto City Library, Monterey County Free Library, Napa City and County Library, Nevada City Library, Northwestern University, Oakland Public Library, Orange County Public Library, Plumas County Library, Red Bluff City Library, Redwood City-San Mateo County Library, Riverside City and County Library, Sacramento County Library, Sacramento Public Library, San Benito County Free Library, San Bernadino County Library, San Diego Public Library, San Diego State University, San Francisco Public Library, San Jose State University, San Luis Obispo City and County Library, San Rafael Civic Center Library, Santa Barbara Public Library, Santa Cruz Public Library, Shasta County Library, Siskiyou County Library, Solano County Library, Sonoma County Library, Stanford University Libraries, Stanislaus County Free Library, Stockton City Library, Stockton-San Joaquin County Public Library, Sutter County Library, Tehama County Library, Trinity County Library, Tulare County Free Library, Tulare Public Library, Tuolumne County Library, U.C. Berkeley Library, U.C. Davis Library, U.C., Hastings College of Law, U.C. Los Angeles, University Research Library, U.C. San Diego, Government Documents/Maps Department, U.C. Santa Barbara, Library-Government Publications Section, U.C. Water Resources Center, Willows Public Library, Yolo County Library, Yuba County Library.

FOR FURTHER INFORMATION CONTACT: If requesting copies of the DPEIS, contact Ms. Alisha Sterud, Bureau of Reclamation, 2800 Cottage Way, MP–120, Sacramento CA 95825, telephone: (916) 978–5190. For additional information contact Mr. Alan Candlish, Bureau of Reclamation, 2800 Cottage Way, MP–120, Sacramento CA 95825, telephone: (916) 978–5190.

Dated: October 17, 1997.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 97–28763 Filed 11–06–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Westland Irrigation District Boundary Adjustment, Hermiston, OR

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare an environmental impact statement (EIS) for a proposed boundary adjustment to include additional lands into the Westland Irrigation District. Westland Irrigation District (WID) proposes the addition of 21,100 acres, of which 9,912 acres are currently irrigated, into their boundaries.

The NEPA process was initiated in late 1993 and, as a result of comments received then, has been on hold until additional information was obtained. This notice is to inform the public of the resumption of the NEPA process and the preparation of an EIS.

FOR FURTHER INFORMATION CONTACT: Mr. John Tiedeman, UCA–1607, Upper Columbia Area Office, Bureau of Reclamation, PO Box 1749, Yakima, WA 98907–1749; Telephone (509) 575–5848 extension 238.

SUPPLEMENTARY INFORMATION: WID is one of several districts in the Umatilla basin either served by federally owned facilities or receiving federally controlled water. A Federal repayment contract with WID requires that changes

to district boundaries must be approved by the Secretary of the Interior. During studies undertaken to implement the Umatilla Basin Project Act, it became apparent that WID was providing federally supplied water to lands outside of the district boundaries. In 1993, to address this problem, WID requested that Reclamation allow a change in their boundaries so that they may provide irrigation water to lands outside the current boundaries. In the interim Reclamation entered into a series of annual water service contracts with WID so irrigation of lands outside of the district boundaries with federally supplied water could continue while issues surrounding the boundary expansion were resolved.

Reclamation and the National Resources Department of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) held public meetings on November 4 and December 17, 1993, to gather comments from the public concerning the ''Proposed Boundary Changes for Irrigation Districts in the Umatilla Project, Oregon.'' Key issues identified in the scoping effort included Umatilla River hydrology and passage conditions for anadromous fish, Native American trust resources, and continue viability of irrigated agriculture. Based on the complex and often controversial nature of the issues involved, the high level of public and agency interest, and Reclamation's Native American trust responsibilities, Reclamation concluded that an EIS should be prepared. Since then, a hydrologic model of the Umatilla basin, necessary to complete the assessment of the proposed boundary adjustment, had been developed. Completion of the hydrologic model is anticipated for February 1998.

Four alternatives are proposed, including the no action alternative. Under the no action alternative all deliveries of federally supplied water by WID to lands outside of the current district boundaries would cease. Under the action alternatives some, or all, of these deliveries could continue. The draft EIS is expected to be completed in March of 1999.

At this time, no additional scoping meetings are planned. A summary of scoping issues identified through previous meetings is available upon request. Anyone interested in more information concerning the proposed action or who has information concerning significant environmental issues, should contact Mr. Tiederman as provided under the **FOR FURTHER INFORMATION CONTACT** section.

Dated: November 3, 1997.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 97–29448 Filed 11–6–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 1998 is 7.125 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1997, through and including September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: (303) 236–1061, extension 287.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 7.125 percent for fiscal year 1998.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 6.91 percent. Rounding this average yield to the nearest one-eighth percent is 6.875 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 1997 to 1998. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 7.125 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: October 31, 1997.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 97–29447 Filed 11–6–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Raytheon Company, General Motors Corporation, and HE Holdings, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in the District of Columbia, Civil No. 1:97CV02397.

On October 16, 1997, the United States filed a Complaint alleging that the proposed acquisition by Raytheon Company of Hughes Aircraft Company, a wholly owned subsidiary of HE Holdings, Inc. and an indirect subsidiary of General Motors Corporation, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed contemporaneously with the Complaint, requires Raytheon to: (1) Divest the second generation and third generation focal plane array business of Raytheon TI Systems (''RTIS'') and the second generation ground electro-optical business of Hughes Aircraft Company's Sensors and Communications Segment; (2) establish a firewall that prevents the flow of information concerning the Follow-on-to-TOW (''FOTT'') missile program between the RTIS/Lockheed Martin Corp. joint venture FOTT team and the Hughes FOTT team, and between each FOTT team and any other employee of Raytheon; and (3) provide incentives to the RTIS/Lockheed Martin FOTT team to pursue its bid to ensure competition between Raytheon and Hughes in bids for the FOTT missile.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and

filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, (202) 514–2841. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

[Civil No: 97 2397]

United States of America, Plaintiff, v. Raytheon Company, General Motors Corp., and H E Holdings, Inc., Defendants

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

(2) The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

(4) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event plaintiff withdraws its consent, as provided in paragraph 2 above, or in the event the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: October 16, 1997.

For Plaintiff United States of America:

Willie L. Hudgins,

Esquire (D.C. Bar #37127), U.S. Department of Justice, Antitrust Division, Litigation II, Suite 3000, Washington, D.C. 20005, (202) 307–0924.

For Defendant Raytheon Company

Robert D. Paul,

Esquire (D.C. Bar #416314), Michael S. Shuster, Esquire, White & Case, 601 13th St., N.W., Washington, D.C. 20005–3807, (202) 626–3614.

For Defendants H E Holdings, Inc. and General Motors Corp.:

Robert C. Odle, Jr.,

Esquire (D.C. Bar #389845), Peter D. Standish, Esquire, Douglas A. Nave, Esquire, Weil, Gotshal & Manges LLP, 767 Fifth Ave., New York, NY 10153–0119.

It is so Ordered by the Court, this _____ day of _____, 1997.

_____

United States District Judge.

United States District Court for the District Of Columbia

United States of America, Plaintiff. v. Raytheon Company, General Motors Corp., and H E Holdings, Inc., Defendants

Final Judgment

Whereas, plaintiff, the United States of America, filed its Complaint in this action on October 16, 1997, and plaintiff and defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, plaintiff intends defendants to be required to preserve competition by: (1) Promptly divesting the second generation (''2nd Gen.'') and third generation (''3rd Gen.'') focal plane array (''FPA'') business of Raytheon TI Systems (''RTIS'') and the 2nd Gen. ground electro-optical (''EO'') business of Hughes Aircraft Company's Sensors and Communications System Segment; (2) establishing a firewall that prevents the flow of information concerning the Follow-on-to-TOW (''FOTT'') missile program between the RTIS Missile Systems Division (''RTIS Missiles'') of Raytheon and any other part of Raytheon and between Hughes Missile Systems and any other part of Raytheon: and (3) incentivizing RTIS Missiles to pursue its bid through a joint venture with Lockheed Martin Corp. to ensure competition in bids for the FOTT missile;

And whereas, plaintiff requires defendants to make the divestitures for the purpose of establishing a viable competitor in the development, production, and sale of FPAs and ground EO systems, and to construct firewalls and incentivize RTIS Missiles for the purpose of preserving competition in bidding for the FOTT missile program;

And whereas, defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that the firewalls can be constructed and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or firewall provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

A. ''A-Kit'' means all components necessary to fit a B-Kit into a particular

ground vehicle, including the optics, electronics, software, visual display, stabilization, and fire control as required.

B. ''B-Kit'' means the common components for 2nd Gen. Forward Looking Infrared Systems (''FLIRs'') designed under the HTI program, including SADA II integrated cooler/dewar detector assemblies, afocal assemblies, and associated electronics.

C. ''DoD'' means the Department of Defense.

D. ''DoJ'' means the Antitrust Division of the Department of Justice.

E. ''EO Business'' means the 2nd Gen. ground EO business of Hughes operated out of the El Segundo, California and La Grange, Georgia facilities that produces A-Kits and B-Kits for ground vehicles and other applications, including the IBAS. M–1 TIS, LRASSS, and HTT programs, and all employees listed in confidential Attachment A, including:

a. All tangible assets used to produce A-Kits and B-Kits; all real property (owned or leased), including interests in the El Segundo, California and La Grange, Georgia facilities used to produce A-Kits and B-Kits, research and development activities, as identified pursuant to the Court's Hold Separate and Partition Plan Stipulation and Order; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the production of A-Kits and B-Kits; all licenses, permits and authorizations issued by any governmental organization relating to A-Kits and B-Kits; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to A-Kits and B-Kits; supply agreements; all customer lists and credit records; and other records maintained by Hughes in connection with the production of A-Kits and B-Kits;

b. All intangible assets relating to the research, development, and production of A-Kits and B-Kits, including but not limited to a non-exclusive, transferable, royalty-free license to use all patents utilized by Hughes in the EO Business, licenses and sublicenses, intellectual property, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, and all manuals and technical information Hughes provides to its own employees, customers, suppliers, agents or licensees;

c. All research data concerning historic and current research and development efforts relating to the production of A-Kits and B-Kits, including designs of experiments, and the results of unsuccessful designs and experiments;

d. At the option of the purchasers, a supply contract for computer support services and information and communications services sufficient to support the EO Business over a period of one year; and

e. At the option of the purchaser, at the time of purchase, an option to purchase or lease an additional 10,000 square feet of manufacturing space for the EO Business in addition to the space set aside for the EO Business in the Hold Separate and Partition Plan and Order.

F. ''FOTT Information'' means all information relating to the FOTT Program, including but not limited to, information relating to any and all proposals, technology, cost data, suppliers, designs, plans, test results, specifications, pricing, technical interface with IBAS and ITAS or other sensitive competitive information. FOTT Information shall be stamped as ''Confidential and Competition Sensitive.''

G. ''FOTT Program'' means the Follow-on-to-TOW missile program, for which the Hughes FOTT Team and the TI/Martin Javelin Joint Venture (as defined below) will be competing for the Engineering Manufacturing Developing (''EMD'') contract, scheduled to be awarded by the United States Army in 1998.

H. ''FPA'' means a matrix of detectors or pixels made of material that is sensitive to infrared (''IR'') radiation, which is mated to a silicon processor and used to detect and analyze IR radiation.

L. ''FPA Business'' means the 2nd Gen. and 3rd Gen. scanning and staring IR detector businesses of RTIS operated out of the Semiconductor Building and the Research West Building located at the Expressway site in Dallas, Texas, including all dewar and cryogenic cooler manufacturing and dewar and cryogenic cooler assembly (except for RTIS' uncooled FPA Business), and including all employees listed in confidential Attachment, including:

a. All tangible assets used to produce scanning IR detectors, including SADA detectors, staring detectors, dewars, and cryogenic coolers, including, but not limited to, all real property (owned or leased), including interests in the Dallas facilities, used in the operation of the RTIS FPA Business, including research and development activities, as identified pursuant to the Court's Hold Separate and Partition Plan Stipulation and Order; all manufacturing, personal property, inventory, office furniture, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property or improvements used in the operation of the RTIS FPA Business; all licenses, permits and authorizations issued by any governmental organization relating to the RTIS FPA Business; all contracts, teaming arrangements, agreements, leases, commitments and understandings pertaining to the RTIS FPA Business and its operations; supply agreements; all customer lists and credit records; and other records maintained by Raytheon in connection with the RTIS FPA Business;

b. All intangible assets relating to the RTIS FPA Business, including but not limited to all patents, licenses and sublicenses, intellectual property, maskwork rights, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols, cell libraries, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, designed tools and simulation capability, and all manuals and technical information Raytheon provides to its own employees, customers, suppliers, agents or licensees, except that the purchaser shall agree to grant to the seller a non-exclusive, transferable, royalty-free license for any invention disclosed in U.S. Patent No. 5,274,578; and any invention disclosed in U.S. Patent Applications Nos. 08/474,229, 08/097,522, 08/478,570 and 08/487,820 and Provisional Patent Application No. 60/014,812; and

c. All research data concerning historic and current research and development efforts relating to the RTIS FPA Business, including designs of experiments, and the results of unsuccessful designs and experiments.

J. ''HTI'' means the Horizontal Technology Integration program to develop a common B-Kit to be used on different ground vehicle platforms.

K. ''Hughes'' means Hughes Aircraft Company, an indirect subsidiary of General Motors Corp., with its headquarters in Arlington, Virginia, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnership and joint ventures, and directors, officers, managers, agents and employees.

L. ''Hughes FOTT Team'' means all Hughes Missile Systems managers and employees who have been assigned to or

consulted in connection with the FOTT program.

M. ''IBAS'' means the Integrated Bradley Acquisition System, a program to upgrade the sights on a Bradley Fighting Vehicle.

N. ''ITAS'' means the Improved Target Acquisition System, a program to improve TOW missile launching capabilities.

O. ''LRASSS'' means the Long-Range Advanced Scout Surveillance System, a future surveillance system to be mounted on light ground vehicles.

P. ''M1–TIS'' means the Thermal Imaging System for the M1 Abrams tank.

Q. ''Raytheon'' means Raytheon Company, a Delaware corporation with its headquarters and principal place of business in Lexington, Massachusetts, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

R. ''RTIS'' means Raytheon TI Systems, Inc.

S. ''RTIS FOTT team'' means Mr. Lawrence Schmidt, all RTIS managers and employees of the TI/Martin Javelin Joint Venture, and all other RTIS employees who have been assigned to or consulted in connection with the FOTT program. One attorney in the General Counsel's Office of Raytheon, to be designated by Raytheon, shall be deemed a member of the RTIS FOTT Team and may be consulted for the purpose of obtaining legal or regulatory advice, but shall not receive FOTT Information concerning pricing or other bid information.

T. ''SADA'' means the Standardized Advanced Dewar Assembly and consists of a scanning FPA mounted in an evacuated dewar. The SADA program is an effort by the United States Army to develop a family of IR detectors that can be used in a variety of battlefield systems.

U. ''TI/Martin Javelin Joint Venture'' means the joint venture between Texas Instruments a/k/a RTIS and Lockheed Martin, which will be a competitor for the FOTT Program.

V. ''Uncooled FPA Business'' means the technology, production equipment, and all tangible and intangible assets used by RTIS solely in the production of uncooled FPAs.

III. Applicability

A. The provisions of this Final Judgment apply to Raytheon, its successor and assigns, their subsidiaries, directors, officers, managers, agents, and employers, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Raytheon shall require, as a condition of the sale or other disposition of all or substantially all of its assets or of a lesser business unit that includes Raytheon's business of developing and producing FPAs and ground EO Systems, that the transferee agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Raytheon is hereby ordered and directed in accordance with the terms of this Final Judgment, within one-hundred and eighty (180) calendar days after October 3, 1997 or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the FPA Business and the EO Business to an acquirer(s) acceptable to DoJ and DoD in their sole discretion.

B. Raytheon shall use its best efforts to accomplish the divestitures as expeditiously and timely as possible. DoJ in its sole determination, in consultation with DoD, may extend the time period for any divestitures for an additional period of time not to exceed thirty (30) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, Raytheon, promptly shall make known, by usual and customary means, the availability of the EPA Business and the EO Business described in this Final Judgment. Raytheon shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Raytheon shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the FPA Business and the EO Business customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Raytheon shall make available such information to DoJ at the same time that such information is made available to any other person.

D. Raytheon shall permit bona fide prospective purchasers of the FPA Business and the EO Business to have reasonable access to personnel and to make such inspection of the physical facilities of the FPA Business and EO Business and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Raytheon shall not take any action that will impede in any way the operation of the FPA Business or the EO Business.

F. Unless both DoJ and DoD otherwise consent in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire FPA Business and the entire EO Business, operated in place pursuant to the Hold Separate and Partition Plan Stipulation and Order, and be accomplished by selling or otherwise conveying the FPA Business and the EO Business to a purchaser(s) in such a way as to satisfy DoJ and DoD, in their sole discretion, that the FPA Business and the EO Business can and will be used by the purchaser(s) as part of a viable, ongoing business or businesses engaged in the development, production, and sale of FPAs and ground EO systems. Divestiture of the FPA Business and EO Business may be made to one or more purchasers provided that in each instance it is demonstrated to the sole satisfaction of DoJ and DoD that the FPA Business and EO Business will remain viable. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser(s) who it is demonstrated to DoJ's and DoD's sole satisfaction: (1) Has the capability and intent of competing effectively in the development, production and sale of FPAs or ground EO systems as the case may be; (2) has managerial, operational, and financial capability to compete effectively in the development, production and sale of FPAs or ground systems as the case may be; (3) is eligible to receive applicable DoD security clearances; and (4) that none of the terms of any agreement between the purchaser and Raytheon give Raytheon the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

G. For a period of two years from the filing of the Complaint in this matter, Raytheon and Hughes shall not solicit to hire any individual who, on the date of the filing of the Complaint in this matter, was an employee of the FPA Business or the EO Business. For a period of two years from the filing of the Complaint in this matter, Raytheon and Hughes shall not hire any individual who, on the date of the filing of the Complaint in this matter, was an employee of the FPA Business or the EO Business unless such individual has a written offer of employment from a third party for a like position.

H. Raytheon shall comply with all agreements with DoD regarding the

protection of information related to classified programs.

I. Raytheon shall not charge to DoD any costs directly or indirectly incurred in complying with this Final Judgment.

V. Appointment of Trustee

A. In the event that Raytheon has not divested the FPA Business and the EO Business within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by DoJ, in consultation with DoD, to effect the divestiture of the FPA Business and the EO Business.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the FPA Business described in Section II(I) and the EO Business described in Section II(E) of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and IX of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Raytheon any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to DoJ and DoD, and shall have such other powers as this Court shall deem appropriate. Raytheon shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Raytheon must be conveyed in writing to DoJ and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Raytheon, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Raytheon and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Raytheon shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Raytheon shall develop financial or other information relevant to the business to be divested customarily provided in a due dilligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Raytheon shall permit bona fide prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and nay and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by DoJ.

VI. Firewall

A. Members of the RTIS FOTT Team are prohibited from giving or receiving, either directly or indirectly, any FOTT Information to or from the Hughes FOTT Team or any other Raytheon employee. Members of the Hughes FOTT Team are prohibited from giving or receiving, either directly or indirectly, any FOTT Information to or from the RTIS FOTT Team or any other Raytheon employee. To implement this provision, Raytheon is required to construct a firewall within Raytheon that prevents the flow of FOTT Information between the RTIS FOTT Team and any other segment or official of Raytheon. Raytheon is also required to construct a firewall within Raytheon that prevents the flow of any FOTT Information between the Hughes FOTT Team and any other segment or official of Raytheon. These firewalls are intended to ensure competition between RTIS Missiles and Hughes Missile Systems in bidding on the FOTT Program. Raytheon shall, within five (5) business days of its signing the Stipulation and Order consenting to the entry of this Final Judgment, submit to DoJ and DoD a document setting forth in detail its procedures to effect compliance with this provision. DoJ and DoD shall have the sole discretion to approve Raytheon's compliance plan and shall notify Raytheon within three (3) business days whether they approve of or reject Raytheon's compliance plan. In the event that Raytheon's compliance plan is rejected, the reasons for the rejection shall be provided to Raytheon by DoJ and Raytheon shall be given the opportunity to submit, within two (2) business days of receiving the notice of rejection, a revised compliance plan. If the parties cannot agree on a compliance plan within an additional three (3) business days, a plan will be devised by DoD and implemented by Raytheon. All Raytheon employees shall abide by the provisions of the compliance plan. The prohibitions in this paragraph shall remain in effect until final determination of the EMD contract award for the FOTT Program is made by DoD. Raytheon shall use all

reasonable efforts to submit a competitive bid by the RTIS FOTT Team for the FOTT Program.

B. Raytheon shall delegate to Mr. Lawrence Schmidt, Senior Vice President, Missile Systems Division of RTIS, in his sole discretion, the right to review and determine on behalf of Raytheon all matters relating to the TI/Martin Javelin Joint Venture bid, including any best and final offer and responses to any inquiry from DoD, on the FOTT Program; to invest Raytheon's funds in the FOTT Program; and to draw on other resources within RTIS Missiles to compete for the FOTT Program.

C. Raytheon shall provide an economic incentive to the RTIS management personnel of the TI/Martin Javelin Joint Venture to ensure all reasonable efforts will be made by Raytheon to submit a competitive bid by the TI/Martin Javelin Joint Venture for the FOTT Program. As an incentive to win the FOTT Program, Raytheon shall pay, conditioned solely upon the TI/Martin Javelin Joint Venture being awarded the EMD contract for the FOTT Program, bonuses to certain RTIS Missiles employees. Each employee to receive a bonus upon award of the EMD contract for the FOTT Program and the amount of each applicable bonus is listed in confidential Attachment ''C.''

D. Raytheon shall notify and train all RTIS Missiles, Hughes Missile Systems, and other Raytheon employees likely to see FOTT Information regarding the restrictions on FOTT Information and require that all such employees sign a statement acknowledging the restrictions on the FOTT Information. In addition, all RTIS Missiles employees having access to FOTT Information must sign a certification stating that they understand the restrictions of the firewall and agree to adhere to the firewall restrictions.

VII. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment. Raytheon or the trustee, whichever is then responsible for effecting the divestitures, shall notify DoJ and DoD of the proposed divestitures. If the trustee is responsible, if shall similarly notify Raytheon. The notice shall set for the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by DoJ and DoD of such notice, DoJ, in consultation with DoD, may request from Raytheon, the proposed purchaser, or any other third party additional information concerning the proposed divestitures and the proposed purchaser. Raytheon and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after DoJ has been provided the additional information requested from Raytheon, the proposed purchaser, and any third party, whichever is later, DoJ and DoD shall each provide written notice to Raytheon and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If DoJ and DoD provide written notice to Raytheon and the trustee that they do not object, then the divestiture may be consummated, subject only to Raytheon's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that NoJ and DoD do not object to the proposed purchaser or upon objection by DoJ or DoD, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Raytheon under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (2) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Raytheon shall deliver to DoJ and DoD an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Raytheon has taken to solicit a buyer for the relevant assets and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by DoJ to information provided by Raytheon, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Raytheon shall deliver to DoJ and DoD an affidavit which describes in detail all actions Raytheon has taken and all steps Raytheon has implemented on an on-going basis to comply with the firewall provisions pursuant to Section VI of this Final Judgment and to preserve the FPA Business and the EO Business pursuant to Section IX and this Final Judgment and the Hold Separate and Partition Order entered by the Court. The affidavit also shall describe, but not be limited to, Raytheon's efforts to maintain and operate the FPA Business and the EO Business as an active competitor, maintain the management, staffing, research and development activities, sales, marketing and pricing of the FPA Business and the EO Business, and maintain the FPA Business and the EO Business in operable condition at current capacity configurations. Raytheon shall deliver to DoJ and DoD an affidavit describing any changes to the efforts and actions outlined in Raytheon's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Raytheon shall preserve all records of all efforts made to preserve the business to be divested and effect the divestitures.

IX. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Raytheon shall take all steps necessary to comply with the Hold Separate and Partition Plan Stipulation and Order entered by this Court and to preserve the assets of the FPA Business and the EO Business. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

X. Financing

Raytheon is ordered and directed not to finance all or any part of any purchase by an acquirer(s) made pursuant to Sections IV or V of this Final Judgment.

XI. Compliance Inspection

For purposes of determining or securing compliance with the Final

Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Raytheon made to its principal offices, shall be permitted:

1. Access during office hours of Raytheon to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Raytheon, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of Raytheon and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Raytheon's principal offices, Raytheon shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate and Partition Order.

C. No information or documents obtained by the means provided in Sections VIII or XI of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Raytheon to DoJ or DoD, Raytheon represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Raytheon marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure.'' then ten (10) calendar days notice shall be given by DoJ or DoD to Raytheon prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Raytheon is not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the day of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 1998.

_____

United States District Judge.

United States District Court for the District of Columbia

[Civil No. 1:97CV02397]

United States of America, Plaintiff, v. Raytheon Company, General Motors Corporation, and He Holdings, Inc., Defendants

United States District Judge Emmet G. Sullivan

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competivie Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On October 16, 1997, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Raytheon Company (''Raytheon'') of Hughes Aircraft Co. (''Hughes'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Raytheon and Hughes are the only two firms that design, develop, and produce second generation (''2nd Gen.'') electro-optical (''EO'') systems for Department of Defense (''DoD'') ground applications. It alleges that Raytheon and Hughes are also the only two firms that design, develop, and produce critical infared (''IR'') detectors, called ''SADA II'' detectors, used in ground EO systems, and are the leading firms that develop and produce staring IR detectors used for sensors in missile seeker heads and aircraft and missile warning system applications. The Complaint further alleges that Raytheon, through its majority ownership in a joint venture with Lockheed Martin Corporation (''Lockheed Martin''), and Hughes are competitors for the Follow-On-To-TOW (''FOTT'') new advanced antitank missile program that will replace the current inventory of TOW antitank missiles.

The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Raytheon from acquiring Hughes.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Raytheon to complete its acquisition of Hughes, but require a divestiture and other terms that will preserve competition in the relevant markets. This settlement consists of a Stipulation and Order, Hold Separate and Partition Plan Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders Raytheon to divest, within one-hundred and eighty (180) calendar days after October 3, 1997 or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, the FPA Business (as defined in the Final Judgment) of Raytheon TI Systems (''RTIS''), and the EO Business (as defined in the Final Judgment) of Hughes, to an acquirer(s) acceptable to the Antitrust Division of the Department of Justice (''DoJ'') and DoD. RTIS's FPA Business includes the 2nd Gen. scanning and third generation (''3rd Gen.'') staring IR detector businesses (operated out of the Semiconductor Building and the Research West Building, located at the Expressway site in Dallas, Texas), all tangible and intangible assets used in producing those detectors, including production facilities, research and development activities, and all dewar and cryogenic cooler manufacturing assembly.

Hughes' EO Business includes the 2nd Gen. ground EO business operated out of the El Segundo, California and La Grange, Georgia facilities, which produce A-kits and B-kits for ground vehicles and other applications, including the Integrated Bradley Acquisition System (''IBAS''), Thermal Imaging System for the M1 Abrams tank (''M–1 TIS''), Long-Range Advanced Scout Surveillance System (''LRASSS''), and Horizontal Technology Integration Program (''HTI'') programs, all tangible and intangible assets used in producing A-kits and B-kits, production facilities, and research development activities. In addition, Raytheon is required to

provide, at the option of the purchaser, a contract for computer support services and information and communications services sufficient to support the EO Business over a period of one year, and, at the option of the purchaser, an option to purchase or lease manufacturing space in addition to that currently set aside for the EO Business.

Until such divestitures are completed, the terms of the Hold Separate and Partition Plan Stipulation and Order entered into by the parties apply to ensure that the FPA Business and the EO Business shall be maintained as an independent competitor from Raytheon.

In addition to the divestitures, the proposed Final Judgment requires that Raytheon establish firewalls to preserve the independence of the Hughes team competing for the FOTT program (''Hughes ROTT Team'') from the RTIS/Lockheed Martin FOTT joint venture (RTIS FOTT Team). The firewall provisions prohibit the flow of information between the two teams and between either team and any other employee of Raytheon. The Proposed Final Judgment requires Raytheon to delegate to the head of RTIS Missile Systems Division the sole discretion to determine all matters relating to RTIS FOTT Team's bid and to create economic incentives for the RTIS FOTT Team members to ensure all reasonable efforts will be made to submit a competitive bid for the FOTT Program.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Raytheon is a Delaware corporation headquartered in Lexington, Massachusetts. Raytheon produces heavy construction equipment; refrigerators and freezers; radio and TV broadcasting and communications equipment; semiconductors and related devices; aircraft; guided missiles and space vehicles; search, detection and navigation systems; and engineering services. RTIS, a division of Raytheon, produces ground EO systems at a facility in McKinney, Texas and IR detectors at its Expressway facility in Dallas, Texas. Amber, a separate unit of Raytheon, produces detectors at a facility in Goleta, California. In 1996, Raytheon reported total sales of about $12 billion.

General Motors Corporation (''General Motors'') is a Delaware corporation headquartered in Detroit, Michigan. Hughes, a missle and defense electronics company, is an indirect subsidiary of General Motors. Hughes produces ground EO systems at facilities in El Segundo, California and LaGrange, Georgia. Hughes operates the industry's premier detector facility, Santa Barbara Research Center (''SBRC''), in Santa Barbara, California. In 1996, Hughes reported total sales of approximately $6 billion.

HE Holdings, Inc. (''HE Holdings'') is a Delaware corporation headquartered in Detroit, Michigan. Hughes is a direct subsidiary of HE Holdings.

On January 16, 1997, Raytheon entered into an agreement with General Motors to purchase HE Holdings, the parent of Hughes. This transaction, which would, in part, take place in the highly concentrated SADA II detector, staring FPA, ground EO systems, and FOTT missile markets, precipitated the government's suit.

B. The Relevant Markets

SADA II Detectors

IR detectors are sensing devices that convert IR radiation into an electrical signal. The devices detect the differences in that heat emissions between an object and its surroundings, and can therefore produce a thermal image of objects in the device's field of view. The detector consists of linear or mosaic arrays of individual diodes made from semiconductor materials such as mercury cadmium telluride (''MCT'') or indium antimonide ''(InSb''). The detector is attached to a silicon chip or ''readout'' device that contains the circuitry which stores the energy captured by the detector and converts this energy to a voltage signal. When mated to the readout circuit, the detector is often called a focal plane array (''FPA''). The FPA is typically housed in an evacuated cooler dewar assembly which isolates the FPA and cools it to cryogenic temperatures.

The combination of FPA cooler dewar assembly, optics, electronics, software, and a visual display is commonly called a FLIR (Forward Looking Infrared). FLIRs are used for surveillance and weapons fire control purposes in ground and airborne EO systems. FPAs are also used in heat-seeking missile guidance systems and missile warning systems, applications for which no pictorial image is required. Since the Gulf War, great strides have been made in IR technology, and the military is switching from older first generation (''1st Gen.'') lower performance technology to more advanced 2nd Gen. technology in a variety of applications.

Second generation scanning FPAs consist of individual detector elements arranged in two dimensions varying in size from 240×2 to 480×4. The detector is scanned mechanically with mirrors across a field of view. Second generation scanning FPAs differ from 1st. Gen. scanning FPAs in that the readout circuit is mounted directly to the detector material. For this reason, 2nd Gen. FPAs are photovoltaic, while 1st. Gen. FPAs are photo conductive. Scanning FPAs are preferred on ground vehicles because of their wide field of view.

FPAs are distinguished by the spectrum of the electromagnetic wavelength they detect—longwave (''LW''), midwave (''MW'') or shortwave (''SW''). LW is visible in the 8 to 12 micron range, MW in the 3 to 5 micron range, and SW in the 1 to 2 micron range. Short wave is not typically used for tactical applications. InSb is the primary material used for detecting MW IR radiation, and it is only used in staring arrays. MCT, the leading material for detecting LW IR radiation, is used in virtually all scanned arrays, but is also used in staring FPAs.

In the late 1960s, DoD started to develop an IR detector common across all the services. This effort resulted in the 1st Gen. ''common module'' detectors, which were placed in the field in approximately 1970. Since the common module detector is not mounted directly to an integrated readout circuit, fewer detector elements can be placed on the array. Because it has fewer detector elements, the sensitivity and resolution of 1st Gen. FPAs are not as good as that of 2nd Gen. FPAs. First generation detectors were used in Desert Storm, and it was discovered that U.S. weaponry could fire further than the FLIR systems could detect. The desire for EO systems with a range closer to that of the weapon systems motivated the development of 2nd Gen. devices. First generation FPAs are still in use today, although in the early 1990s, the U.S. military stopped placing new 1st Gen FLIRs in the field.

In the late 1980s, the Army's Night Vision Laboratory began development of 2nd Gen. detectors under the Standardized Advanced Dewar Assembly (''SADA'') program. SADA assemblies use a two dimensional MCT array sensitive to LW IR radiation. SADA detectors include four different configurations: SADA I, SADA II, SADA

III A and SADA III B. Each type has different specifications so that one does not substitute for another.

The Army uses a SADA II for ground vehicles. As part of a broader effort undertaken in 1992 to insert a common 2nd Gen. FLIR system into various battlefield platforms, the Army decided to use SADA II detectors in the M1A2 Abrams Tank, the M2A3 Bradley Fighting Vehicle, and the LRASSS. The SADA II is also used in the FLIR for the Improved Targeting Acquisition System (''ITAS'') for the High Mobility Motorized Wheeled Vehicle (''HMMWV'').

Because they do not match the field of view achievable with SADA II detectors, staring FPAs are not viable substitutes for a SADA II detector. Staring FPAs of a size needed to match the field of view obtainable from a scanning FPA are not yet available in LW MCT, which is the only material that meets the Army's needs to see through battlefield smoke, dust, and clutter.

Even if large format LW MCT arrays became available in the future, a switch to such arrays would not be economically justified in response to a small but significant and nontransitory price increase in the SADA II detectors, because of the substantial configuration changes and consequent costs required to replace SADA II detectors in ground vehicles with staring detectors.

Raytheon and Hughes are the only two firms that have sold SADA II detectors to DoD. Hughes qualified as a SADA II supplier in mid-1996, and Raytheon was permitted to bid for 1997 purchases based on its demonstrated success toward completing the qualification process. Raytheon is expected to be fully qualified by the end of 1997. In 1997, about 103 SADA II detectors having a total dollar value of about $6.6 million were purchased, of which 70 percent were supplied by Hughes and 30 percent by Raytheon. DoD projects purchases of 2,945 SADA II detectors through the year 2002, having a total dollar value of about $138.8 million.

Raytheon's acquisition of Hughes would eliminate all competition in the development, production, and sale of SADA II detectors. The proposed acquisition will result in a single supplier with the incentive and ability to raise prices and little or no incentive to minimize cost.

Successful entry into the production and sale of SADA II detectors is difficult, time consuming, and costly. A potential entrant would have to design and develop a product, establish production processes, and complete a rigorous qualification process. A new facility capable of producing SADA II detectors could cost over $20 million. Only one other firm, Sofradir of France, is trying to qualify under the SADA II program. Sofradir, which is partially owned by the French government, is beginning the qualification process. It is unrealistic to expect sufficient new entry in a timely fashion to protect competition in upcoming SADA II purchases.

Staring FPAs

Staring or third generation (''3rd Gen.'') FPAs consist of a mosaic of diodes typically square or rectangular in shape. Since they contain no scanning mechanism, staring FPAs provide an image by staring at the scene and rapidly updating changes in the scene. Staring FPAs are lighter weight than scanning, and they can be more economical to use. Staring FPAs are produced in sizes ranging from 64×64 to 1024×1024. The largest size currently produced for tactical applications, however, is 640×480. Staring FPAs provide greater sensitivity and resolution than scanning FPAs, because they have a larger number of detectors. However, staring FPAs are more difficult to produce than scanning FPAs because of the difficulty in producing large InSb or MCT wafers. Due to their smaller physical size and lighter weight, staring FPAs are used in missile seeker heads and airborne applications where small size and light weight are a premium. Staring FPAs are also the detector of choice for missile warning systems.

Staring FPAs have primarily been made of InSb because it was the first technology capable of producing staring FPAs and the material itself is easier to work with. Staring FPAs are now available using MCT technology.

Raytheon and Hughes are the two leading suppliers of staring FPAs for military programs. Raytheon produces staring FPAs at its RTIS facility in Dallas, Texas and its Amber facility, in Goleta, California. Hughes operates SBRC, the industry's premier staring FPA facility, in Santa Barbara, California. Hughes and Raytheon have supplied or are contracted to supply the staring FPAs on most DoD missile and aircraft programs. DoD projects purchases of about 14,000 staring FPAs over the next five years having a value of about $35 million.

Raytheon's acquisition of Hughes would combine the two leading suppliers of staring FPAs with over 90 percent of the market. The acquisition would create a clear dominant supplier with the incentive and ability to raise prices and little or no incentive to minimize cost.

Boeing Company (''Boeing'') and Lockheed Martin make staring FPAs for military applications, but neither is a major supplier in the tactical market. Boeing has focused on space applications, where the FPA must meet more rigid durability and quality standards. Consequently, FPAs for space applications cost significantly more than FPAs for tactical applications. Lockheed Martin operates a very small, research-oriented staring FPA operation. Boeing would need to refocus its staring FPA business from the higher price space applications and Lockheed Martin would need to invest in a production-oriented facility in order for either to be a more significant supplier in the tactical market.

Successful entry into the production and sale of staring FPAs is difficult, time consuming, and costly. A potential entrant would have to design and develop a product and establish production processes. A new facility capable of producing staring FPAs could cost over $20 million. It is unrealistic to expect new entry in a timely fashion to protect competition in upcoming staring FPA purchases.

The acquisition also likely will result in lessening of competition in the market for missile systems. Raytheon and Hughes are not only suppliers of staring FPAs, but are also major suppliers of the missile systems of which these devices are critical components. With the acquisition of Hughes, Raytheon will control access to virtually all currently viable staring FPAs for tactical applications. Raytheon will have an incentive to refuse to sell, or to sell on disadvantageous terms, its state-of-the-art staring FPAs to its missile competitors. Without access to the latest staring FPAs, a missile manufacturer is at a serious competitive disadvantage.

2nd Gen. Ground EO Systems

A ground EO system is an integrated system with a thermal imager (usually a FLIR), including an integrated cooler dewar assembly with detector, afocal assemblies, and associated electronics. It might also include the optics, electronics, software, visual displays, fire control and stabilization necessary to adapt the system to a particular platform.

Targeting and navigation are the two major types of ground infrared EO systems. Targeting systems, sometimes called ''fire control systems,'' acquire the target and direct the missile or gun round to the target. These systems are much more complex than those used for

navigation, which only need to permit the operator to see the general area.

A ground EO system operating in or on a ground combat vehicle, in the dust, heat and smoke of a battlefield, faces risks and demands that are different from those faced by an EO system on a fighter aircraft or a helicopter operating substantially above the battlefield. Many problems that are unique to designing EO systems for the ground combat environment are not faced in designing and EO system for airborne applications. Among these is the requirement that any FLIR on a tank be able to absorb the tremendous shock of a direct hit and keep functioning. In addition, the shock of the recoil of the gun and the extreme vibrations that constantly accompany the operation of a ground combat vehicle must also be accounted for in designing and producing a group EO system. An EO system operating on the ground may also have to see through several miles of battlefield smoke and debris. For these reasons, the Army spent over $90 million in the early 1990s to specifically develop an EO system for its ground vehicles.

Raytheon and Hughes are the only two firms that develop and produce 2nd Gen. EO systems for ground vehicles. Raytheon's RTIS and Hughes are the only two firms that have established the developmental capacity and low-cost production processes needed to economically produce 2nd Gen. ground EO system.

During the next five years, DoD expects to spend about $200 million a year for 2nd Gen. ground EO systems to be purchased for the following programs: the Improved Target Acquisition System for the HMMWV; the Improved Bradley Acquisition System for the Bradley Fighting Vehicle; the Commander's Independent Thermal Viewer for the M1 Abrams tank; the Thermal Independent Sight for the M1 Abrams tank; the Commander's Independent Viewer for the Bradley Fighting Vehicle; and the Long Range Advanced Scout Surveillance System. Raytheon and Hughes are the only sources for these ground EO systems.

Raytheon's acquisition of Hughes would eliminate all competition in the development, production, and sale of 2nd Gen. ground EO systems for military applications. The proposed acquisition would result in a single supplier with the incentive and ability to raise prices and little or no incentive to minimize cost.

Sucessful entry into the production and sale of 2nd Gen. ground DoD is difficult, time consuming, and costly, Entry requires advanced technology, skilled engineers and specialized equipment. A potential entrant would have to engage in difficult, expensive, and time consuming research to develop and produce 2nd Gen. ground EO systems. It is unrealistic to expect new entry in a timely fashion to protect competition in upcoming 2nd Gen. ground EO systems purchases.

FOTT Program

FOTT is a U.S. Army engineering, manufacturing, and development (''EMD'') program for an advanced missile to replace the current inventory of TOW anti-tank missiles. The program started on March 30, 1995 when the Army issued a Request for Information. An initial draft Request for Proposal was issued on May 15, 1996, a second draft Request for Proposal was issued on February 12, 1997, and a third draft Request for Proposal was issued on August 8, 1997. The Army currently anticipates issuing a formal Request for Proposal for the FOTT program at the end of 1997 or early 1998. A contract for EMD is expected to be awarded in the first half of 1998. Hughes and a joint venture between RTIS and Lockheed Martin, in which RTIS owns a 60 percent interest, are competing for the FOTT program.

The U.S. Army has determined that development of an advanced anti-tank missile is necessary and that no other missile system meets the mission objectives set for the FOTT program.

If Raytheon acquires Hughes, it will control the Hughes FOTT proposal and it will control a 60 percent interest in the RTIS/Lockheed Martin joint venture FOTT proposal. In such a situation, Raytheon has a strong economic incentive to favor its Hughes proposal, where it stands to win 100 percent of the program, over the team in which it has only a 60 percent interest. Raytheon's acquisition of Hughes will eliminate the aggressive competition that would otherwise exist between these independent teams. FOTT is a potential $8 billion to $10 billion program.

It would be very difficult for another firm to successfully enter the FOTT competition at this stage. The Hughes and RTIS/Lockheed Martin Joint venture teams have completed the validation and demonstration stage and have each spent over $20 million during the last three years developing a missile to demonstrate during the EMD selection. Selection of a contractor for the EMD contract is expected during the first half of 1998.

C. Harm to Competition as a Consequence of the Acquisition

Raytheon's acquisition of Hughes would eliminate competition in the research, development, and production of SADA II detectors and ground EO systems, both necessary to ground military weapons systems in the United States. It would combine the two leading suppliers of staring FPAs with over 90 percent of the market. In addition, Raytheon's acquisition of Hughes would eliminate the aggressive competition that would otherwise exist between Hughes and the RTIS/Lockheed Martin joint venture for the FOTT antitank missile. Entry by a new company would not be timely, likely or sufficient to prevent harm to competition in any of these product areas.

The Complaint alleges that the transaction would have the following effects, among others: competition generally in the innovation, development, production, and sale of SADA II detectors, staring FPAs, ground EO systems, and the FOTT missile in the United States would be lessened substantially; actual and future competition between Raytheon and Hughes in the development, production and sale of SADA II detectors, staring FPAs, ground EO systems, and the FOTT missile in the United States will be eliminated; and prices for SADA II detectors, staring FPAs, ground EO systems, and the FOTT missile in the United States would likely increase.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Hughes by Raytheon.

The proposed Final Judgment provides that Raytheon must divest, within one hundred eighty (180) calendar days after October 3, 1997, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, the FPA Business of RTIS and the EO Business of Hughes to an acquirer(s) acceptable to the DoJ and DoD. In addition, Raytheon is required to provide, at the option of the purchaser, a contract for computer support services and information and communications services sufficient to support the EO Business over a period of one year, and, at the option of the purchaser, an option to purchase or lease manufacturing space in addition to that currently set aside for the EO Business.

If defendants fail to divest these businesses, a trustee (selected by DoJ in

consultation with DoD) will be appointed by the Court. The trustee will be authorized to sell the FPA Business and the EO Business. The Final Judgment provides that Raytheon will pay all costs and expenses of the trustee. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Divestiture of the FPA Business, the EO Business and the options preserves competition because it will restore the SADA II, staring FPA, and the ground EO systems markets to structures that existed prior to the acquisition and will preserve the existence of independent competitors. Divestiture will keep at least two producers of SADA II detectors and ground EO systems in the market competing for upcoming contracts, which will preserve and encourage ongoing competition in product innovation and development, production, and sales. Divestiture will also maintain at least two major competitors for staring FPAs and prevent missile system manufacturers from being foreclosed from a critical input. The divestiture thus will preserve competition in upcoming programs.

In addition to the divestitures, the Final Judgment requires that Raytheon establish procedures to assure that the current Hughes and the RTIS/Lockheed Martin joint venture remain independent competitors for the FOTT program. The firewall provisions required by the Final Judgment prevent the flow information between Hughes' FOTT team and the RTIS FOTT team and between either team and any other Raytheon employee. Raytheon is required to delegate to the head of its RTIS Missile Systems Division the sole discretion to determine all matters relating to the RTIS FOTT bid to create economic incentives for the RTIS FOTT team members to ensure all reasonable efforts will be made to submit a competitive bid for the FOTT program.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days proceeding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comment and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants Raytheon and General Motors. The United States could have brought suit and sought preliminary and permanent injunctions against Raytheon's acquisition of Hughes.

The United States is satisfied that the divestive of the described assets and the other terms specified in the proposed Final Judgment will encourage viable competition in the research, development, and production of SADA II detectors, staring FPAs, ground EO systems, and the FOTT program. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in these markets. The divestiture of the FPA Business and the EO Business and the other proposed terms will restore the SADA II, staring FPA, ground EO systems, and FOTT missile markets to structures that existed prior to the acquisition and will preserve the existence of independent competitors in those markets.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanism are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry. ''the Court is nowhere compelled to go to trail or to engage in extended proceedings which might have a effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather.

[1] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D.

Continued

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determining whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660,666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also, Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

[T]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest in one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).''[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America:

Dated: October 22, 1997.

J. Robert Kramer II,

Chief, Litigation II Section, PA Bar #23963.

Willie L. Hudgins,

Assistant Chief, Litigation II Section, DC Bar #37127.

and

Janet Adams Nash,

Kevin C. Quin,

Stacy Nelson,

Laura M. Scott,

Nancy Olson,

Tara M. Higgins,

Charles R. Schwidde,

Robert W. Wilder,

Melanie Sabo,

Trial Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., NW., Suite 3000, Washington, DC 20530, 202–307–0924, 202–307–6283 (Facsimile).

Certificate of Service

I hereby certify under penalty of perjury that on this 22nd day of October, 1997, I caused copies of the foregoing competitive impact statement to be served via hand-delivery upon the following:

Counsel for Raytheon Company.

Robert D. Paul, Esq.,

Michael S. Shuster, Esq.,

White & Case, 601 13th St., NW., Washington, DC 20005–3807.

Counsel for HE Holdings, Inc., and General Motors Corp.

Robert C. Odle, Esq.,

Peter D. Standish, Esq.,

Douglas A. Nave, Esq.,

Weil, Gotshal & Manges LLP, 767 Fifth Ave., New York, NY 10153–0119.

Willie L. Hudgins, Esq.,

Assistant Chief, Litigation II Section, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, (202) 307–0924.

[FR Doc. 97–29474 Filed 11–6–97; 8:45 am]

BILLING CODE 4410–11–M

Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co.*, supra, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office; National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Meeting Open to the Public

AGENCY: Office of the Secretary, Labor.

ACTION: Notice meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, and educational institutions.

DATES: The Committee will meet on December 5, 1997 from 9:00 a.m. to 4:00 p.m.

ADDRESSES: University of Maryland, School of Law, 519 West Fayette St., Room 200, Baltimore, Maryland. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Irasema Garza, designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, D.C. on November 3, 1997.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 97–29486 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: November 13, 1997, 10:00 am, U.S. Department of Labor, Room S–5215 B&C, 200 Constitution Ave., NW., Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, D.C. this 1st day of November 1997.

Andrew J. Samet,

Acting, Deputy Under Secretary, International Affairs.

[FR Doc. 97–29456 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33, 766; Versa Technologies, Inc., Moxness Products Div., Wausau, WI

TA–W–33, 849; California Curves, Inc., Temecula, CA

TA–W–33, 725; Stanwood Mills, Inc., Slatington, PA

TA–W–33, 770; Appleton Papers, Inc., Newton Falls, NY

TA–W–33, 726 & A; Thermal Engineering International, Joplin, MO and Pittsburg, KS

TA–W–33, 681; Elgin E², Inc., Erie, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33, 894; Payless Cashways, Inc., Wichita Falls, TX

TA–W–33, 733; Bethship, a Division of Bethlehem Steel Corp., Sparrows Point Yard, Sparrows Point, MD

TA–W–33, 802; ACER America Corp., Temple TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33, 716; United Steering Systems, Grabill, IN

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33, 844; Bose Corp., Westboro, MA

Employment declines at the subject plant was caused by a transfer of production to other domestic locations. The company has experienced increasing corporate sales and employment during the relevant period.

TA–W–33, 889; Elf Atochem, North America, Inc., Tacoma, WA

TA–W–33, 885; RG Thomas Corp., Palisades Park, NJ

TA–W–33, 705; DeLong Sportswear, Inc., Olney Div., Olney, TX

TA–W–33, 571; PCC Composites/ Advanced Forming Technology, Pittsburgh, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,852; Kirsch, Inc., Sturgis, MI

Separations at the subject firm were exclusively associated with a reduction in the number of employees needed to perform administrative functions. There were no layoffs of production workers at Kirsch, Inc., Sturgis, MI during the relevant period.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–33,846; Kimberly-Clark Corp., Oconto Falls, WI: August 28, 1996.

TA–W–33,804; Prewash & Pressing Service, Inc., El Paso, TX: August 20, 1996.

TA–W–33,876; Jansport, Inc., Burlington, WA: September 22, 1996.

TA–W–33,736; Bassett Furniture Industries, Inc., Statesville, NC: August 6, 1996.

TA–W–33,803; Precise Polestar, Inc., Phillipsburg, PA: August 15, 1996.

TA–W–33,814; Bourns, Inc., Pressure Products Div., Riverside, CA: August 20, 1996.

TA–W–33,637; Universal-Rundle Corp., Hundo, TX: June 20, 1996.

TA–W–33,798; Concept Apparel 2000 (currently known as JC Jeans, Inc.), El Paso, TX: August 16, 1996.

TA–W–33,653; Anglo Fabrics Co., Inc., Webster, MA: June 26, 1996.

TA–W–33,789; Indian Valley Industries, Inc., Johnson City, NY: August 16, 1996.

TA–W–33,847; Simpson Industries, Inc., Gladwin, MI: September 16, 1996.

TA–W–33,820; Fisher Rosemount Petroleum, Statesboro, GA: August 20, 1996.

TA–W–33,835; Hillsboro Glass Co., Hillsboro, IL: September 2, 1996.

TA–W–33,811; Philips Technologies Airpax, Cambridge, MD: August 27, 1996.

TA–W–33,855; Nukote International, Inc., Franklin, TN: September 15, 1996.

TA–W–33,861; Posey Manufacturing Co., Hoquiam, WA: February 19, 1996.

TA–W–33,800; Milco Industries, Inc., Bloomsburg, PA: August 25, 1996.

TA–W–33,751; Malone Manufacturing, Malone, NY: August 7, 1996.

TA–W–33,839; Irwin Manufacturing Corp., Alma Div., Alma, GA: August 1, 1996.
TA–W–33,854; CAE Screenplates, Inc., Glens Falls, NY: September 16, 1996.
TA–W–33,858; Reed Manufacturing Co., Inc., Walnut, MS: September 11, 1996.
TA–W–33,765; Landis & Gyn Unilities Service, Inc., Lafayette, IN: August 12, 1996.
TA–W–33,845; Onan Corp., Huntsville, AL: September 9, 1996.
TA–W–33,821; Universal Friction Composites, Manheim, PA: September 3, 1996.
TA–W–33,886; Masterwear Corp., Lexington Apparel, Lexington, TN: September 24, 1996.
TA–W–33,904; Youngone America, Miami, FL: September 10, 1996.
TA–W–33,903; Taylor Togs, Inc., Micaville & Green Mountain, NC: October 2, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01761; Big Lake Contractors, Inc., Belle Glade, FL
NAFTA–TAA–01746; Hundley Farms, Locahatchee, FL
NAFTA–TAA–01774; Petelaine, Inc., Loxahatchee, FL
NAFTA–TAA–01722; Sapp Arms, Inc., Homestead (Florida City, FL)
NAFTA–TAA–01875; Appleton Papers, Inc., Newton Falls, NY
NAFTA–TAA–01784; F & T Farms, Inc., Florida City, FL
NAFTA–TAA–01756; Seminole Farms, Clewiston, FL
NAFTA–TAA–01759; Flatland Harvesting, Indiantown, FL
NAFTA–TAA–01842; DeLong Sportswear, Inc., Olney Div., Olney, TX
NAFTA–TAA–01708; Joiner & Son Farms, Inc., Florida City, FL
NAFTA–TAA–01861 & A; Thermal Engineering International Joplin, MO and Pittsburg, KS
NAFTA–TAA–01721; DiMare Homestead, Inc., Florida City, FL
NAFTA–TAA–01770; Du Bois Farms, Boynton Beach, FL
NAFTA–TAA–01949; Elf Atochem North America, Inc., Tacoma, WA
NAFTA–TAA–01826; Elgin E^2, Inc., Erie, PA
NAFTA–TAA–01938; California Curves, Inc., Temecula, CA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01695; Florida Fresh, Inc., Florida City, FL.

Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01873; Anglo Fabrics Co., Inc., Webster, MA: July 30, 1996.
NAFTA–TAA–01947; Simpson Industries, Inc., Gladwin, MI: September 16, 1996.
NAFTA–TAA–01913; Fisher-Rosemount Petroleum, Statesboro, GA: August 20, 1996.
NAFTA–TAA–01920; Hillsboro Glass Co., Hillsboro, IL: September 2, 1996.
NAFTA–TAA–01916; Irwin Manufacturing Corp., Alma Division, Alma, GA: August 1, 1996.
NAFTA–TAA–01883; Bassett Furniture Industries, Inc., Statesville, NC: August 6, 1996.
NAFTA–TAA–01957; Lees Manufacturing Co., Cannon Falls, MN: October 9, 1996.
NAFTA–TAA–01945; Simpson Industries, Jackson, MI: September 24, 1996.
NAFTA–TAA–01935; Jansport, Inc., Bayview Facility, Burlington, WA: September 22, 1996.
NAFTA–TAA–01906; Prewash & Pressing Services, Inc., EL Paso, TX August 29, 1996.
NAFTA–TAA–01857; Onan Corp., Huntsville, AL: July 28, 1996.
NAFTA–TAA–01933; CAE Screenplates, Inc., Glens Falls, NY: September 16, 1996.
NAFTA–TAA–01772; Iori Farm, Homestead, FL: March 28, 1996.
NAFTA–TAA–01953; General Binding Corp., Velobind Div., Sparks, NE: October 3, 1996.
NAFTA–TAA–01921; Kimberly-Clark Corp., Oconto Falls, WI: August 28, 1996.
NAFTA–TAA–01801; Kimberly-Clark Corp., Marinette, WI: July 4, 1996.
NAFTA–TAA–01892; Standard Textile Co., Pridecraft Enterprises Div., Georgiana, AL: August 18, 1996.
NAFTA–TAA–01934; Great American Products, Inc., Broadview, IL: September 11, 1996.
NAFTA–TAA–01968; Frolic Footwear, Walnut Ridge, AR: October 6, 1996.
NAFTA–TAA–01959; Bourns, Inc., Pressure Products Div., Riverside, CA: August 20, 1996.
NAFTA–TAA–01981; Carolyn of Virginia, Inc., Bristol, VA: October 20, 1996.
NAFTA–TAA–01973; Oneita Industries, Inc., Fayette Apparel Plant, Fayette, AL: October 7, 1996.
NAFTA–TAA–01854; Tuscarora, Inc., Martinville, IN: July 31, 1996.
NAFTA–TAA–01891; Standard Textile Co., Inc., Pridecraft Enterprises Div., Forsyth, GA: August 18, 1996.

I hereby certify that the aforementioned determinations were issued during the month of October, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W.,

Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 3, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29449 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,526]

Baroid Drilling Fluids, Incorporated, A Subsidiary of Cimbar Performance Minerals, Potosi, Missouri; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 2, 1997 in response to a worker petition which was filed on May 19, 1997 on behalf of workers at Baroid Drilling Fluids, Incorporated in Potosi, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve on purpose, and the investigation has been terminated.

Signed in Washington, D. C. this 28th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29453 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 17, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 17, 1997.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 10/20/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,906	Sunbeam Corp. (Wrks)	Shubuta, MS	10/02/97	Weighing Scales.
33,907	Textron Automotive (Wrks)	Dover, NH	10/02/97	Automotive Armrests, Glovebox Doors.
33,908	Tennessee River, Inc (Comp)	Russellville, AL	10/03/97	Ladies' and Men's Sportswear.
33,909	Redco Foods, Inc (Wkrs)	Little Falls, NY	09/26/97	Tea.
33,910	Best Manufacturing Co (Comp)	Salisbury, NC	09/25/97	T-Shirts and Sweat Shirts.
33,911	Almark Mills, Inc (Wkrs)	Dawson, GA	10/03/97	Sportswear.
33,912	Fiskars, Inc (Wkrs)	Fergus Falls, MN	10/03/97	Electrical Strip Outlets.
33,913	Bates of Maine, Inc (UNITE)	Lewiston, ME	10/06/97	Bedspreads.
33,914	Dexter Shoe Co (Wrks)	Dexter, ME	10/03/97	Boots and Shoes.
33,915	DQ Investment Corp (Comp)	San Diego, CA	09/30/97	Data Entry Operation.

[FR Doc. 97–29452 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01755]

Billy R. Evans Harvesting, Belle Glade, Florida; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on May 27, 1997 in response to a petition filed on behalf of workers at Billy R. Evans Harvesting, located in Belle Glade, Florida. The workers harvest sweet corn and plant sugarcane.

In a letter dated October 28, 1997, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 31st day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29450 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01942]

General Motors Corporation Power Train Division, Danville, Illinois; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 30, 1997 in response to a petition filed on behalf of workers at General Motors Corporation, Power Train Division, Danville, Illinois.

In a letter dated October 22, 1997, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

A trade adjustment assistance investigation (TA–W–33,945) is currently underway to determine if workers are eligible to apply for benefits under the Trade Act of 1974. The investigation was instituted on October 27, 1997. A final determination should be made within 60 days of the institution date.

Signed at Washington, D.C., this 30th day of October 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29451 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01223]

Johnson & Johnson Medical, Incorporated Including Temporary Workers of Kelly Services, Incorporated El Paso, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on October 9, 1996, applicable to all workers of Johnson & Johnson Medical, Incorporated, located in El Paso, Texas. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers of Johnson & Johnson Medical, Incorporated were temporary workers of Kelly Services, Incorporated employed to produce surgical gowns, drapes and sheets at the El Paso, Texas facility. Based on these findings, the Department is amending the certification to include temporary workers from Kelly Services, Incorporated, El Paso, Texas who were engaged in the production of surgical gowns, drapes and sheets at Johnson and Johnson Medical, Incorporated, El Paso, Texas.

The intent of the Department's certification is to include all workers of Johnson & Johnson Medical, Incorporated adversely affected by the shift of production to Mexico. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to NAFTA—01223 is hereby issued as follows:

All workers of Johnson & Johnson Medical, Incorporated, El Paso, Texas and temporary workers of Kelly Services, El Paso, Texas, engaged in employment related to the production of surgical gowns, drapes and sheets for Johnson & Johnson Medical, Incorporated, El Paso, Texas who became totally or partially separated from employment on or after August 29, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 30th day of October, 1997.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 97–29455 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be

found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interests, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 31st day of October 1997.

Margaret Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–29274 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–97–47]

Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes (29 CFR 24)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed implementation of the information collection requirements contained in 29 CFR 24. The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of the Agency is necessary for the proper performance of the functions of the Agency, including whether the information will have particular utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments are to be submitted on or before January 6, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–47, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Rich Weitzman, Office of Investigative Assistance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202)219–8095. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning (202) 219–7894, or Barbara Bielaski at (202) 219–8076, ext. 142. For electronic copies of the Information Collection Request on the certification provisions of Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes, contact OSHA's Webpage on the Internet at http://www.osha.gov/ and click on ''standards.''

SUPPLEMENTARY INFORMATION:

I. Background

29 CFR 24 establishes procedures for the expeditious handling of complaints pursuant to the following statutes: Clean Air Act, 42 U.S.C. 7622; Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9610; Energy Reorganization Act of 1974, 42 U.S.C. 5851; Federal Water Pollution Control Act, 33 U.S.C. 1367; Safe Drinking Water Act, 42 U.S.C. 300j–9(I), Solid Waste Disposal Act, 42 U.S.C. 6971; and Toxic Substances Control Act, 15 U.S.C. 2622. These complaints are filed by employees, or persons acting on their behalf, of alleged discriminatory action by employers.

The employee records required are necessary to conduct discrimination investigations under 29 CFR 24. They are intended to gather evidence to establish whether or not an employee has suffered discrimination reprisal for engaging in activity protected under Section 322 of the Clean Air Act; Section 110 of the Comprehensive Environmental Response, Compensation, and Liability Act; Section 210 of the Energy Reorganization Act; Section 507 of the Federal Water Pollution Control Act; Section 1550(I) of the Safe Drinking Water Act; Section 7001 of the Solid Waste Disposal Act; and Section 23 of the toxic Substances Control Act.

II Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the procedures for the handling of discrimination complaints under Federal employee protection statutes (currently approved under OMB Control No. 1215–0183.)

III OSHA's Estimate of a Burden

OSHA estimates that there will be 200 complaints filed annually. On average, each complaint will require one hour to supply the documentation needed to conduct the investigation.

Type of Review: New.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes.

OMB Number: 1218–Onew (formerly 1215–0183).

Agency Number: Docket Number ICR–97–47.

Affected public: All public and private sector employers.

Frequency: Not Applicable.

Number of Respondents: 100.

Average Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 200.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, DC, this 4th day of November 1997.

John B. Miles, Jr.,

Director, Directorate of Compliance Programs.

[FR Doc. 97–29487 Filed 11–6–97; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Music and Opera Section (Planning & Stabilization Category) to the National Council on the Arts will be held on December 2–4, 1997. The panel will meet from 9:30 a.m. to 6:00 p.m. on December 2, 9:00 a.m. to 6:00 p.m. on December 3, and 9:00 a.m. to 4:00 p.m. on December 4, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 10:00 a.m. to 12:00 p.m. on December 4, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:30 a.m. to 6:00 p.m. on December 2, 9:00 a.m. to 6:00 p.m. on December 3, and 9:00 a.m. to 10:00 a.m. and 12:00 p.m. to 4:00 p.m. on December 4, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 4, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–29461 Filed 11–6–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Visual Arts Section (Creation & Presentation Category) to the National Council on the Arts will be held on November 18–21, 1997. The panel will meet from 9:00 a.m. to 6:00 p.m. on November 18 and 19, 9:00 a.m. to 5:30 p.m. on November 20, and 9:00 a.m. to 4:00 p.m. on November 21, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on November 21, will be open to the public for a policy discussion of guidelines, planning field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. to November 18 and 19, 9:00 a.m. to 5:30 p.m. on November 20 and 11:15 a.m. to 4:00 p.m. on November 11, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determinations of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 4, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–29462 Filed 11–6–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

In the Matter of Consumers Energy Company (Palisades Plant); Exemption

I

Consumers Energy Company (the licensee) is the holder of Facility Operating License No. DPR–20 which authorizes operation of the Palisades Plant. The Palisades facility is a pressurized-water reactor located at the licensee's site in Van Buren County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees

to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at Palisades is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at Palisades and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only one fuel assembly is allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible uranium-235 (U–235) enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that is stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated July 2, 1997, the licensee requested an exemption from 10 CFR 70.24(a). The Commission's technical staff has reviewed the licensee's submittal and has determined that Palisades meets the criteria for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at Palisades.

The purpose of the criticality monitors required by 10 CFR 70.24(a) is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24(a).

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

Therefore, the Commission hereby grants Consumers Energy an exemption from the requirements of 10 CFR 70.24(a).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (62 FR).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of October 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29489 Filed 11–6–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410]

Long Island Lighting Company; Nine Mile Point Nuclear Station, Unit No. 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding an indirect transfer of control of ownership and possessory rights held by Long Island Lighting Company (LILCO) under the operating license for Nine Mile Point Nuclear Station, Unit No. 2 (NMP2). The indirect transfer would be to the Long Island Power Authority (LIPA). LILCO is licensed by the Commission to own and possess an 18 percent interest in NMP2.

By letter dated September 8, 1997, LILCO informed the Commission that LIPA plans to acquire LILCO by purchasing its stock through a cash merger, at a time when LILCO consists of its electric transmission and distribution system, its retail electric business, substantially all of its electric regulatory assets, and its 18 percent share of NMP2. LILCO thereby would become a subsidiary of LIPA. After this restructuring, LILCO will continue to exist as an ''electric utility'' as defined in 10 CFR 50.2 providing the same electric utility services it did immediately prior to the restructuring. LILCO will continue to be a licensee of NMP2, and no direct transfer of the operating license or interests in the station will result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of Niagara Mohawk Power Corporation, which is responsible for operating and maintaining NMP2.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the LILCO letter dated September 8, 1997, as supplemented October 8, 1997. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC, and at the local public document room

located at the Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland this 28th day of October 1997.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–29490 Filed 11–6–97; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Termination of Single Employer Plans; Missing Participants; PBGC Forms 500–501, 600–602

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend its approval, under the Paperwork Reduction Act, of a collection of information in its regulations on Termination of Single Employer Plans and Missing Participants (29 CFR Parts 4041 and 4050) and implementing forms and instructions (PBGC Forms 500–501 and 600–602). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 8, 1997.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. The request for extension will be available for public inspection at the Communications and Public Affairs Department of the Pension Benefit Guaranty Corporation, suite 240, 1200 K Street, NW., Washington, DC, 20005–4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The PBGC administers the pension plan termination insurance programs under Title IV of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''). Under section 4041 of ERISA, a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, and the PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to the PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed, the plan administrator is subject to the requirements of ERISA section 4050 and the PBGC's missing participants regulation (29 CFR part 4050).

Elsewhere in today's **Federal Register**, the PBGC published a final rule that extends standard termination deadlines and otherwise simplifies the standard termination process, requires that plan administrators provide participants with information on state guaranty association coverage of annuities, and makes conforming changes to the distress termination process. The final rule also makes conforming and simplifying changes to the missing participants regulation. In addition, the PBGC made clarifying and other changes (related to the final rule) to its implementing forms and instructions under the termination and missing participants regulations.

Terminations initiated before the effective date of the final rule generally will be subject to the existing collection of information requirements. (The PBGC specified in the final rule certain portions of the final rule that plan administrators may apply to terminations in process at the time the final rule becomes effective.) Thus, even after the effective date of the final rule, there will be a period of time during which the existing collection of information requirements will apply for some terminations.

The PBGC is asking OMB to (1) approve for three years the revised collection of information requirements contained in the new final termination and missing participants regulations and implementing forms and instructions; and (2) extend its approval for three years of the collection of information requirements in the existing termination and missing participants regulations and implementing forms and instructions. To facilitate OMB's consideration of these requests, the PBGC is combining the final rule and rollover submissions.

Much of the work associated with terminating a plan is performed for purposes other than meeting the collection of information requirements in the PBGC's termination and missing participants regulations. The PBGC estimates that 3,750 plan administrators will be subject to the collection of information requirements each year, and that the total annual burden of complying with these requirements is 5,231 hours and $2,761,672.

Issued in Washington, DC, this 3rd day of November, 1997.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–29499 Filed 11–6–97; 8:45 am]

BILLING CODE 7708–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Employee Annuity Under the Railroad Retirement Act; OMB 3220–0002.

Section 2 of the Railroad Retirement Act (RRA), provides for payment of age and service, disability and supplemental annuities to qualified employees. The basic requirements for a regular employee annuity retirement annuity under the RRA is 120 months (10 years)

of creditable railroad service. Benefits then become payable after the employee meets certain other requirements, which depend, in turn, on the type of annuity payable.

The requirements relating to the annuities are prescribed in 20 CFR 216, and 220.

The forms used by the RRB to collect information needed for determining entitlement to and the amount of an employee retirement annuity follow: Form AA–1, Application for Employee Annuity Under the Railroad Retirement Act is completed by an applicant for either an age and service or disability annuity. It obtains information about the applicants marital history, work history, military service, benefits from other governmental agencies and railroad pensions. Form AA–1d, Application for Determination of Employee Disability, is completed by an employee who is filing for a disability annuity under the RRA, or a disability freeze under the Social Security Act for early Medicare based on a disability. Form G–204, Verification of Workers Compensation/Public Disability Benefit Information, is used to obtain and verify information concerning worker's compensation or public disability benefits that are or will be paid by a public agency to a disabled railroad employee. Completion of the forms is required to obtain a benefit. One response is requested of each respondent.

The RRB proposes to revise Form AA–1 to add items that secure information pertaining to the direct deposit of benefits and Medicare processing and delete items no longer required. Forms AA–1, AA–1d and G–204 will be revised to add language required by the Paperwork Reduction Act of 1995. Minor non-burden impacting cosmetic and editorial changes will also be made to all three forms. The RRB estimates that 13,400 Form AA–1's, 5,650 AA–1d's and 175 G–204's are completed annually. The completion time for Form AA–1 is estimated to 37 to 62 minutes per response. The completion time for AA–1d is estimated at 35 to 60 minutes per response. The completion time for Form G–204 is estimated at 5 minutes per response.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–29476 Filed 11–6–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26769]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 31, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office or Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 24, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–9137); Notice of Proposal To Amend Articles of Incorporation and Authorize Registered Holding Company To Acquire Preferred Stock of Utility Subsidiaries; Order Authorizing Solicitation of Proxies

The Southern Company (''Southern''), 270 Peachtree Street, N.W., Atlanta, Georgia 30303, a registered holding company, and certain of its public-utility subsidiaries, Alabama Power Company (''Alabama''), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company (''Georgia''), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, Gulf Power Company (''Gulf''), 500 Bayfront Parkway, Pensacola, Florida 32501, and Mississippi Power Company (''Mississippi''), 2992 West Beach, Gulfport, Mississippi 39501 (Alabama, Georgia, Gulf and Mississippi collectively, ''Subsidiaries''), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c), 12(d) and 12(e) of the Act, and rules 43, 44, 51, 54, 62 and 65 thereunder.

Alabama

Alabama has outstanding 5,608,955 shares of common stock, par value $40 per share (''Alabama Common Stock''), all of which are held by Southern. Alabama's outstanding preferred stock consists of: (1) 5.52 million shares of Class A cumulative preferred stock, stated capital $25 per share, issued in three series,[1] which are traded on the New York Stock Exchange (''Alabama NYSE Preferred Stock''); (2) 704,000 shares of cumulative preferred stock, par value $100 per share, issued in six series,[2] which are traded over-the-counter (''Alabama $100 Preferred Stock''); (3) 200 shares of Class A cumulative preferred stock, stated capital $100,000 per share, which are traded over-the-counter (''Alabama 1993 Auction Preferred Stock''); and (4) 500,000 shares of Class A cumulative preferred stock, stated capital $100, which are traded over-the-counter (''Alabama 1988 Auction Preferred Stock'' and, together with the Alabama NYSE Preferred Stock, Alabama $100 Preferred Stock and Alabama 1993 Auction Preferred Stock, ''Alabama Preferred Stock''). Alabama has outstanding no other class of equity securities.

Paragraph A.2.f.(2) of Article IX of Alabama's Charter (''Alabama Charter'') currently provides that, so long as any shares of Alabama's Preferred Stock are outstanding, without the affirmative vote of the holders of at least a majority

[1] The three series of Alabama NYSE Preferred Stock consist of a 6.80% series, of which 1.52 million shares are outstanding (''6.80% Series''); a 6.40% series, of which two million shares are outstanding (''6.40% Series''); and an adjustable rate series, of which two million shares are outstanding (''AR Series'').

[2] The six series of Alabama $100 Preferred Stock consist of a 4.20% series, of which 364,000 shares are outstanding (''4.20% Series''); a 4.52% series, of which 50,000 shares are outstanding (''4.52% Series''); a 4.60% series, of which 100,000 shares are outstanding (''4.60% Series''); a 4.64% series, of which 60,000 shares are outstanding (''4.64% Series''); a 4.72% series, of which 50,000 shares are outstanding (''4.72% Series''); and a 4.92% series, of which 80,000 shares are outstanding (''4.92% Series'').

of the total voting power of the outstanding Alabama Preferred Stock, Alabama shall not issue or assume any securities representing unsecured debt (other than for the purpose of refunding or renewing outstanding unsecured securities issued by Alabama resulting in equal or longer maturities or redeeming or otherwise retiring all outstanding shares of the Alabama Preferred Stock or of any senior or equally ranking stock) if, immediately after the issue or assumption, the total outstanding principal amount of all securities representing unsecured debt of Alabama would exceed 20% of the aggregate of all existing secured debt of Alabama and the capital stock, premiums thereon and surplus of Alabama as stated on Alabama's books (''Alabama Debt Limitation Provision'').

Paragraph A.2f.(1) of Article IX of the Alabama Charter currently provides that, so long as any shares of Alabama Preferred Stock are outstanding, without the affirmative vote of the holders of at least a majority of the total voting power of the outstanding Alabama Preferred Stock, Alabama shall not dispose of all or substantially all of its property or merge or consolidate, unless the action has been approved by the Commission (''Alabama Merger Provision'').

Paragraph A.2.b. (except the first paragraph therein) of Article IX of the Alabama Charter currently provides that, so long as any shares of Alabama Preferred Stock are outstanding (except as may be approved or permitted by the affirmative vote of the holders of at least two-thirds of the total voting power of the outstanding Alabama Preferred Stock), Alabama's payment of dividends on the Alabama Common Stock is limited to 50% of net income available for the stock during a period of 12 months if, calculated on a corporate basis, the ratio of Alabama Common Stock equity to total capitalization, including surplus, adjusted to reflect the payment of the proposed dividend, is below 20% and to 75% of net income if the ratio is 20% or more but less than 25% (''Alabama Common Stock Dividend Provision'').

The clause after the words ''January 31, 1942'' in the first paragraph of Paragraph A.2.b. of Article IX of the Alabama Charter currently provides that, so long as any shares of Alabama Preferred Stock are outstanding, Alabama shall not pay dividends on Alabama common Stock (except those paid concurrently with the receipt of a cash capital contribution in like amount) in cases where retained earnings are not at least equal to two times annual dividends on the outstanding Alabama Preferred Stock (''Alabama Retained Earnings Dividend Provision'' and, together with the Alabama Debt Limitation Provision, the Alabama Merger Provision and the Alabama Common Stock Dividend Provision, (''Alabama Restriction Provisions'').

Georgia

Georgia has outstanding 7.7615 million shares of common stock, no par value (''Georgia Common Stock''), all of which are held by Southern. Georgia's outstanding preferred stock consists of: (1) 8.1565 million shares of Class A cumulative preferred stock, stated value $25 per share, issued in three series,[3] which are traded on the New York Stock Exchange (''Georgia NYSE Preferred Stock''); and (2) 1,177,864 shares of cumulative preferred stock, stated value $100 per share, issued in eleven series,[4] which are traded over-the-counter (''Georgia OTC Preferred Stock'' and, together with the Georgia NYSE Preferred Stock, ''Georgia Preferred Stock''). Georgia has outstanding no other class of equity securities.

Subparagraph 14.A.3.f.(2) of Paragraph III of Georgia's Charter, as amended (''Georgia Charter''), currently provides that, so long as any shares of Georgia Preferred Stock are outstanding, without the affirmative vote of the holders of at least a majority of the total voting power of the outstanding Georgia Preferred Stock, Georgia shall not issue or assume any securities representing unsecured debt (other than for the purpose of refunding or renewing outstanding unsecured securities issued by Georgia resulting in equal or longer maturities or redeeming or otherwise retiring all outstanding shares of the Georgia Preferred Stock or of any senior or equally ranking stock) if, immediately after the issue or assumption, (1) the total outstanding principal amount of all securities representing unsecured debt of Georgia would exceed 20% of the aggregate of all existing secured debt of Georgia and the capital stock, premiums thereon and surplus of Georgia as stated on Georgia's books; or (2) the total outstanding principal amount of all securities representing unsecured debt of Georgia of maturities of less than ten years[5] would exceed 10% of the aggregate (''Georgia Debt Limitation Provision'').

Subparagraph 14.A.3.f.(1) of Paragraph III of the Georgia Charter currently provides that, so long as any shares of Georgia Preferred Stock are outstanding, without the affirmative vote of the holders of at least a majority of the total voting power of the outstanding Georgia Preferred Stock, Georgia shall not dispose of all or substantially all of its property or merge or consolidate, unless the action has been approved by the Commission under the Act (''Georgia Merger Provision'').

Subparagraph 14.A.3.b. (except the first paragraph therein) of Paragraph III of the Georgia Charter currently provides that, so long as any shares of Georgia Preferred Stock are outstanding, Georgia's payment of dividends on the Georgia Common Stock is limited to 50% of net income available for the stock during a period of 12 months if, calculated on a corporate basis, the ratio of Georgia Common Stock equity to total capitalization, including surplus, adjusted to reflect the payment of the proposed dividend, is below 20%, and to 75% of net income if the ratio is 20% or more but less than 25% (''Georgia Common Stock Dividend Provision'' and, together with the Georgia Debt Limitation Provision and the Georgia Merger Provision, ''Georgia Restriction Provisions'').

Gulf

Gulf has outstanding 992,717 shares of common stock, no par value (''Gulf Common Stock''), all of which are held by Southern. Gulf's outstanding preferred stock consists of: (1) 151,026 shares of preferred stock, par value $100 per share, issued in three series,[6] which

[3] The three series of Georgia NYSE Preferred Stock consist of a $1.925 series, of which 1.1565 million shares are outstanding (''$1.925 Series''); an adjustable rate (first 1993) series, of which three million shares are outstanding (''AR1 1993 Series''); and an adjustable rate (second 1993) series, of which four million shares are outstanding (''AR2 1993 Series'').

[4] The eleven series of Georgia OTC Preferred Stock consist of a $4.60 series, of which 433,774 shares are outstanding (''$4.60 Series''); a $4.60 1962 series, of which 70,000 shares are outstanding (''$4.60 1962 Series''); a $4.60 1963 series, of which 70,000 shares are outstanding (''$4.60 1963 Series''); a $4.60 1964 series, of which 50,000 shares are outstanding (''$4.60 1964 Series''); a $4.72 series, of which 60,000 shares are outstanding (''$4.72 Series''); a $4.92 series, of which 100,000 shares are outstanding (''$4.92 Series''); a $4.96 series, of which 70,000 shares are outstanding (''$4.96 Series''); a $5.00 series, of which 14,090 shares are outstanding (''$5.00 Series''); a $5.64 series, of which 90,000 shares are outstanding (''$5.64 Series''); a $6.48 series, of which 120,000 shares are outstanding (''$6.48 Series''); and a $6.60 series, of which 100,000 shares are outstanding (''$6.60 Series'').

[5] For the purpose of this provision, the payment due upon the maturity of unsecured debt having an original single maturity in excess of ten years or the payment due upon the final maturity of any unsecured serial debt which had original maturities in excess of ten years shall not be regarded as unsecured debt of a maturity less than ten years until the payment shall be required to be made within three years.

[6] The three series of Gulf $100 Preferred Stock consist of a 4.64% series, of which 51,026 shares

Continued

are traded over-the-counter (''Gulf $100 Preferred Stock''); and (2) 1.4 million shares of Class A preferred stock, par value $10 per share, stated capital $25 per share, issued in two series,[7] which are traded over-the-counter (''Gulf $10 Preferred Stock'' and, together with the Gulf $100 Preferred Stock, ''Gulf Preferred Stock''). Gulf has outstanding no other class of equity securities.

Paragraph (F)(b) under the ''General Provisions'' of the ''Preferred Stock'' section of Gulf's Restated Articles of Incorporation, as amended (''Gulf Charter''), currently provides that, so long as any shares of Gulf Preferred Stock are outstanding, without the affirmative vote of the holders of at least a majority of the total voting power of the outstanding Gulf Preferred Stock, Gulf shall not issue or assume any securities representing unsecured debt (other than for the purpose of refunding or renewing outstanding unsecured securities issued by Gulf resulting in equal or longer maturities or redeeming or otherwise retiring all outstanding shares of the Gulf Preferred Stock or of any senior or equally ranking stock) if, immediately after the issue or assumption, (1) the total outstanding principal amount of all securities representing unsecured debt or Gulf would exceed 20% of the aggregate of all existing secured debt of Gulf and the capital stock, premiums thereon and surplus of Gulf as stated on Gulf's books; or (2) the total outstanding principal amount of all securities representing unsecured debt of Gulf maturities of less than ten years[8] would exceed 10% of the aggregate (''Gulf Debt Limitation Provision'').

Paragraph (F)(a) under ''General Provisions'' of the ''Preferred Stock'' section of the Gulf Charter currently provides that, so long as any shares of Gulf Preferred Stock are outstanding, without the affirmative vote of the holders of at least a majority of the total voting power of the outstanding Gulf Preferred Stock, Gulf shall not dispose of all or substantially all of its property or merge or consolidate, unless the action has been approved by the Commission under the Act (''Gulf Merger Provision'').

Paragraph (B) (except the first paragraph therein) under the ''General Provisions'' of the ''Preferred Stock'' section of the Gulf Charter currently provides that, so long as any shares of Gulf Preferred Stock are outstanding (except as may be approved or permitted by the affirmative vote of the holders of at least two-thirds of the total voting power of the outstanding Gulf Preferred Stock), Gulf's payment of dividends on the Gulf Common Stock are limited to 50% of net income available for the stock during a period of 12 months if, calculated on a corporate basis, the ratio of Gulf Common Stock equity to total capitalization, including surplus, adjusted to reflect the payment of the proposed dividend, is below 20%, and to 75% of net income if the ratio is 20% or more but less than 25% (''Gulf Common Stock Dividend Provision'' and, together with the Gulf Debt Limitation Provision and the Gulf Merger Provision, ''Gulf Restriction Provisions'').

Mississippi

Mississippi has outstanding 1.121 million shares of common stock, without par value (''Mississippi Common Stock''), all of which are held by Southern. Mississippi's outstanding preferred stock consists of: (1) 936,160 shares of depositary preferred shares, each representing one-fourth a share of preferred stock, par value $100 per share, issued in two series,[9] which are traded on the New York Stock Exchange (''Mississippi NYSE Preferred Stock''); and (2) 160,099 shares of cumulative preferred stock, par value $1000 per share, issued in four series,[10] which are traded over-the-counter (''Mississippi OTC Preferred Stock'' and, together with Mississippi NYSE Preferred Stock, ''Mississippi Preferred Stock''). Mississippi has outstanding no other class of equity securities.

Subparagraph (F)(b) of Paragraph FOURTH under ''General Provisions'' of the ''Preferred Stock'' section of Mississippi's Articles of Incorporation, as amended (''Mississippi Charter''), currently provides that, so long as any shares of Mississippi Preferred Stock are outstanding, without the affirmative vote of the holders of at least a majority of the outstanding Mississippi Preferred Stock, Mississippi shall not issue or assume any securities representing unsecured debt (other than for the purpose of refunding or renewing outstanding unsecured securities issued by Mississippi resulting in equal or longer maturities or redeeming or otherwise retiring all outstanding shares of the Mississippi Preferred Stock or any senior or equally ranking stock) if, immediately after the issue or assumption, (1) the total outstanding principal amount of all securities representing unsecured debt of Mississippi would exceed 20% of the aggregate of all existing secured debt of Mississippi and the capital stock, premiums thereon and surplus of Mississippi as stated on Mississippi's books; or (2) the total outstanding principal amount of all securities representing unsecured debt of Mississippi of maturities of less than ten years[11] would exceed 10% of the aggregate (''Mississippi Debt Limitation Provision'').

Subparagraph (F)(a) of Paragraph FOURTH under the ''General Provisions'' of the ''Preferred Stock'' section of the Mississippi Charter currently provides that, so long as any shares of Mississippi Preferred Stock are outstanding, without the affirmative vote of the holders of at least a majority of the outstanding Mississippi Preferred Stock, Mississippi shall not dispose of all or substantially all of its property or merge or consolidate, unless the action has been approved by the Commission under the Act (''Mississippi Merger Provision'').

Subparagraph (B) (except the first paragraph therein) of Paragraph FOURTH under ''General Provisions'' of the ''Preferred Stock'' section of the Mississippi Charter currently provides that, so long as any shares of Mississippi Preferred Stock are outstanding, Mississippi's payment of dividends on the Mississippi Common Stock are limited to 50% of net income available for the stock during a period of 12 months if, calculated on a corporate

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are outstanding (''4.64% Series''); a 5.16% series, of which 50,000 shares are outstanding (''5.16% Series''); and a 5.44% series, of which 50,000 shares are outstanding (''5.44% Series'').

[7] The two series of Gulf $10 Preferred Stock consist of a 6.72% series, of which 800,000 shares are outstanding (''6.72% Series''); and an adjustable rate (1993) series, of which 600,000 shares are outstanding ''(AR 1993 Series'').

[8] For the purpose of this provision, the payment due upon the maturity of unsecured debt having an original single maturity in excess of ten years or the payment due upon the final maturity of any unsecured serial debt which had original maturities in excess of ten years shall not be regarded as unsecured debt of a maturity less than ten years until the payment shall be required to be made within three years.

[9] The two series of Mississippi NYSE Preferred Stock consist of a 6.32% series, of which 600,000 shares are outstanding (''6.32% Series''); and a 6.65% series, of which 336,160 shares are outstanding (''6.65% Series'').

[10] The four series of Mississippi OTC Preferred Stock consist of a 4.40% series, of which 40,000 shares are outstanding (''4.40% Series''); a 4.60% series, of which 20,099 shares are outstanding (''4.60% Series'')' a 4.72% series, of which 50,000 shares are outstanding (''4.72% Series''); and a 7.00% series, of which 50,000 shares are outstanding (''7.00% Series'').

[11] For the purpose of this provision, the payment due upon the maturity of unsecured debt having an original single maturity in excess of ten years or the payment due upon the final maturity of any unsecured serial debt which had original maturities in excess of ten years shall not be regarded as unsecured debt of a maturity less than ten years until the payment shall be required to be made within three years.

basis, the ratio of Mississippi Common Stock equity to total capitalization, including surplus, adjusted to reflect the payment of the proposed dividend, is below 20%, and to 75% of net income if the ratio is 20% or more but less than 25% (''Mississippi Common Stock Dividend Provision'' and together with the Mississippi Debt Limitation Provision and the Mississippi Merger Provision, ''Mississippi Restriction Provisions'' and, Mississippi Restriction Provisions together with Georgia Restriction Provisions, Gulf Restriction Provisions and Alabama Restriction Provisions ''Subsidiary Restriction Provisions).

Each Subsidiary proposes to solicit proxies (''Proxy Solicitation'') from the holders of its outstanding shares of Preferred Stock of each series (except in the case of Georgia for the $1.925 Series) and Common Stock for use at a special meeting of its stockholders (''Special Meeting'') to consider a proposed amendment to its Charter that would in each case eliminate the Subsidiary Restriction Provisions (''Proposed Amendment''). Adoption of the Proposed Amendment requires the affirmative vote at a Subsidiary's Special Meeting (in person by ballot or by proxy) of the holders of at least (1) two-thirds of the voting power of the outstanding shares of the Preferred Stock of all Series, voting together as one class, and (2) in the case of Georgia, two-thirds of the Common Stock, and in the case of Alabama, Gulf and Mississippi, a majority of the Common Stock. Southern will vote its shares of Common Stock in favor of the Proposed Amendment. The Subsidiaries have engaged Corporate Investor Communications, Inc. to act as information agent in connection with the Proxy Solicitations for a fee plus reimbursement of reasonable out-of-pocket expenses.

If a Proposed Amendment is adopted, Alabama, Georgia, Gulf and Mississippi, as the case may be, propose to make a special cash payment equal to 1.00% of the par value, stated value or stated capital, as applicable, per share of the Preferred Stock (except that the special cash payment shall equal 0.25% of the stated capital per share for shares of the Alabama 1988 Auction Stock and the Alabama 1993 Preferred Stock) (each, a ''Special Cash Payment'') for each share of Preferred Stock (each, a ''Share'' except for Shares of Georgia's $1.925 Series) properly voted at the Social Meeting in favor of the Proposed Amendment, provided that the Shares are not tendered under the concurrent cash tender offer described below. Alabama, Georgia, Gulf and Mississippi will disburse Special Cash Payments out of their general funds, promptly after adoption of a Proposed Amendment.

Currently with the commencement of the Proxy Solicitations, subject to the terms and conditions stated in the relevant offering documents,[12] Southern proposes to make offers (each an ''Offer'') to the holders of Alabama's Preferred Stock of the 4.20% Series (''Alabama Tendered Series''), Georgia's Preferred Stock of the $4.60 Series, the $4.60 1962 Series, the $4.60 1963 Series, the $4.60 1964 Series, the $4.72 Series, the $4.92 Series, the $4.96 Series, the $5.00 Series and the $5.64 Series (collectively, ''Georgia Tendered Series''), Gulf's Preferred Stock of each series (collectively, ''Gulf Tendered Series'') and Mississippi's Preferred Stock of the 4.40% Series, the 4.60% Series and the 4.72% Series (collectively, ''Mississippi Tendered Series''), under which Southern will offer to acquire from the holders of the Alabama, Georgia, Gulf and Mississippi Preferred Stock of each Tendered Series any and all Shares of that series at the cash purchase prices to be specified in the Offer (subject to potential increase or decrease under the terms of the Offer) (''Purchase Price''). Southern anticipates that the Offer for each Tendered Series of Preferred Stock will be scheduled to expire at 5:00 P.M. (New York City time) on the date of the Special Meeting, (''Expiration Date'').

In addition, Georgia has entered into an agreement to purchase shares of its AR1 1993 Series and AR2 1993 Series from the holders of the Georgia NYSE Preferred Stock (collectively, ''AR2 1993 Series''). It is proposed that, subject to Commission authorization herein, Georgia may assign its rights under the contract to Southern, which it is expected would than purchase shares of the AR 1993 Series not later than the time at which Southern purchases the shares under the Georgia Offer, and Georgia would purchase the shares of the AR 1993 Series from Southern (at the price paid by Southern) not later than the time at which Georgia purchases Shares sold to Southern under the Georgia Offer.

The Offer consists of separate requests to acquire each of the Alabama Tendered Series, the nine Georgia Tendered Series, the five Gulf Tendered Series and the three Mississippi Tendered Series (collectively, ''Tendered Series''), with the offer for any one Tendered Series being independent of the offer for any other Tendered Series. The applicable Purchase Price and the other terms and conditions of the Offers apply equally to all Preferred Stockholders of the respective Tendered Series. The Offers are not conditioned upon any minimum number of Shares of the applicable Tendered Series being tendered, but are conditioned, among other things, on the Proposed Amendments being adopted at the respective Special Meetings. Subject to the terms of the offering documents, Southern will purchase at the applicable Purchase Price any and all Shares of any Tendered Series that are validly tendered and not withdrawn prior to the Expiration Date.

To tender Shares according to the terms of the offering documents, the tendering Preferred Stockholder must either: (1) send to The Bank of New York, in its capacity as depositary for the Offer (''Depositary''), a properly completed and duly executed Letter of Transmittal and Proxy for that Series (if not voting at the Special Meeting in person by ballot), together with any required signature guarantees and any other documents required by the Letter of Transmittal and Proxy, and either (a) certificates for the Shares to be tendered must be received by the Depositary at one of its addresses specified in the offering documents, or (b) the Shares must be delivered under the procedures for book-entry transfer described in the offering documents (and a confirmation of the delivery must be received by the Depositary), in each case by the Expiration Date; or (2) comply with a guaranteed delivery procedure specified in the offering documents. Tenders of Shares made under an Offer may be withdrawn at any time prior to the Expiration Date. Thereafter, the tenders are irrevocable, subject to certain exceptions identified in the offering documents.

Southern states that its obligations to proceed with the Offers and to accept for payment and to pay for any Shares tendered will be made in accordance with rule 51 under the Act and are subject to various conditions enumerated in the offering documents, including receipt of a Commission order under the Act authorizing the proposed transactions and the adoption of the Proposed Amendments at the Special Meetings.

At any time or from time to time, Southern may extend the Expiration Date applicable to any Series by giving notice of the extension to the Depositary, without extending the

[12] With respect to Shares subject to both the Proxy Solicitation and Southern's offer to the holders of certain Preferred Stock, the transactions will be effected by means of the same core document—a combined proxy statement and issuer tender offer statement under the Securities Exchange Act of 1934 (''Exchange Act'') and applicable rules and regulations thereunder.

Expiration Date for any other Series. During any extension, all shares of the applicable Series previously tendered will remain subject to the Offer, and may be withdrawn at any time prior to the Expiration Date as extendedy.

Conversely, Southern may elect in its sole discretion to terminate the Offer prior to the scheduled Expiration Date and not accept for payment and pay for any Shares tendered, subject to applicable provisions of rule 13e–4 under the Exchange Act requiring Southern either to pay the consideration offered or to return the Shares tendered promptly after the termination or withdrawal of the Offer, upon the occurrence of any of the conditions to closing enumerated in the offering documents, by giving notice of the termination to the Depository and making a public announcement thereof.

Subject to compliance with applicable law, Southern further reserves the right in the offering documents, in its sole discretion, to amend one or more Offers in any respect by making a public announcement thereof. If Southern materially changes the terms of an Offer or the information concerning an Offer, or if it waives a material condition of an Offer, Southern will extend the Expiration Date to the extent required by the applicable provisions of rule 13e–4 under the Exchange Act. Those provisions require that the minimum period during which an issuer tender offer must remain open following material changes in the terms of the offer or information concerning the offer (other than a change in price or change in percentage of securities sought) will depend on the facts and circumstances, including the relative materiality of the terms or information. If an Offer is scheduled to expire at any time earlier than the expiration of a period ending on the tenth business day from, and including, the date that Southern notifies Preferred Stockholders that it will: (1) increase or decrease the price it will pay for Shares; (2) decrease the percentage of Shares it seeks; or (3) increase or decrease soliciting dealer's fees, the Expiration Date will be extended until the expiration of the period of ten business days.

Shares validly tendered to the Depositary under an Offer and not withdrawn according to the procedures stated in the offering documents will be held by Southern until the Expiration Date (or returned if the Offer is terminated). Subject to the terms and conditions of the Offer, as promptly as practicable after the Expiration Date, Southern will accept for payment (and thereby purchase) and pay for shares validly tendered and not withdrawn. Southern will pay for Shares that it has purchased under the Offer by depositing the applicable Purchase Price with the Depositary, which will act as agent for the tendering Preferred Stockholders to receive payment from Southern and transmit payment to tendering Preferred Stockholders. Southern will pay all stock transfer taxes, if any, payable on account of its acquisition of Shares under the Offer, except in certain circumstances where special payment or delivery procedures are utilized in conformance with the applicable Letters of Transmittal and Proxy.

With respect to Shares validly tendered and accepted for payment by Southern, each tendering Preferred Stockholder will be entitled to receive as consideration from Southern only the applicable Purchase Price (which Southern anticipates will reflect a premium over the current market price at the commencement of the Offers). Any holder will not be entitled to receive, with respect to the tendered Shares, additional consideration in the form of a Special Cash Payment.

As noted above, subject to the terms and conditions of the Offer, Shares validly tendered and not withdrawn will be accepted for payment and paid for by Southern as promptly as practicable after the Expiration Date. If a Proposed Amendment is adopted at a Subsidiary's Special Meeting, promptly after consummation of the Offer the Subsidiary will purchase the Shares sold to Southern under the Offer at the relevant Purchase Price plus expenses incurred in the Offer, and the Subsidiary will retire and cancel the Shares.

If a Proposed Amendment is not adopted at the Special Meeting, Southern may elect, but is not obligated, to waive the condition, subject to applicable law. In that case, as promptly as practicable after Southern's waiver and purchase of any Shares validly tendered under the Offers, the affected Subsidiary anticipates that it may either adjourn the Special Meeting or call another special meeting of its common and preferred stockholders and solicit proxies therefrom for the same purpose as in the instant proceeding, i.e., to secure the requisite two-thirds affirmative vote of preferred stockholders to amend the Charter to eliminate the Restriction Provisions. At that meeting, Southern would vote any Shares it acquired under the Offer or otherwise [13] (as well as all of its shares of Common Stock) in favor of the proposed Charter amendment to eliminate the Restriction Provisions.[14] If the proposed amendment is adopted at that meeting, and in any event within one year from the Expiration Date (including any potential extension thereof under the Offer), Southern will promptly after the meeting or at the expiration of the one-year period, as applicable, sell the Shares to the Subsidiary at the Purchase Price plus expenses paid under the Offer, and the Subsidiary will then retire and cancel the Shares. Merrill Lynch, Pierce, Fenner & Smith Incorporated will act as dealer manager for Southern in connection with the Offers.[15]

To finance its purchase of any Shares tendered, accepted for payment and paid for under the Offer, Southern intends to use its general funds and/or incur short-term indebtedness in an amount sufficient to pay the Purchase Price for all tendered Shares.

The Subsidiaries state that they consider the Restriction Provision a significant impediment to their ability to maintain financial flexibility and minimize their financing costs, to the detriment of their utility customers and, indirectly, Southern's shareholders. Southern and the Subsidiaries assert that the ongoing financing flexibility and cost benefits to be gained by the Subsidiaries as a result of elimination of the Restriction Provisions outweigh the one-time cost of the Special Cash Payments and the other costs of the Proxy Solicitation. Southern and the Subsidiaries further represent that the terms of the purchase of Shares under

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[13] Following the Expiration Date and the consummation of the purchase of Shares under the Offer, Southern or one or more Subsidiaries may determine to purchase additional Shares on the open market, in privately negotiated transactions, through one or more tender offers or otherwise. Southern will not undertake any such transactions without receipt of any required Commission authorizations under the Act in one or more separate proceedings. Likewise, if a further special meeting is necessary, the Subsidiaries would not undertake any associated proxy solicitation and proposed Charter amendment prior to receipt of any required Commission authorizations under the Act in a separate proceeding.

[14] By contrast, if a Subsidiary, rather than Southern, had acquired Shares under the Offer, upon acquisition by the Subsidiary any Shares would be deemed treasury shares under Alabama, Georgia, Maine and Mississippi law, as the case may be, and, the Subsidiary would be precluded from voting those Shares under any circumstances.

[15] Southern proposes to agree to pay the dealer manager a fee for Shares tendered, accepted for payment and paid for pursuant to the Offer and a fee for any Shares that are not tendered pursuant to the Offers but which are voted in favor of the Proposed Amendment, and to reimburse the dealer manager for certain of its reasonable out-of-pocket expenses. In addition, Southern proposes to pay a solicitation fee for any Shares tendered, accepted for payment and paid for pursuant to the Offer and each Subsidiary proposes to pay a separate fee for any of their respective Shares that are not tendered pursuant to the Offer but which vote in favor of the Proposed Amendment.

the Offers will benefit not only tendering Preferred Stockholders (by affording certain Preferred Stockholders who may not favor the elimination of the Restriction Provisions an option to exit the Preferred Stock at a premium to the market price and without the usual transaction costs associated with a sale) but also, taking into account all related transaction costs, Southern's shareholders and Southern System utility customers by: (1) contributing to the elimination of the Restriction Provisions; and (2) resulting in the acquisition and retirement of outstanding Shares and their potential replacement with comparatively less expensive financing alternatives, such as short-term debt.

As noted, the Subsidiaries propose to submit the Proposed Amendment for consideration and action at special meetings of the stockholder and, in connection therewith, to solicit proxies from the holders of their capital stock. The Subsidiaries request that the effectiveness of the application-declaration with respect to the Proxy Solicitations on the Proposed Amendments be permitted to become effective immediately, under rule 62(d).

The applicants also request authorization to deviate from the preferred stock provisions of the *Statement of Policy Regarding Preferred Stock Subject to the Public Utility Holding Company Act of 1935*, HCAR No. 13106 (Feb. 16, 1956), to the extent applicable with respect to the Proposed Amendments.

It appears to the Commission that the application-declaration to the extent that it relates to the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d):

It is ordered, that the application-declaration, to the extent that it relates to the proposed solicitation of proxies be, and it hereby is, permitted to become effective immediately under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–29418 Filed 11–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26770]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

October 31, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 24, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Services, Inc. (70–8531)

Central and South West Services, Inc. (''CSWS''), 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas, 75266, a nonutility subsidiary company of Central and South West Corporation (''CSW''), a registered holding company, has filed a post-effective amendment, under sections 9(a) and 10 of the Act and rule 54 under the Act, to an application-declaration filed under sections 9(a) and 10 of the Act.

By order dated April 26, 1995 (HCAR 26280) (''Order''), CSWS, which operates an engineering and construction department that provides power plant control system procurement, integration and programming services as well as power plant engineering and construction services to associates within the CSW system, was authorized to provide such services to non-associates through December 31, 1997.

The order provides that the charges for services to nonassociates are negotiated and that CSWS anticipates that a substantial portion of the services will be priced on a time and materials basis. CSWS intends to price the services to result in an after-tax profit margin of 15%. Finally, the Order provides that profits or losses from the services to non-associates would be accounted for in accordance with requirements of the Uniform System of Accounts for service companies engaged in business with non-associate companies.

CSWS now requests an extension of the authorization contained in the Order through December 31, 2002.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–29472 Filed 11–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22871; File No. 812–10854]

Salomon, Inc.

November 3, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(f)(1)(A) of the Act.

SUMMARY OF APPLICATION: Applicant Salomon Inc (''Salomon'') requests an order to permit Salomon and its investment advisory subsidiaries, Salomon Brothers Asset Management (''SBAM'') and Salomon Brothers Asset Management Limited (''SBAM Limited'') that act as investment adviser on subadviser (collectively, ''Advisers'') to one or more registered investment companies, to receive payment in connection with the sale of applicant's advisory business. Without the requested exemption, an investment company advised by an Adviser would have to reconstitute its board of directors (''Board'') to meet the 75 percent non-interested director requirement of section 15(f)(1)(A).

FILING DATE: The application was filed on November 3, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 24, 1997 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 7 World Trade Center, New York, NY 10048

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, at (202) 942–7120, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Salomon is a global investment banking and securities and commodities trading company. Salomon Brothers Inc and its subsidiaries (''Salomon Brothers'') conduct Salomon's investment banking and securities trading activities. Salomon's asset management business is conducted primarily through SBAM and SBAM Limited, both indirect, wholly-owned subsidiaries of Salomon and investment advisers registered under the Investment Advisers Act of 1940.

2. The relief requested relates to the following registered investment companies for which SBAM or SBAM Limited acts as investment adviser, investment manager, or subadviser: The Emerging Markets Income Fund Inc., The Emerging Markets Income Fund II Inc., The Emerging Markets Floating Rate Fund Inc., Global Partners Income Fund Inc., Municipal Partners Fund Inc., Municipal Partners Fund II Inc., New England Zenith Fund (''New England''), JNL Series Trust, North American Funds, WNL Series Trust, SEI International Trust, Nationwide Separate Account Trust (''Nationwide''), The Americas Income Trust, Inc., Heritage Income Trust, Latin America Investment Fund, and Irish Investment Fund, Inc. (''Irish Investment'') (collectively, the ''Companies''). [1]

3. Travelers Group Inc. (''Travelers'') is a diversified, integrated financial services company engaged in investment services, consumer finance, and life and property-casualty insurance services.

4. On September 24, 1997, Travelers and Salomon entered into a merger agreement, under which a wholly-owned subsidiary of Travelers will be merged into Salomon, with Salomon continuing as the surviving entity, becoming a wholly-owned subsidiary of Travelers, and changing its name to Salomon Smith Barney Holdings, Inc. (''Salomon Smith Barney''). Then, Smith Barney Holdings, Inc., a wholly-owned subsidiary of Travelers, will merge with Salomon Smith Barney. After the two mergers (collectively, the ''Transaction''), the combined company will hold the investment banking, proprietary trading, retail brokerage and asset management operations of both Salomon and Smith Barney Holdings, Inc. Upon consummation of the Transaction, SBAM and SBAM Limited will remain wholly-owned subsidiaries of Salomon Smith Barney and will continue to operate in the same fashion. Applicant anticipates that the Transaction will be consummated in late November 1997.

5. In connection with the Transaction, the parties to the Transaction have determined to seek to comply with the safe harbor provisions of section 15(f) of the Act. The Board and the shareholders of each Company are being asked to consider and approve new contracts with SBAM and, in certain cases, SBAM Limited in connection with the Transaction.[2]

6. Applicant states that, absent exemptive relief, following consummation of the Transaction, more than 25% of the Board of a Company would be ''interested persons'' for purposes of section 15(f)(1)(A) of the Act. The Companies have informed applicant that reconstituting each Company's Board is not in the best interests of the Companies or their shareholders.

Applicant's Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A). This condition provides that, for a period of three years after such a sale, at least 75 percent of the board of directors of an investment company may not be ''interested persons'' with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B)(v) defines an interested person of an investment adviser to include any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such broker or dealer. Rule 2a19–1 provides an exemption from the definition of interested person for directors who are registered as brokers or dealers, or who are affiliated persons of registered brokers or dealers, provided certain conditions are met.[3]

2. Upon consummation of the Transaction, the Board of each Company will consist of a majority of directors who are not interested persons of any Adviser within the meaning of section 2(a)(19)(B). However, each Board also will consist of one or more directors who may be considered interested persons of one of the Advisers (''Interested Directors''), for a total of thirty-two Interested Directors in the sixteen fund complexes involved.[4]

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[1] In each of the foregoing cases, whether acting as investment adviser, investment manager or subadviser, SBAM or SBAM Limited (as applicable) is acting as an investment adviser within the meaning of section 2(a)(20) of the Act, and serves as investment adviser, investment manager or subadviser under a contract subject to section 15 of the Act.

[2] In certain instances, Companies have obtained or, in the case of Nationwide, have applied for exemptive relief permitting the investment adviser to the Company to hire and fire subadvisers without shareholder approval. *See NASL Financial Services, Inc., et al.*, Investment Company Act Release Nos. 22382 (December 9, 1996) (notice) and 22429 (December 31, 1996) (order); *SEI Institutional Managed Trust, et al.*, Investment Company Act Release Nos. 21863 (April 1, 1996) (notice) and 21921 (April 29, 1996) (order). To the extent permitted by their respective orders, these Companies will not seek shareholder approval of new contracts with SBAM and SBAM Limited.

[3] The rule generally provides that the exemption is available only if: (a) The broker or dealer does not execute any portfolio transactions for, engage in principal transactions with, or distribute shares for, the fund complex, (b) the fund's board determines that the fund will not be adversely affected if the broker or dealer does not effect the portfolio or principal transactions or distribute shares of the fund, and (c) no more than a minority of the fund's directors are registered brokers or dealers or affiliated persons thereof.

[4] Applicants believe that the 75% disinterested board requirement set forth in section 15(f)(1)(A) of the Act should not apply to investment company directors who are interested persons of an investment adviser to a registered investment company within the meaning of section 2(a)(19)(B) of the Act, unless that investment adviser is involved in the relevant change of control. Accordingly, applicants assert that a director who is an interested person of an investment adviser to a Company counts against the 75% disinterested board requirement only if that director also is an

Twenty-two of the Interested Directors may be considered interested persons of one of the Advisers within the meaning of section 2(a)(19)(B)(v) by virtue of their relationship to a registered broker-dealer. The exemption provided by rule 2a19–1 will not be available with respect to these Interested Directors because the broker-dealers with which they are affiliated act as distributors for the Companies in question or engage in transactions with other members of each Company's complex.[5]

3. Three of the directors are the beneficial owners of Travelers stock and, therefore, will be interested persons within the meaning of section 2(a)(19)(B)(iii).[6] While applicant is not aware of any other director owning Travelers stock, it is possible that other Company directors may be beneficial owners of up to 1,000 shares of Travelers stock in similar situations where the amount of the advisory fees paid by the Company to SBAM or SBAM Limited in relationship to the total revenues of Travelers is such that the income derived by the director from his or her holdings of Travelers stock will not be affected by advisory fees paid by the Company.[7]

4. The remaining seven director positions will be filled by one individual who is an officer and director of SBAM and Salomon Brothers, affiliates of one of the parties to the Transaction. As such, this director will be an interested person of one of the Advisers. With the exception of this director, none of the members of the Companies' Boards will be affiliated persons (within the meaning of section 2(a)(3) of the Act) of any party to the Transaction.

5. Without the requested exemption, a Company would have to reconstitute its Board to meet the 75 percent non-interested director requirement of section 15(f)(1)(A). Under the relief requested, during the three years following consummation of the Transaction, directors who are ''interested persons'' of an Adviser solely by reason of being (i) affiliated persons of brokers or dealers who are affiliated persons of another investment adviser to a Company, or (ii) on the Board of a Company on the date the Transaction is consummated beneficially owning Travelers stock as described in the application, will not be considered ''interested persons'' of SBAM or SBAM Limited for purposes of calculating the 75 percent requirement in section 15(f)(1)(A) of the Act.

6. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule or regulation under the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. Applicant believes that the requested exemption is necessary and appropriate in the public interest. Applicant states that compliance with section 15(f)(1)(A) would require a Company to reconstitute its Board. In applicant's view, this reconstitution would serve no public interest and would be contrary to the interests of the shareholders of the Companies. Applicant submits that the addition of directors to achieve the 75% disinterested director ratio required by section 15(f)(1)(A) could make the Boards unduly large and unwieldy, make decisional and operational matters cumbersome, unnecessarily increase the expenses of the Transaction, and would cause the Companies to incur additional expenses in connection with the selection and election of the additional directors. In addition, applicant submits that shrinking the Boards by eliminating previously existing Interested Director positions would deny the Companies the valued services and insights these insiders bring to their respective Boards.

8. Although directors who are affiliated persons of broker-dealers may be viewed as interested persons of the Advisers, these directors and the broker-dealers with which they are affiliated are not affiliated persons of any party to the Transaction. In addition, applicant argues that a director's affiliation with a Company's distributor should not preclude the requested exemption, despite the unavailability of the rule 2a19–1 exemption, because a Company's distributor is retained directly by the Company. As a result, retention of a distributor depends upon approval from the Company's Board and not upon the identity of or transactions involving the Company's Adviser. Further, applicant submits that each distributor's compensation is based on asset levels and/or the receipt of sales loads, and each distributor therefore has a direct economic interest in the financial success of the Company that retains it, an interest that is consistent with the interests of the Company's shareholders.

9. Applicant asserts, with respect to the directors who are shareholders of Travelers, that the immaterial number of shares owned by these directors should have no affect on fulfilling their responsibilities to their respective Companies. Applicant asserts that the income derived by each director from ownership of Travelers stock will not be affected in any noticeable degree by the advisory fees paid by the applicable Companies. Applicant maintains, therefore, that the beneficial ownership of Travelers stock should not prevent these directors from carrying out their fiduciary duties.

10. Applicant believes that the requested exemption is consistent with the protection of investors. Applicant states that the parties to the Transaction will comply with section 15(f)(1)(B) of the Act for at least two years following consummation of the Transaction. Accordingly, applicant argues that no unfair burdens will be placed on the Companies as a result of the Transaction. The Board and shareholders of each Company are being asked to consider and approve new contracts with SBAM and, in certain cases, SBAM Limited in connection with the Transaction. The adviser arrangements will continue only if the Board has determined that they continue to be in the best interests of the Company's shareholders, and then only in the event that the Company's shareholders also approve the continuation of the arrangements. Applicant also states that the Companies will continue to treat the Interested Directors as interested persons of the Companies and the Advisers for all purposes other than section 15(f)(1)(A) of the Act for so long as the directors are ''interested persons'' as defined in section 2(a)(19) of the Act and are not exempted from that definition by any applicable rules or orders of the SEC.

11. Applicant also submits that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act.

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interested person of one of the Advisers, either before or following consummation of the Transaction.

[5] The exemption provided by rule 2a19–1 of the Act may not be available with respect to the director of Irish Investment because the Board has not made the determinations required by the rule.

[6] Two of these directors serve on the Board of New England, and each is the beneficial owner of one thousand shares and four hundred shares, respectively, of Travelers stock, which constitutes .00016% and .00006% of Travelers 641,114,000 shares outstanding as of July 31, 1997. The third director serves on the Board of Irish Investment, and beneficially owns 8,300 shares of Travelers stock, which constitutes .00129% of Travelers shares outstanding as of July 31, 1997.

[7] In any of these instances, (i) the director would have been on the Board of the respective Company on the date the Transaction was consummated, (ii) the director would have owned the Travelers stock on the date the Transaction was consummated and would not have acquired additional Travelers stock after the date the Transaction was consummated, (iii) no more than two directors per Company would be beneficial owners of Travelers stock, and (iv) the Travelers stock owned by any of the directors will not represent a material portion of the director's assets.

Applicant asserts that the legislative history of section 15(f) indicates that Congress intended the SEC to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on a fund. Applicant also states that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exists where the board of an investment company is influenced by a substantial number of interested directors to approve a transaction because the directors have an economic interest in the adviser. Because these circumstances do not exist in the present case, applicant believes that the SEC should be willing to exercise flexibility.

Applicant's Condition

Applicant agrees that any order of the SEC granting the requested relief with respect to a particular Company will be subject to the following condition:

If, within three years of the completion of the Transaction, it becomes necessary to replace any director of the Company, that director will be replaced by a director who is not an ''interested person'' of SBAM or SBAM Limited within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time, after giving effect to the order granted pursuant to the application, are not interested persons of SBAM or SBAM Limited, provided that this condition will not preclude replacements with or additions of directors who are interested persons of SBAM or SBAM Limited solely by reason of being affiliated persons of brokers or dealers who are affiliated persons of another investment adviser to a Company, provided that the brokers or dealers are not affiliated persons of SBAM or SBAM Limited.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–29471 Filed 11–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39291]

Order Denying Exemption From Broker-Dealer Registration to Investors Direct Empowerment Association, Inc.

November 3, 1997.

AGENCY: Securities and Exchange Commission.

ACTION: Denial of exemption.

SUMMARY: The Securities and Exchange Commission is denying an exemption from broker-dealer registration pursuant to Section 15(a) of the Securities Exchange Act of 1934 to Investors Direct Empowerment Association, Inc.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Lourdes Gonzalez, Special Counsel, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Mail Stop 5–10, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Investors Direct Empowerment Association, Inc. (''IDEA''), a not-for-profit corporation, has requested an exemption, pursuant to Section 15(a)(2) of the Securities Exchange Act of 1934 (''Exchange Act''), from the broker-dealer registration requirement of Section 15(a)(1) of the Exchange Act.

Under IDEA's proposed program, IDEA would purchase one share of stock from various corporations with dividend reinvestment and stock purchase plans (''DRSPPs'') and then would join each corporation's DRSPP. An investor interested in joining a corporation's DRSPP would send funds to IDEA, made payable to an unaffiliated escrow agent, for the purchase of specified securities. IDEA would aggregate investors' funds, then forward them to the appropriate DRSPP to purchase shares of that corporation in IDEA's name as nominee. IDEA then would allocate the shares purchased among participating investors. IDEA would charge a fee per order received.

IDEA maintains that its proposed program is similar to a program operated since 1979 by another not-for-profit corporation, the National Association of Investors Corporation (formerly the National Association of Investment Clubs) (''NAIC''), for which the Commission granted an exemption pursuant to Section 15(a)(2) of the Exchange Act. In granting the NAIC's exemption in 1979, the Commission stated that ''it would be in the public interest to grant the NAIC a conditional exemption with respect to registration as a broker or dealer. The NAIC proposes to offer brokerage services to a potentially large number of customers through an unusual and novel program.'' [1]

II. Discussion

The Commission cannot find that exempting IDEA from the broker-dealer registration requirement would be consistent with the public interest and the protection of investors. Although IDEA's goal of providing small investors with a means of buying securities at fees lower than those charged by broker-dealers is laudable, IDEA's proposed program presents significant investor protection concerns. These concerns are among the primary reasons the Exchange Act normally requires broker-dealer registration. In particular, IDEA's control over investors' funds and securities would expose investors to the same types of risks as those inherent in dealing with a registered broker-dealer. IDEA's status as a not-for-profit corporation does not mitigate these concerns.

While only a limited number of DRSPPs currently permit direct investment by first time investors, this number is increasing rapidly. In response to investor concerns with respect to T+3 settlement, the Commission took several steps in December 1994 to permit investors to buy securities directly from issuers through ''open availability'' direct registration programs and to permit investors to leave these securities with transfer agents.[2] These initiatives were designed, in part, to facilitate investors' access to issuer DRSPPs. IDEA's program, therefore, is not so unusual or novel, and does not present any other compelling justifications, as to mitigate the investor protection concerns raised by IDEA's handling of investors' funds and securities.

It is therefore ordered, pursuant to Section 15(a)(2) of the Exchange Act, that IDEA's request for an exemption from broker-dealer registration pursuant to Section 15(a)(1) of the Exchange Act is denied.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–29419 Filed 11–6–97; 8:45 am]

BILLING CODE 8010–01–M

[1] *See Letter re the National Association of Investment Clubs* (June 1, 1979).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–22870]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 31, 1997.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company

[2] Securities Exchange Act Release No. 35058 (December 1, 1994); Securities Exchange Act Release No. 35040 (December 1, 1994); *Letter re: The Securities Transfer Association* (December 1, 1994); *Letter re: First Chicago Trust Company of New York* (December 1, 1994).

Act of 1940 for the month of October, 1997. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 24, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 10–4, 450 Fifth Street, N.W., Washington, D.C. 20549.

The Rodney Square Total Return Fund [File No. 811–4806]

The Rodney Square Growth Equity Fund [File No. 811–4807]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Neither applicant ever made a public offering of its securities or proposes to make a public offering or engage in business of any kind.

Filing Dates: Both applications were filed on September 18, 1997.

Applicant's Address: Rodney Square North, 1100 North Market Street, Wilmington, Delaware 19890–0001.

SAFECO Advisor Series Trust [File No. 811–8466]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 7, 1996, each series of applicant, except Advisor GNMA Fund, made a liquidating distribution to its shareholders at net asset value. All of the portfolio securities of Advisor GNMA Fund were redeemed in-kid by its sole remaining shareholder, SAFECO Corporation. No expenses were incurred in connection with the liquidation, and unamortized organizational expenses were paid by applicant's investment adviser.

Filing Date: The application was filed on June 19, 1997.

Applicant's Address: SAFECO Plaza, Seattle, Washington, 98185.

Horace Mann Balanced Fund, Inc. [File No. 811–3665]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets and liabilities to the Balanced Fund, a series of Horace Mann Mutual Funds, on April 30, 1997, based on the relative net asset value per share. All expenses associated with the Agreement and Plan of Reorganization were borne by an affiliate of Horace Mann Life Insurance Company, and not by Applicant.

Filing Date: The application was filed on July 16, 1997.

Applicant's Address: One Horace Mann Plaza, Springfield, Illinois 62715.

Horace Mann Short-Term Investment Fund, Inc. [File No. 811–3666]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets and liabilities to the Short-Term Investment Fund, a series of Horace Mann Mutual Funds, on April 30, 1997, based on the relative net asset value per share. All expenses associated with the Agreement and Plan of Reorganization were borne by an affiliate of Horace Mann Life Insurance Company, and not by Applicant.

Filing Date: The application was filed on July 16, 1997.

Applicant's Address: One Horace Mann Plaza, Springfield, Illinois 62715.

Horace Mann Growth Fund, Inc. [File No. 811–778]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets and liabilities to the Growth Fund, a series of Horace Mann Mutual Funds, on April 30, 1997, based on the relative net asset value per share. All expenses associated with the Agreement and Plan of Reorganization were borne by an affiliate of Horace Mann Life Insurance Company, and not be Applicant.

Filing Date: The application was filed on July 16, 1997.

Applicant's Address: One Horace Mann Plaza, Springfield, Illinois 62715.

Horace Mann Income Fund, Inc. [File No. 811–3664]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant transferred its assets and liabilities to the Income Fund, a series of Horace Mann Mutual Funds, on April 30, 1997, based on the relative net asset value per share. All expenses associated with the Agreement and Plan of Reorganization were borne by an affiliate of Horace Mann Life Insurance Company, and not by Applicant.

Filing Date: The application was filed on July 16, 1997.

Applicant's Address: One Horace Mann Plaza, Springfield, Illinois 62715.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–29417 Filed 11–6–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39288; File No. SR–NYSE–97–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend and Make Permanent the Allocation Policy and Procedures Pilot Program

October 30, 1997.

Pursuant to Section 19(b)(1) of the Securities Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 1997, the New Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 proposed rule change seeks to amend and to obtain permanent approval of the Exchange's Allocation Policy and Procedures pilot program. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend and to make permanent the Exchange's Allocation Policy and Procedures pilot program. The Exchange's Allocation Policy and Procedures (''Policy'') are intended: (1) to ensure that securities are allocated in an equitable and fair manner and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security; and (4) to contribute to the strength of the specialist system.

On February 28, 1997, the Exchange proposed to change the Policy with respect to listing company input. The Commission approved the filing as a seven-month pilot program, effective March 7, 1997 until October 7, 1997.[3] On October 6, 1997, the Commission approved an extension of the Exchange's pilot program, until November 28, 1997.[4]

Under the pilot, listing companies may: (1) have the Allocation Committee select their specialist unit; or (2) make the final selection of a specialist unit from among a group of three to five specialist units selected by the Allocation Committee. The listing company may submit a generic letter to the Allocation Committee which may describe desired general characteristics of a specialist unit, but may not mention particular specialist units. Under the second option, the listing company meets, either in person or by teleconference, with the specialist units selected by the Allocation Committee within two business days after their selection. The listing company must make its decision as to a specialist unit by the next business day.

The Exchange proposes the following additional changes to its Policy based upon the staff's experience with the pilot program:

Listing Company Input

When the listing company selects Option (2), the Allocation Committee will select a group of three, four or five units that are the most qualified specialist units among the units that apply. It is proposed that if three units are selected, the Allocation Committee may select an alternate specialist unit to be among the group of units that a company may interview in the event a unit is elimated. A unit could be eleimated if it or the specialist designated to trade the stock cannot meet with the listing company at the appointed time. A unit chosen as an alternate will be informed of its status as such. Currently, the policy is silent regarding this procedure.

Company Letter

The Exchange proposes that the letter submitted by the listing company focus on the history and background of the company and its industry; how the company historically has funded its operations; characteristics of its shareholder based and any unusual trading patterns that may result therefrom; and any public information regarding the company's plans for the future. The letter may also include the company's specific views on being traded by a specialist unit with experience in trading in its industry or country and the company's preference, if any, that its stock not be traded by specialist units which trade competitors, in which case, names of direct competitors should be included in the letter. Currently, the listing company's letter to the Allocation Committee describes characteristics that focus on the specialist rather than the listing company. The Allocation Committee has found that letters which describe the listing company are more helpful to the Allocation Committee in assessing the type of specialist unit that would be more appropriate for the company.

Interview Scheduling and Format

Currently, within two business days after the selection of a group of specialist units by the Allocation Committee, the listing company must meet with the specialist unit's representative. In addition, the listing company must select its specialist unit within one business day of the interview. Experience has shown that these time frames were too compressed at time for company travel arrangements or preparation by the specialist units. Pursuant to the proposal, after the Allocation Committee selects a group of specialist units (under Option 2), the listing company must meet with the selected group of specialist units representatives by the close of business on the last Exchange business day of the week in which the selection of the group was made. As soon as practicable, following its meeting with representatives of the specialist units, the listing company must select its special unit. If a listing company meets with any of its specialist units on the last Exchange business day of the week, it must take its decision on that day.

Currently, the Policy permits telephone interviews at the request of a listing company. In-person interviews have been shown to be more effective. Therefore, telephone interviews will not be permitted for domestic listing companies, unless the Exchange approves for compelling circumstances. Telephone interviews will be permitted for non-U.S. listing companies.

Contact Between Listing Companies and Specialist Units

Currently, the Policy is silent regarding contact between listing companies and specialist units. However, the NYSE's Information Memo No. 97–13 states that once allocation applications are distributed, the exchange expects that specialist units will have no contact with the listing companies.

The Exchange proposes to codify into its Policy its prohibitions on contact between listing companies and specialist units from the time allocation applications are solicited until Allocation Committee meetings. From the selection of an interviewing pool to the time of interviews, units may provide material to Exchange staff no later then two hours before the scheduled interview. Exchange staff will provide the material to the listing company on the day of the interview. Such material must be limited to information pertaining to the specialist unit, and may not contain information that refers to another specialist unit or units, except overall floorwide statistics.

The Exchange proposes that at the interview, information or material may be provided either orally or in writing. Any material provided either orally or in writing by the specialist unit must relate only to that unit. Information regarding other units may not be provided, except for floorwide statistics.

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[3] *See* Securities Exchange Act Release No. 38372 (March 7, 1997) 62 FR 13421 (March 21, 1997) (notice of filing and immediate effectiveness of File No. SR–NYSE–97–04). On April 16, 1997, the Exchange filed another proposed change to its Policy not covered under the pilot program. *See* Securities Exchange Act Release No. 38828 (July 9, 1997) 62 FR 39043 (July 21, 1997) (order approving File No. SR–NYSE–97–12).

[4] *See* Securities Exchange Act Release No. 39206, 62 FR 53679 (October 15, 1997) (order approving File No. SR–NYSE–97–27).

Any information contained in Exchange documents may be provided by the unit orally or in writing on the unit's letterhead. Following its interview, a specialist unit may not have any contact with the listing company and any follow-up questions by the company regarding publicly available information on a unit must be sent to the Exchange. If the Exchange approves, a response will be provided. The specialist units in the group of units interviewed will be advised of such requests.

Spin-offs/Related Companies

This section of the Policy covers situations in which a listing company is a spin-off of or related to a listed company. Currently these situations are handled as new listings, with allocation open to all specialist units.

Under the proposed revisions of the Policy, a listing company that is a spin-off or related company may choose to stay with the specialist unit registered in the related listed company.

If the listing company chooses to have the Allocation Committee select its specialist, the listing company may request, and the Allocation Committee will honor, that it not be traded by the specialist unit that trades the related listed company. Alternatively, the listing company may choose Option 2 and request that the Allocation Committee include or exclude from the group of specialist units, the specialist registered in the related listed stock.

The Exchange believes that the pilot program, as amended, should be made permanent in that it has successfully established flexible procedures for the listing company to effectively participate in the selection process of specialist units that are most suitable to make quality markets in the listing company's stock.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[5] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protest investors and the public interest. The Exchange believes that the experience gained from the pilot program suggests that the amendments to the Policy are consistent with these objectives in that they enable the Exchange to further enhance the process by which stocks are allocated between specialist units to ensure fairness and equal opportunity in the process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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:

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File Number SR–NYSE–97–30 and should be submitted by November 28, 1997.

Fifth Street, N.W., Wahsington, D.C. 20549. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File Number SR–NYSE–97–30 and should be submitted by November 28, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

[FR Doc. 97–29473 Filed 11–6–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–116]

Initiation of Section 302 Investigation, Proposed Determinations and Action, and Request for Public Comment: Honduran Protection of Intellectual Property Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; proposed determination and action; request for public comment; and public hearing.

SUMMARY: The Trade Policy Staff Committee (TPSC) has determined that the Government of Honduras has failed to provide adequate and effective means under its laws for foreign nationals to secure, exercise and enforce exclusive rights in intellectual property and has recommended that the duty-free treatment accorded Honduras under the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI) programs be partially withdrawn. In light of the foregoing, the United States Trade Representative (USTR) is initiating an investigation under section 302(b) of the Trade Act of 1974, as amended (the ''Trade Act'') with regard to acts, policies, and practices of the Government of Honduras with respect to the protection of intellectual property rights, and proposes to determine that these acts, policies and practices are actionable under section 301(b) and that the appropriate response is a partial suspension of tariff preference benefits

accorded to Honduras under the GSP and CBI programs. The annex to this notice sets forth a list of articles of Honduras which could be subject to the suspension of tariff preference benefits. The USTR invites interested persons to submit written comments and to participate in a public hearing concerning the proposed determinations and action.

DATES: This investigation was initiated on October 31,1997. Requests to appear at the public hearing are due November 14, 1997; written testimony is due November 24, 1997; a public hearing will be held on December 4, 1997; and written comments and rebuttal comments are due December 10, 1997.

ADDRESSES: Written submissions should be sent to Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301–116, Room 223, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. The public hearing will be held in the main hearing room of the United States International Trade Commission, 500 E Street, SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: David Morrissy, Office of Trade and Development, Office of the United States Trade Representative, (202) 395–6971, or William Busis, Office of the General Counsel, Office of the United States Trade Representative, (202) 395–3150.

SUPPLEMENTARY INFORMATION: In June 1992 the Motion Picture Export Association of America (subsequently renamed the Motion Picture Association) filed a petition under the GSP program alleging that Honduras had failed to provide adequate and effective copyright protection and enforcement of rights of copyright owners. The petition alleged wide-spread unauthorized broadcasting of pirated videos and the rebroadcasting of U.S. satellite-carried programming. In addition to these problems, the Government of Honduras has not provided adequate copyright protection for books and sound recordings.

Since the receipt of the GSP petition, the United States has held extensive consultations with the Government of Honduras regarding its failure to provide adequate and effective protection of intellectual property rights. As a result of these consultations, the Honduran government has, in the past, provided assurances that enforcement of intellectual property rights protection laws would improve.

However, the United States has seen a continuing lack of enforcement of copyright in Honduras. In May of 1997 the TPSC determined that the Government of Honduras had failed to provide adequate and effective means under its laws for foreign nationals to secure, exercise and enforce exclusive rights in intellectual property, and recommended that the duty-free treatment accorded Honduras under the GSP and CBI programs be partially withdrawn in four months if these problems were not remedied. (See 62 FR 28915 of May 28, 1997.) In the intervening period, the United States Government has consulted with the Government of Honduras regarding this matter. Despite being notified of continuing and serious U.S. concerns and possible action by the U.S. Government in response, the Government of Honduras has still failed to take sufficient action against continuing and blatant copyright piracy. For example, recent reports indicate that three major television stations in Honduras continue to violate the rights of U.S. copyright owners.

Initiation of Section 302 Investigation

Section 302(b)(1) of the Trade Act (19 U.S.C. 2412(b)(1)) authorizes the USTR to initiate an investigation under Chapter 1 of Title III of the Trade Act (commonly referred to as ''section 301'') with respect to any matter to determine whether the matter is actionable under this provision. Under section 301(b)(1) of the Trade Act, matters actionable under section 301 include acts, policies, or practices of a foreign country that are unreasonable and burden or restrict U.S. commerce. Under section 301(d)(3)(B)(II) of the Trade Act, unreasonable acts, policies or practices include any act, policy or practice which denies fair and equitable provision of adequate and effective protection of intellectual property rights.

Accordingly, the United States Trade Representative, having consulted with the appropriate private sector advisory committees, has determined to initiate an investigation under section 302(b)(1) of the Trade Act to determine whether certain acts, policies, and practices of Honduras with regard to the protection of intellectual property rights are actionable under section 301(b)(1) of the Trade Act.

Proposed Determinations and Action

Based on the failure of the Government of Honduras to provide adequate protection of intellectual property rights, the USTR proposes to determine under sections 304(a)(1)(A) and 301(b) of the Trade Act that the acts, policies, and practices of Honduras with respect to the protection of intellectual property rights are unreasonable and burden or restrict United States commerce, and that action by the United States is appropriate.

Section 301(b)(2) of the Trade Act authorizes the USTR to take all appropriate and feasible action authorized under section 301(c) to obtain the elimination of the actionable acts, policies, or practices. Section 301(c)(1)(C) provides that in a case in which the act, policy, or practice also fails to meet the eligibility requirements for duty-free treatment under the GSP program or CBI program, the USTR may withdraw, limit or suspend such treatment under the GSP or CBI programs.

The GSP program includes an eligibility requirement concerning the extent to which the foreign country provides adequate and effective protection of intellectual property rights (section 502(c)(5) of the Trade Act (19 U.S.C. 2462(c)(5))). The CBI program also includes eligibility requirements concerning the extent to which the foreign country provides under its laws adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, and the extent to which the foreign country prohibits its nationals from engaging in the broadcast of copyrighted material belonging to United States copyright owners without their express consent (section 212(c)(9) and (10) of the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2712(c)(9) and (10)). Based on the failure of the Government of Honduras to provide adequate protection of intellectual property rights, the USTR proposes to determine that Honduras fails to meet these eligibility requirements of the CBI and GSP programs.

Accordingly, under section 304(a)(1)(B) and 301(c)(1)(C) of the Trade Act, the USTR proposes to suspend duty-free treatment accorded certain products from Honduras under the GSP and CBI programs. In particular, the USTR is proposing to suspend GSP and CBI duty-free benefits for certain articles of Honduras, to be chosen from among the articles listed in the annex to this notice. After considering comments received and the testimony presented, the USTR will decide which of the articles listed in the annex will be subject to suspension of duty-free treatment under the GSP and CBI programs.

Written Comments and Public Hearing Regarding Proposed Determinations and Action

In accordance with section 304(b) of the Trade Act, the USTR invites interested persons to provide written comments on the matters under investigation and the proposed determinations. With respect to the proposed action under section 301, comments may address: (1) the appropriateness of a suspension of GSP and CBI benefits with respect to articles of Honduras listed in the annex to this notice; (2) the specific articles from the list in the annex which should be subject to suspension of GSP and CBI duty-free treatment; and (3) the degree to which such suspension of duty-free treatment on particular articles of Honduras might have an adverse effect on U.S. consumers. Written comments are due by December 10, 1997.

A public hearing addressed to these same issues will be held on December 4, 1997, in the main hearing room of the United States International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Interested persons wishing to testify orally at the hearings must provide a written request by November 14, 1997, to Sybia Harrison, Staff Assistant to the Section 301 Committee, Office of the U.S. Trade Representative, 600 17th Street NW, Washington, DC 20508. Requests to testify must include the following information: (1) name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented. Requests to testify must conform to the requirements of 15 CFR 2006.8(a). After the Chairman of the Section 301 Committee considers the request to present oral testimony, Ms. Harrison will notify the applicant of the time of his or her testimony. In addition, persons presenting oral testimony must submit their complete written testimony by November 24, 1997.

In order to allow each interested party an opportunity to contest the information provided by other parties at the hearing, USTR will accept written rebuttal comments, which must be filed by December 10, 1997. In accordance with 15 CFR 2006.8(c), rebuttal comments should be limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as possible.

Written comments, written testimony, and rebuttal comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b). Comments must state clearly the position taken, describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301–116, Room 223, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

All written submissions will be placed in a file (Docket 301–116) open to public inspection pursuant to 15 CFR 2006.13, except for confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Persons wishing to submit confidential business information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked ''Business Confidential'' in a contrasting color ink at the top of each page on each of the twenty copies and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket open to public inspection. An appointment to review the docket may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

Irving A. Williamson,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–P

Annex

HTS Subheading	Article Description	1997 Subcolumn 1 General (MFN) Rate
	[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
	Meat of bovine animals, frozen:	
	Boneless:	
	Described in additional U.S. note 3 to chapter 2 of the HTS and entered pursuant to its provisions:	
	Processed:	
	[High-quality beef cuts]	
0202.30.30	Other	10%
	Other live plants (including their roots), cuttings and slips; mushroom spawn:	
0602.10.00	Unrooted cuttings and slips	6.2%
	[Trees, shrubs and bushes, grafted or not, of kinds which bear edible fruit or nuts; rhododendrons and azaleas, grafted or not; roses, grafted or not]	
	Other:	
	[Herbaceous perennials:]	
	Other:	
	[Mushroom spawn]	
	Other:	
	[With soil attached to roots]	
0602.90.90	Other	6.2%
	Cucumbers, including gherkins, fresh or chilled:	
0707.00.20	If entered during the period from December 1 in any year to the last day of the following February, inclusive	4.6¢/kg
0707.00.40	If entered during the period from March 1 to April 30, inclusive, in any year	6.1¢/kg
	Melons (including watermelons) and papayas (papaws), fresh:	
	Melons (including watermelons):	
	Watermelons:	
0807.11.30	If entered during the period from December 1, in any year, to the following March 31, inclusive	14.5%
0807.11.40	If entered at any other time	18.5%

Annex (con.)
-2-

HTS Subheading	Article Description	1997 Subcolumn 1 General (MFN) Rate
	Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice):	
	Fruits of the genus Capsicum or of the genus Pimenta (including allspice), dried or crushed or ground:	
	Of the genus Capsicum (including cayenne pepper, paprika and red pepper):	
	[Paprika; Anaheim and ancho pepper]	
	Other:	
0904.20.60	Not ground.....	4¢/kg
	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006:	
	[Potatoes]	
	Other vegetables and mixtures of vegetables:	
	[Antipasto; beans]	
2004.90.90	Other.....	14.4%
	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006:	
	Other vegetables and mixtures of vegetables:	
	Fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice):	
	[Pimientos (Capsicum anuum)]	
2005.90.55	Other.....	16.2%
	Fruit juices (including grape must) and vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:	
	Pineapple juice:	
	[Not concentrated, or having a degree of concentration of not more than 3.5 degrees (as determined before correction to the nearest 0.5 degree)]	
2009.40.40	Other.....	1.2¢/liter

Annex (con.)
-3-

HTS Subheading	Article Description	1997 Subcolumn 1 General (MFN) Rate
	Unmanufactured tobacco (whether or not threshed or similarly processed); tobacco refuse:	
	Tobacco, not stemmed/stripped:	
	Not containing wrapper tobacco, or not containing over 35 percent wrapper tobacco:	
	[Oriental or Turkish type; cigar binder and filler]	
	Other:	
	Flue-cured, burley and other light air-cured leaf:	
	[To be used in products other than cigarettes]	
	Other:	
2401.10.63	Described in additional U.S. note 5 to chapter 24 of the HTS and entered pursuant to its provisions.....	26¢/kg
	Tobacco, partly or wholly stemmed/stripped:	
	Threshed or similarly processed:	
	[From cigar leaf]	
	Other:	
	[Oriental or Turkish type]	
	Other:	
	[To be used in products other than cigarettes]	
	Other:	
2401.20.85	Described in additional U.S. note 5 to chapter 24 of the HTS and entered pursuant to its provisions.....	40.8¢/kg

Annex (con.)
-4-

HTS Subheading	Article Description	1997 Subcolumn 1 General (MFN) Rate
	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes:	
	Cigars, cheroots and cigarillos, containing tobacco:	
2402.10.30	Each valued less than 15¢	$3.05/kg + 7.6%
2402.10.60	Each valued 15¢ or over but less than 23¢	92¢/kg + 2.2%
2402.10.80	Each valued 23¢ or over	92¢/kg + 2.2%
	Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations (whether or not in the form of paper, wadding, felt, nonwovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations), excluding waxes of heading 3404:	
3405.10.00	Polishes, creams and similar preparations for footwear or leather	1%
	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:	
	Sacks and bags (including cones):	
3923.21.00	Of polymers of ethylene	3%
3923.29.00	Of other plastics	3%

Annex (con.)
-5-

HTS Subheading	Article Description	1997 Subcolumn 1 General (MFN) Rate
	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper:	
	[Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers; handbags, whether or not with shoulder strap, including those without handle; articles of a kind normally carried in the pocket or in the handbag]	
	Other:	
	With outer surface of sheeting of plastic or of textile materials:	
	Travel, sports and similar bags:	
	With outer surface of textile materials:	
	[Of vegetable fibers and not of pile or tufted construction]	
4202.92.30	Other.....	19.3%
	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed:	
	Coniferous:	
	Wood dowel rods:	
4409.10.60	Plain.....	1%

Annex (con.)
-6-

HTS Subheading	Article Description	1997 Subcolumn 1 General (MFN) Rate
	Builders' joinery and carpentry of wood, including cellular wood panels and assembled parquet panels; shingles and shakes:	
	[Windows, French-windows and their frames]	
	Doors and their frames and thresholds:	
	[French doors]	
4418.20.80	Other	5.9%
	[Parquet panels; formwork (shuttering) for concrete constructional work; shingles and shakes]	
	Other:	
	[Edge-glued lumber]	
4418.90.40	Other	4%
	Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94 of the HTS:	
	Other:	
	Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood:	
4420.90.20	Cigar and cigarette boxes	1.2%
	Statuettes and other ornamental ceramic articles:	
	[Of porcelain or china]	
	Other:	
	[Statues, statuettes and handmade flowers, valued over $2.50 each and produced by professional sculptors or directly from molds made from original models produced by professional sculptors]	
	Other:	
	[Of ceramic tile; of earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze, and mottled, streaked or solidly colored brown to black with metallic oxide or salt]	
6913.90.50	Other	6.4%

Annex (con.)
-7-

HTS Subheading	Article Description	1997 Subcolumn 1 General (MFN) Rate
	Wire of iron or nonalloy steel:	
	Plated or coated with zinc:	
	Round wire:	
7217.20.30	With a diameter of 1.5 mm or more and containing by weight less than 0.25 percent of carbon.....	1%
	Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper:	
	[Thumb tacks; other, suitable for use in powder-actuated handtools]	
	Other:	
	[Of one piece construction]	
7317.00.75	Of two or more pieces.....	1.6%
	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:	
	Parts:	
	[Of power supplies for automatic data processing machines or units thereof of heading 8471]	
	Other:	
	[Printed circuit assemblies]	
8504.90.95	Other.....	2.8%
	Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:	
8544.30.00	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships.....	5%

Annex (con.)
-8-

HTS Subheading	Article Description	1997 Subcolumn 1 General (MFN) Rate
	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:	
	[Seats of a kind used for aircraft; seats of a kind used for motor vehicles; swivel seats with variable height adjustment; seats other than garden seats or camping equipment, convertible into beds; seats of cane, osier, bamboo or similar materials]	
	Other seats, with wooden frames:	
	[Upholstered]	
	Other:	
	[Bent-wood seats]	
	Other:	
	Chairs:	
	[Of teak]	
9401.69.60	Other	2.1%
	Other seats, with metal frames:	
	[Upholstered]	
9401.79.00	Other	1.6%
	Other seats:	
	Of rubber or plastics:	
	[Of reinforced or laminated plastics]	
9401.80.40	Other	1%
	Other furniture and parts thereof:	
	[Metal furniture of a kind used in offices]	
9403.20.00	Other metal furniture	1.6%
	[Wooden furniture of a kind used in offices; wooden furniture of a kind used in the kitchen; wooden furniture of a kind used in the bedroom]	
	Other wooden furniture:	
	[Bent-wood furniture]	
9403.60.80	Other	1%
	Furniture of plastics:	
	[Of reinforced or laminated plastics]	
9403.70.80	Other	1%

Annex (con.)
-9-

HTS Subheading	Article Description	1997 Subcolumn 1 General (MFN) Rate
	Other furniture and parts thereof:	
	Parts:	
	[Of furniture of a kind used for motor vehicles]	
	Other:	
	[Of cane, osier, bamboo or similar materials; of rubber or plastics; of textile material, except cotton]	
9403.90.70	Of wood	2.1%
9403.90.80	Other	1.6%

[FR Doc. 97–29502 Filed 11–4–97; 3:25 pm]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Updated Advisement of Operational Status of Grand Trunk Western Bridge at Mile 19.16 Over the Saginaw River in Saginaw, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is issuing this notice to advise the boating public that a formerly movable bridge over the Saginaw River was authorized to be placed in a non-movable status in 1982, and has remained in that status ever since.

DATES: Comments must be received by December 8, 1997.

ADDRESSES: Any comments or documents should be sent to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH 44199–2060.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom, Chief, Bridge Branch at (216) 902–6084.

SUPPLEMENTARY INFORMATION: A railroad swing span bridge at mile 19.16 over the Saginaw River in Saginaw, MI, was permitted for construction in 1913. Between 1972 and 1982 there was only one opening of this bridge. The one opening was for a special Bicentennial exhibition in 1976. At the request of the Grand Trunk Western Railroad Co., current owner of the bridge, the regulations governing the operations of the bridge were reviewed and revised in 1982. By that time, all commercial marine activity had ceased to transit that portion of the Saginaw River. The 1982 regulation allowed the bridge to remain closed to vessel traffic. See 47 FR 4065, dated January 28, 1982. Persons wishing to express their views concerning the status of this bride may do so by sending their comments to the office listed under **ADDRESSES** above. Comments must be received by December 8, 1997.

Dated: October 6, 1997.

J.F. McGowan,

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

[FR Doc. 97–29510 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on October 28, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
10581–N	Luxfer UK Limited, Nottingham, England	4	11/28/1997
11232–N	State of Alaska Department of Transportation, Juneau, AK	4	11/28/1997
11409–N	Pure Solve, Inc., Irving, TX	1	11/28/1997
11442–N	Union Tank Car Co., East Chicago, IN	4	11/28/1997
11465–N	Monsanto Co., St. Louis, MO	4	11/28/1997
11511–N	Brenner Tank, Inc., Fond du Lac, WI	4	11/28/1997
11523–N	Bio-Lab, Inc., Conyers, GA	4	11/28/1997
11537–N	Babson Bros. Co., Romeoville, IL	4	11/28/1997
11540–N	Convenience Products, Fenton, MO	1	11/28/1997
11561–N	Solkatronic Chemicals, Fairfield, NJ	4	11/27/1997
11578–N	General Alum & Chemical Co., Searsport, MA	4	11/28/1997
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	11/28/1997
11597–N	Zeneca, Inc., Wilmington, DE	4	11/28/1997
11646–N	Barton Solvents, Inc., Des Moines, IO	4	11/28/1997
11654–N	Hoechst Celanese Corp., Dallas, TX	4	11/28/1997
11662–N	FIBA Technologies, Inc., Westboro, MA	4	10/30/1997
11668–N	AlliedSignal, Inc., Morristown, NJ	4	11/28/1997
11678–N	Air Transport Association, Washington, DC	4	11/28/1997
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	11/28/1997
11687–N	Tri Tank Corp., Syracuse, NY	4	12/31/1997
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	12/31/1997
11722–N	Citergaz S.A., 86400 Civray, FR	1	12/31/1997
11735–N	R.D. Offutt Co., Park Rapids, MN	4	12/31/1997
11739–N	Oceaneering Space Systems, Houston, TX	1	12/31/1997
11740–N	Morton International, Inc., Ogden, UT	4	12/31/1997
11751–N	Delta Resigns & Refractories, Detroit, MI	4	12/31/1997

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11759–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	12/31/1997
11761–N	Vulcan Chemicals, Birmingham, AL	4	12/31/1997
11762–N	Owens Fabricators, Inc., Baton Rouge, LA	4	11/28/1997
11765–N	Laidlaw Environmental Services Inc., Columbia, SC	4	11/28/1997
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	11/28/97
11769–N	Great Western Chemical Co, Portland, OR	4	11/28/97
11772–N	Kleespie Tank & Petroleum Equipment, Morris, MN	4	11/28/97
11774–N	Safety Disposal System, Inc., Opa Locka, FL	1	11/28/97
11782–N	Aeronex, Inc., San Diego, CA	4	11/28/97
11783–N	Peoples Natural Gas, Rosemount, MN	4	11/28/97
11797–N	Cryodyne Technologies, Radnor, PA	4	11/28/97
11798–N	Air Products & Chemicals, Inc., Allentown, PA	4	11/28/97
11809–N	Laidlaw Environmental Services Inc., Columbia, SC	4	11/28/97
11811–N	Laidlaw Environmental Services Inc., Columbia, SC	4	11/28/97
11815–N	Union Pacific Railroad Co. et al, Omaha, NE	4	11/28/97
11816–N	The Scotts Co., Marysville, OH	4	11/28/97
11817–N	FIBA Technologies, Inc., Westboro, MA	4	12/31/97
11821–N	Wyoming Department of Transportation, Cheyenne, WY	4	12/31/97
11841–N	Stepan Co., Northfield, IL	4	12/31/97
11850–N	Air Transportation Association & Members, Washington, DC	4	01/30/1998
11852–N	McKenzie Tank Lines, Inc., Tallahassee, FL	4	01/30/1998
11862–N	The BOC Group, Murray Hill, NJ	4	01/30/1998
11863–N	Carrier Corp./d/b/a United Technologies Carrier, Syracuse, NY	4	01/30/1998
11865–N	ACCU Conversion, Inc., City of Industry, CA	4	01/30/1998
11869–N	Driscoll Children's Hospital, Corpus Christi, TX	4	01/30/1998
11881–N	Wampum Hardware Co., New Galilee, PA	4	01/30/1998
970–M	Callery Chemical Corp., Pittsburgh, PA	4	12/31/1997
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	12/31/1997
5493–M	Montana Sulphur & Chemical Co., Billings, MT	4	11/28/1997
5876–M	FMC Corp., Philadelphia, PA	4	11/28/1997
6117–M	Montana Sulphur & Chemical Co., Billings, MT	4	11/28/1997
6610–M	ARCO Chemical Co., Newtown Square, PA	4	11/28/1997
7517–M	Trinity Industries, Inc., Dallas, TX	4	11/28/1997
7879–M	Halliburton Energy Services, Duncan, OK	4	11/28/1997
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	12/31/1997
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY	4	11/28/1997
9266–M	ERMEWA, Inc., Houston, TX	4	11/28/1997
9413–M	EM Science, Cincinnati, OH	4	11/28/1997
9706–M	Taylor-Wharton, Harrisburg, PA	4	12/31/1997
9819–M	Halliburton Energy Services, Duncan, OK	4	12/31/1997
10429–M	Baker Performance Chemicals, Inc., Houston, TX	4	12/31/1997
10677–M	Primus AB, S–71 26 Solna, SW	4	12/30/1997
10798–M	Olin Corp., Stamford, Ct	4	12/31/1997
11005–M	Pressure Technology, Inc., Hanover, MD	4	01/30/1998
11025–M	Mass Systems Inc., Baldwin Park, CA	4	11/30/1997
11058–M	Spex Certiprep, Inc., Metuchen, NJ	4	12/31/1997
11244–M	Aerospace Design & Development, Inc., Niwot, CO	4	01/30/9198
11536–M	Hughes Space & Communications Co., Los Angeles, CA	4	11/30/1997
11579–M	Dyno Nobel Inc., Salt Lake City, UT	4	12/31/1997
11580–M	The Columbiana Boiler Co., Columbiana, OH	4	12/31/1997

[FR Doc. 97–29466 Filed 11–6–97; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33497]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) from Hobart, CA, near milepost 3.1, to Thenard, CA, near milepost 21.7, a distance of approximately 18.6 miles.

The transaction was scheduled to be consummated on November 1, 1997. Because the exemption was filed on October 27, 1997, the transaction could be consummated no sooner than November 3, 1997.

The purpose of the trackage rights is to improve the operating efficiencies of the BNSF.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33497 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, Esq., The Burlington Northern and Santa Fe Railway Company, P. O. Box 961039, Fort Worth, TX 76161–0039.

Decided: October 31, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–29492 Filed 11–6–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33499]

Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—Illinois Central Railroad Company

Illinois Central Railroad Company (IC) has agreed to grant non-exclusive overhead trackage rights to Grand Trunk Western Railroad Incorporated (GTW) over 7.83 miles of IC's mainline track between IC's connection with GTW at Harvey, IL (milepost 19.77) and IC's connection with Norfolk Southern Railway Company (NS) at Chicago, IL (milepost 11.94), with the right to move from either milepost 19.77 or milepost 11.94 to IC's connection with the Indiana Harbor Belt Railroad Company (IHB) at HiLawn/140th Street in Riverdale, IL (milepost 17.77).

The transaction is scheduled to be consummated on or after November 4, 1997, the effective date of the exemption.

The purpose of the local trackage rights is to enable GTW (1) to expedite movement of predominantly automotive traffic to NS at Calumet Yard in Chicago, IL, and to move light locomotives back, and (2) to access the IHB.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33499, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert P. vom Eigen, Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006.

Decided: October 31, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–29491 Filed 11–6–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center; Meeting

AGENCY: Advisory Committee to the National Center for State, Local, and International Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes remarks by Charles Rinkevich, Director of the Federal Law Enforcement Training Center (FLETC); Elizabeth Bresee and Laurie Robinson, Committee Co-chairs; and presentations regarding the Small Town and Rural Training Series (STAR); Community Oriented Policing Services (COPS) Program; Domestic Violence Training Program; Interagency Agreement with Bureau of Justice Assistance (BJA); and an update on Treasury initiative regarding the Guns Tracking Program. Presentations regarding international programs will include the International Law Enforcement Academy in Central America (ILEA-South); recent Agreements and Memorandums of Understanding with DOS; and an update on the Russian initiative. There will also be an update on the Leadership Development Program.

DATES: November 19, 1997.

ADDRESSES: Federal Law Enforcement Training Center Artesia, New Mexico.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, Director, National Center for State, Local, and International Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, Georgia 31524, 1–800–743–5382.

Dated: October 29, 1997.

Steve Kernes,

Acting Director, National Center for State, Local, and International Law Enforcement Training.

[FR Doc. 97–29427 Filed 11–6–97; 8:45 am]

BILLING CODE 4810–32–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–31: OTS No. 4947]

Union Federal Savings and Loan Association, Crawfordsville, Indiana; Approval of Conversion Application

Notice is hereby given that on October 31, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Union Federal Savings and Loan Association, Crawfordsville, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: November 3, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–29416 Filed 11–6–97; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

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 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''CHINA: 5000 YEARS'' (see list) [1], imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Guggenheim Museum from on or about January 29, 1998, through on or about June 3, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

Dated: November 3, 1997.

Les Jin,

General Counsel.

[FR Doc. 97–29484 Filed 11–6–97; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at (202) 619–5030. The address is U.S. Information Agency, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Corrections

Federal Register
Vol. 62, No. 216
Friday, November 7, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION–

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96-ASW-30]

Proposed Modification to the Gulf of Mexico High Offshore Airspace Area

Correction

In proposed rule document 97–24102 beginning on page 47781, in the issue of Thursday, September 11, 1997, make the following corrections:

§ 71.1 [Corrected]

On page 47783, in the second column, in § 71.1, under the heading **Gulf of Mexico High [Revised]**:

a. In the tenth line, ''26°00′006″ N.'' should read ''26°00′00″ N.''

b. In the third line from the bottom, ''95′35″00″ W.'' should read ''95′30#′00″ W.''

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Friday
November 7, 1997

Part II

Environmental Protection Agency

40 CFR Part 52

Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5911–7]

Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: In accordance with the Clean Air Act (CAA), today's action is a proposed rulemaking to require certain States to submit State implementation plan (SIP) measures to ensure that emission reductions are achieved as needed to mitigate transport of ozone (smog) pollution and one of its main precursors—emissions of oxides of nitrogen (NO_X)— across State boundaries in the eastern half of the United States. The States affected by today's action are in the Ozone Transport Assessment Group (OTAG) Region.

Today's action proposes to find that the transport of ozone from certain States in the OTAG region (the 37 eastern most States and the District of Columbia) significantly contributes to nonattainment of the ozone national ambient air quality standards (NAAQS), or interferes with maintenance of the NAAQS, in downwind States. This proposal explains the basis for determining significant contribution or interference with maintenance for the affected States. Further, by today's action, EPA is proposing the appropriate levels of NO_X emissions that each of the affected States will be required to achieve.

The EPA is committed to promulgate final action on the proposed rule within 12 months from the date of publication of today's action.

DATES: The EPA is establishing a 120-day comment period, ending on March 9, 1998. For additional information on the comment period, please refer to **SUPPLEMENTARY INFORMATION.** A public hearing will be held during the comment period, if requested. If a public hearing is requested, EPA will make an announcement in the **Federal Register**.

ADDRESSES: Documents relevant to this matter are available for inspection at the Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–96–56, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action should be addressed to Kimber Smith Scavo, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–3354. Please refer to **SUPPLEMENTARY INFORMATION** below for a list of contacts for specific subjects described in today's action.

SUPPLEMENTARY INFORMATION:

Comment Period

Because commenters may wish to submit technical information that may require additional time to develop, EPA will accept additional pertinent information beyond the 120-day time frame and will do what is possible to take the information into account for the final rulemaking. The EPA will make every effort to consider this information. However, due to the time frames associated with this action, EPA cannot guarantee that information submitted after the close of the comment period will be considered. The EPA is committed to publish the final rulemaking within 12 months of the date of today's action.

Electronic Availability

The official record for this rulemaking, as well as the public version, has been established under docket number A–96–56 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–96–56. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Availability of Related Information

Documents related to OTAG are available on the Agency's Office of Air Quality Planning and Standards' (OAQPS) Technology Transfer Network (TTN) Bulletin Board System (BBS). The telephone number for the TTN BBS is (919) 541–5742. To access the bulletin board a modem and communications software are necessary. The following parameters on the communications software are required: Data Bits-8; Parity-N; and Stop Bits-1. The documents are located on the OTAG BBS. The TTN can also be accessed via the web at http://www.epa.gov/ttn. If assistance is needed in accessing the system, call the help desk at (919) 541-5384 in Research Triangle Park, NC. Other documents related to OTAG can be downloaded from OTAG's webpage at http://www.epa.gov/ttn/otag. The OTAG's technical data are located at http://www.iceis.mcnc.org/OTAGDC.

For Additional Information

For technical questions related to the determination of significant contribution, please contact Norm Possiel, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, MD–13, Research Triangle Park, NC 27711, telephone (919) 541–5692. For legal questions, please contact Howard Hoffman, Office of General Counsel, 401 M Street SW, MC–2344, Washington, DC, 20460, telephone (202) 260–5892. For questions concerning the statewide emission budgets, please contact Doug Grano, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–3292. For questions concerning SIP approvability, please contact Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–3347. For questions concerning the cost analysis, please contact Sam Napolitano, Office of Atmospheric Programs, MC–6201J, 401 M Street SW, Washington, DC 20460, telephone (202) 233–9751.

Outline

I. Preamble

A. Summary of Rulemaking and Affected States

The CAA has set forth many requirements to address nonattainment of the ozone NAAQS. Many States have found it difficult to demonstrate attainment of the NAAQS due to the widespread transport of ozone and its precursors. The Environmental Council of the States (ECOS) recommended formation of a national work group to allow for a thoughtful assessment and development of consensus solutions to the problem. This work group, OTAG, was established 2 years ago to undertake an assessment of the regional transport problem in the Eastern half of the United States. The OTAG was a collaborative process conducted by representatives from the affected States, EPA, and interested members of the

public, including environmental groups and industry, to evaluate the ozone transport problem and develop solutions. The OTAG region includes the following 37 States and the District of Columbia: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin. Today's action builds on the work of OTAG.

Through the OTAG process, the States concluded that widespread NO_X reductions are needed in order to enable areas to attain and maintain the ozone NAAQS. The EPA believes, based on data generated by OTAG and other data sources, that certain downwind States receive amounts of transported ozone and ozone precursors that significantly contribute to nonattainment in the downwind States. Today's action proposes SIP requirements under section 110(a)(1) and section 110(k)(5) in order to meet the requirements of section 110(a)(2)(D) to prohibit ozone precursor emissions from sources or activities in those States from ''contribut(ing) significantly to nonattainment in, or interfer(ing) with maintenance by,'' a downwind State of the ozone NAAQS.

Upon this determination, the EPA is requiring SIP revisions in order to take steps toward ensuring that the necessary regional reductions are achieved that will enable current ozone nonattainment areas in the eastern half of the United States to prepare attainment demonstrations and that will enable all areas to demonstrate noninterference with maintenance of the ozone standard.

The OTAG's July 8, 1997 final recommendations (see Section I.F. OTAG Process and Appendix B) identify control measures for States to achieve additional reductions in emissions of NO_X and do not identify such measures for volatile organic compounds (VOC) beyond EPA's promulgation of national VOC measures. The OTAG Regional and Urban Scale Modeling and Air Quality Analysis Work Groups reached the following relevant conclusions:

- Regional NO_X emissions reductions are effective in producing ozone benefits; the more NO_X reduced, the greater the benefit.
- VOC controls are effective in reducing ozone locally and are most advantageous to urban nonattainment areas. (See Appendix B).

The EPA agrees with these OTAG conclusions and, thus, is not proposing new SIP requirements for VOC emissions for the purpose of reducing the interstate transport of ozone. States may, however, need to consider additional reductions in VOC emissions as they develop local plans to attain and maintain the ozone standards.

Therefore, this rulemaking is intended to make a finding of significant contribution to a nonattainment problem, or interference with a maintenance problem, and to assign, specifically, the emissions budgets for NO_X that each of the identified States must meet through SIP measures. As indicated, the EPA is proposing to require the submission of SIP controls to meet the specified budgets. However, this requirement permits each State to choose for itself what measures to adopt to meet the necessary emission budget. Consistent with OTAG's recommendations to achieve NO_X emission decreases primarily from large stationary sources in a trading program, EPA encourages States to consider electric utility and large boiler controls under a cap-and-trade program as a cost-effective strategy. This is described in more detail in section III, Statewide Emission Budgets. The EPA also recognizes that promotion of energy efficiency can contribute to a cost-effective strategy. The EPA is working to develop guidance on how States can integrate energy efficiency into their SIPs to help meet their NO_X budgets at least cost.

The EPA proposes to find, after considering OTAG's recommendations and other relevant information, that the following 22 States and the District of Columbia significantly contribute to nonattainment in, or interfere with maintenance by, a downwind State: Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. These findings proposed today reflect the air quality modeling and other technical work done by OTAG, as well as other relevant information.

Under this proposal, these States would be required to adopt and submit, within 12 months after publication of the notice of final rulemaking, SIPs containing control measures that will mitigate the ozone transport problem by meeting the assigned statewide emissions budget. Section II, Weight of Evidence Determination of Significant Contribution, describes how EPA determined which States to propose as significant contributors, and section III, Statewide Emission Budgets, describes how EPA determined the appropriate statewide emission budgets and proposes to assign specific emission budgets for the States identified above. Section V, SIP Revisions and Approvability Criteria, describes the proposed SIP requirements.

The EPA believes that expedited implementation of regional control strategies to facilitate attainment is necessary. On July 18, 1997, EPA published its final rule for strengthening the NAAQS for ozone by establishing a new, 8-hour NAAQS (62 FR 38856). This results in more areas and larger areas with monitoring data indicating nonattainment. Thus, it will be even more critical to implement regional control strategies which will mitigate transport into areas in violation of the new standard and thus enable these areas to demonstrate attainment. The regional NO_X reduction strategy proposed in today's action will provide a mechanism to achieve reductions that will be necessary for States to enable them to attain and maintain this revised standard. The proposed regional reductions alone should be enough to allow most of the new nonattainment counties in States covered by this rulemaking to be able to comply with the new standard. States that are not required to comply with the requirements set forth in today's action would also benefit from the NO_X strategy EPA is proposing if they adopt similar measures. On July 16, 1997, President Clinton issued a directive on the implementation of the revised air quality standards. This implementation policy is described in section IV, Implementation of Revised Air Quality Standards.

Many of the States that EPA is not proposing to find as significant contributors to the ozone nonattainment problem, and, therefore, do not have a proposed NO_X statewide emissions budget to mitigate ozone transport, still may need, as recommended by OTAG, to cooperate and coordinate SIP development activities with other States. States with local interstate nonattainment areas for the 1-hour standard and/or the new 8-hour standard are expected to work together to reduce emissions to mitigate local scale interstate transport problems in order to provide for attainment in the nonattainment area as a whole.

In addition, areas in these States (those covered by OTAG modeling but

not covered by this proposal) may be able to receive the transitional classification as described in section IV, Implementation of Revised Air Quality Standards. An area in the State would satisfy one of the eligibility requirements for the transitional area classification by attaining the 1-hour standard and submitting a SIP attainment demonstration by 2000 for the 8-hour standard. The OTAG's modeling (in particular, OTAG strategy Run 5 described in section II.B.2, OTAG Strategy Modeling) shows that a strategy in which a State adopted NO_X emission decreases similar to those EPA proposes to establish in this rulemaking would be helpful in achieving attainment in most of these areas. The EPA strongly suggests that these States (those covered by OTAG modeling but not covered by this proposal) with new nonattainment counties for the 8-hour standard should consider the option of this strategy since our analysis indicates that nearly all new nonattainment counties are projected to come into attainment as a result of this strategy. The benefits of this regional strategy for States not required to implement the proposed strategy under this rulemaking are described below in section VI, States Not Covered by this Rulemaking.

The EPA plans to publish a supplemental notice of proposed rulemaking (SNPR) in early 1998. The Agency intends to include in the SNPR a proposed model cap-and-trade rule, air quality analyses of the proposed statewide emission budgets, emissions reporting and State reporting requirements, a discussion of the interaction with the Title IV NO_X rule (including EPA's plans to proceed with rulemaking on remanded elements of that rule relating to flexible implementation where an appropriate cap-and-trade system is in place), and proposed rule language for the rulemaking discussed in today's action. There will be another public comment period following publication of the SNPR. All comments received regarding either today's action or the proposed rule language in the SNPR will be considered before promulgation of a final rule.

B. General Factual Background

In today's proposal, EPA takes a significant step in order to reduce ozone in the eastern half of the country. Ground-level ozone, the main harmful ingredient in smog, is produced in complex chemical reactions when its precursors, VOC and NO_X, react in the presence of sunlight. The chemical reactions that create ozone take place while the pollutants are being blown through the air by the wind, which means that ozone can be more severe many miles away from the source of emissions than it is at the source.

At ground level, ozone can cause a variety of ill effects to human health, crops and trees. Specifically, ground-level ozone induces the following health effects:

- Decreased lung function, primarily in children active outdoors.
- Increased respiratory symptoms, particularly in highly sensitive individuals.
- Hospital admissions and emergency room visits for respiratory causes, among children and adults with pre-existing respiratory disease such as asthma.
- Inflammation of the lung.
- Possible long-term damage to the lungs.

The new 8-hour primary ambient air quality standard will provide increased protection to the public from these health effects.

Each year, ground-level ozone above background is also responsible for several hundred million dollars worth of agricultural crop yield loss. It is estimated that full compliance of the newly promulgated ozone NAAQS will result in about $500 million of prevented crop yield loss. Ozone also causes noticeable foliar damage in many crops, trees, and ornamental plants (i.e., grass, flowers, shrubs, and trees) and causes reduced growth in plants. Studies indicate that current ambient levels of ozone are responsible for damage to forests and ecosystems (including habitat for native animal species).

The science of ozone formation, transport, and accumulation is complex. Ozone is produced and destroyed in a cyclical set of chemical reactions involving NO_X, VOC and sunlight. Emissions of NO_X and VOC are necessary for the formation of ozone in the lower atmosphere. In part of the cycle of reactions, ozone concentrations in an area can be lowered by the reaction of nitric oxide with ozone, forming nitrogen dioxide; as the air moves downwind and the cycle continues, the nitrogen dioxide forms additional ozone. The importance of this reaction depends, in part, on the relative concentrations of NO_X, VOC and ozone, all of which change with time and location.

As part of the efforts to reduce harmful levels of smog, EPA today proposes to require certain States to revise their SIPs in order to implement the regional reductions in transported ozone and its precursors that are needed to enable areas in the Eastern United States to attain and maintain the NAAQS. Since air pollution travels across county and State lines, it is essential for State governments and air pollution control agencies to cooperate to solve the problem.

C. Statutory and Regulatory Background

1. Clean Air Act Provisions

a. 1970 and 1977 Clean Air Act Amendments. For almost 30 years, Congress has focused major efforts on curbing tropospheric ozone. In 1970, Congress amended title I of the CAA to require, among other things, that EPA issue, and periodically review and if necessary revise, NAAQS for ubiquitous air pollutants (sections 108 and 109). Congress required the States to submit SIPs to attain those NAAQS, and Congress included, in section 110, a list of minimum requirements that SIPs must meet. Congress anticipated that areas would attain the NAAQS by 1975.

In 1977, Congress amended the CAA to provide, among other things, additional time for areas to attain the ozone NAAQS, as well as to impose specific SIP requirements for those nonattainment areas. These provisions first required the designation of areas as attainment, nonattainment, or unclassified, under section 107; and then required that SIPs for ozone nonattainment areas include the additional provisions set out in part D of title I, as well as demonstrations of attainment of the ozone NAAQS by either 1982 or 1987 (section 172).

In addition, the 1977 Amendments included two provisions focused on interstate transport of air pollutants: the predecessor to current section 110(a)(2)(D), which requires SIPs for all areas to constrain emissions with certain adverse downwind effects; and section 126, which authorizes a downwind State (or political subdivision) to petition for EPA to impose limits directly on upwind sources found to adversely affect that State. Section 110(a)(2)(D), which is key to the present action, is described in more detail below.

b. 1990 Clean Air Act Amendments. In 1990, Congress amended the CAA to better address, among other things, continued nonattainment of the 1-hour ozone NAAQS, the requirements that would apply if EPA revised the 1-hour standard, and transport of air pollutants across State boundaries (Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Numerous provisions added, or revised, by the 1990 Amendments are relevant to today's proposal.

i. 1-hour Ozone NAAQS. In the 1990 Amendments, Congress required the States and EPA to review and, if necessary, revise the designation of areas as attainment, nonattainment, and unclassifiable under the ozone NAAQS in effect at that time, which was the 1-hour standard (section 107(d)(4)). Areas designated as nonattainment were divided into, primarily, five classifications based on air quality design value (section 181(a)(1)). Each classification carries specific requirements, including new attainment dates (sections 181–182). In increasing severity of the air quality problem, these classifications are marginal, moderate, serious, severe and extreme. The OTAG region includes all classifications except extreme.

As amended in 1990, the CAA requires States containing ozone nonattainment areas classified as serious, severe, or extreme to submit several SIP revisions at various times. One set of SIP revisions included specified control measures, such as reasonably available control technology (RACT) for existing VOC and NO_X sources (section 182(b)(2), 182(f)). In addition, the CAA requires the reduction of VOC in the amount of 15 percent by 1996 from a 1990 baseline (section 182(b)(1)). Further, the CAA requires the reduction of VOC or NO_X emissions in the amount of 9 percent over each 3-year period from 1996 through the attainment date (the rate-of-progress (ROP) SIP submittals) under section 182(c)(2)(B). In addition, the CAA requires a demonstration of attainment (including air quality modeling) for the nonattainment area (the attainment demonstration), as well as SIP measures containing any additional reductions that may be necessary to attain by the applicable attainment date (section 182(c)–(e)). The CAA established November 15, 1994 as the required date for the ROP and attainment demonstration SIP submittals.[1]

ii. Revised Ozone NAAQS. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of the NAAQS. As amended in 1990, the CAA further requires designating areas as attainment, nonattainment, and unclassifiable under a revised NAAQS (section 107(d)(1)). The CAA authorizes EPA to classify areas that are designated nonattainment under a new NAAQS, and to establish for those areas attainment dates not to exceed 10 years from the date of designation (section 172(a)).

The CAA continues, in revised form, certain requirements, dating from the 1970 Amendments, which pertain to all areas, regardless of their designation. All areas are required to submit SIPs within certain time frames (section 110(a)(1)), and those SIPs must include specified provisions, under section 110(a)(2). In addition, SIPs for nonattainment areas are generally required to include additional specified control requirements, as well as controls providing for attainment of the revised NAAQS and periodic reductions providing ''reasonable further progress'' in the interim (section 172(c)).

iii. Provisions Concerning Transport of Ozone and Its Precursors. The 1990 Amendments reflect general awareness by Congress that ozone is a regional, and not merely a local, problem. As described above, ozone and its precursors may be transported long distances across State lines to combine with ozone and precursors downwind, thereby exacerbating the ozone problems downwind. In the case of ozone, this transport phenomenon was not generally recognized until relatively recently. Yet, ozone transport is a major reason for the persistence of the ozone problem, notwithstanding the imposition of numerous controls, both Federal and State, across the country.

Section 110(a)(2)(D) provides one of the most important tools for addressing the problem of transport. This provision, which applies by its terms to all SIPs for each pollutant covered by a NAAQS, and for all areas regardless of their attainment designation, provides that a SIP must contain provisions preventing its sources from contributing significantly to nonattainment problems or interfering with maintenance in downwind States.

Section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet any CAA requirement, as well as to mitigate interstate transport of the type described in section 184 (concerning ozone transport in the northeast) or section 176A (concerning interstate transport in general) and thereby require the State to submit, within a specified period, a SIP revision to correct the inadequacy. The CAA further addresses interstate transport of pollution in section 126, which Congress clarified in 1990. Subparagraph (b) of that provision authorizes each State (or political subdivision) to petition EPA for a finding that emissions from ''any major source or group of stationary sources'' in an upwind State contribute significantly to nonattainment in, or interfere with maintenance by, the downwind State. If EPA makes such a finding in support of a section 126 petition, EPA would impose limits on the affected source or group of sources (section 126(c)).[2]

In addition, the 1990 Amendments included specific provisions focused on the interstate transport of ozone. Section 184 delineates a multistate ozone transport region (OTR) in the Northeast, requires specific additional controls for all areas (not only nonattainment areas) in that region, and establishes the Ozone Transport Commission (OTC) for the purpose of recommending to EPA regionwide controls affecting all areas in that region.

2. Regulatory Structure

a. March 2, 1995 Policy. Notwithstanding significant efforts, the States generally were not able to meet the November 15, 1994 statutory deadline for the attainment demonstration and other SIP submissions required under section 182(c). The major reason for this failure was that States were not able to address or control transport. As a result, in a memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, dated March 2, 1995, entitled ''Ozone Attainment Demonstrations,'' (March 2, 1995 Memorandum or the Memorandum), EPA recognized the efforts made by States and the remaining difficulties in making the ROP and attainment demonstration submittals. The EPA recognized that development of the necessary technical information, as well as the control measures necessary to achieve the large level of reductions likely to be required, had been particularly difficult for the States affected by ozone transport.

Accordingly, as an administrative remedial matter, the Memorandum indicated that EPA would establish new time frames for SIP submittals. The Memorandum indicated that EPA would divide the required SIP submittals into two phases. Phase I generally consisted of: SIP measures providing for ROP reductions due by the end of 1999, an enforceable SIP commitment to submit any remaining required ROP reductions on a specified schedule after 1996, and an enforceable SIP commitment to submit the additional SIP measures needed for attainment. Phase II consists of the remaining submittals, beginning in 1997.

Ten States and the District of Columbia failed to submit Phase I

[1] For moderate ozone nonattainment areas, the attainment demonstration was due November 15, 1993 (section 182(b)(1)(A), except that if the State elected to conduct an urban airshed model, EPA allowed an extension to November 15, 1994.

[2] In addition, section 115 authorizes EPA to require a SIP revision when a State's emitters ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country.''

elements within the specified time. By notice dated July 10, 1996 (61 FR 36292), EPA issued findings and thereby started sanctions clocks for these areas for those Phase I submittals.

The Phase II submittals primarily consisted of the remaining ROP SIP measures, the attainment demonstration and additional local rules needed to attain, and any regional controls needed for attainment by all areas in the region. The March 2, 1995 Memorandum indicated that the attainment demonstration, target calculations for the post-1999 ROP milestones, and identification of rules needed to attain and for post-1999 ROP were due in mid-1997. To allow time for States to incorporate the results of the OTAG modeling into their local plans, EPA, in its Final Policy for Implementation of the 1-hour and Pre-Existing PM–10 Standards, is extending the mid-1997 submittal date to April 1998.

b. OTAG. In addition, the March 2 1995 Memorandum called for an assessment of the ozone transport phenomenon. The Environmental Council of States (ECOS) had recommended formation of a national work group to allow for a thoughtful assessment and development of consensus solutions to the problem. The OTAG has been a partnership between EPA, the 37 easternmost States and the District of Columbia, industry representatives and environmental groups. This effort has created an opportunity for the development of an Eastern United States ozone strategy to address transport and to assist in attainment of the 1-hour ambient ozone standard.

The EPA believes that the OTAG process has been invaluable in demonstrating the types of regional ozone precursor reductions that are needed to enable areas in the Eastern United States to attain and maintain the ambient air quality standard for ozone. Indeed, today's action to propose to mandate SIP revisions under section 110(a)(2)(D) is a first step directed at providing the regulatory structure to implement the kinds of broad regional precursor reductions recommended by OTAG.

c. EPA's Transport SIP Call Regulatory Efforts. Shortly after OTAG began its work, EPA began to indicate that it intended to issue a SIP call to require States to implement the reductions necessary to address the ozone transport problem. On January 10, 1997 (62 FR 1420), EPA published a Notice of Intent that articulated this goal and indicated that before taking final action, EPA would carefully consider the technical work and any recommendations of OTAG.

By a letter to Mary Gade, Chair of OTAG, dated April 16, 1997, EPA Assistant Administrator Mary D. Nichols stated that on the basis of technical work performed by EPA staff, it appeared that EPA would issue a SIP call to specified States and the District of Columbia. The EPA staff issued a technical support document, ''Preliminary Assessment of States Making a Significant Contribution to Downwind Ozone Nonattainment,'' dated April, 1997, which explained EPA's technical basis for those tentative conclusions. Please refer to section II, Weight of Evidence Determination of Significant Contribution, for EPA's revised conclusions.

As described below in section I.F., OTAG Process, OTAG completed its work in June 1997 and issued its final recommendations to EPA on July 8, 1997. The OTAG's technical work and recommendations form part of the basis of today's proposal.

d. Revision of the Ozone NAAQS. On July 18, 1997 (62 FR 38856), EPA issued its final action to revise the NAAQS for ozone. The EPA's decision to revise the standard was based on the Agency's review of the available scientific evidence linking exposures to ambient ozone to adverse health and welfare effects at levels allowed by the pre-existing 1-hour ozone standards. The 1-hour primary standard was replaced by an 8-hour standard at a level of 0.08 parts per million (ppm), with a form based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor within an area. The new primary standard will provide increased protection to the public, especially children and other at-risk populations, against a wide range of ozone-induced health effects. Health effects are described in section I.B, General Factual Background. The EPA retained the applicability of the 1-hour NAAQS for certain areas to ensure adequate health protection during the transition to full implementation of the 8-hour NAAQS.

The pre-existing 1-hour secondary ozone standard was replaced by an 8-hour standard identical to the new primary standard. The new secondary standard will provide increased protection to the public welfare against ozone-induced effects on vegetation as described in section I.B, General Factual Background.

e. Impacts of NO_X Emissions. At the August 7, 1997 Clean Air Act Advisory Committee meeting, EPA announced the availability of a document (''Nitrogen Oxides: Impacts on Public Health and the Environment,'' EPA–452/R–97–002, August 1997) that describes the multiple impacts of NO_X emissions on public health and the environment and the consequent implications for national policy. In addition to helping attain public health standards for ozone, decreases in emissions of NO_X are helpful to reducing acid deposition, greenhouse gases, nitrates in drinking water, stratospheric ozone depletion, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. These impacts are described in more detail in section X, Nonozone Benefits of NO_X Reductions.

D. EPA's Proposed Analytical Approach

1. Process for Requiring Submission of Section 110(a)(2)(D) SIP Revisions

As described above, SIPs for all areas must meet the requirements of section 110(a)(2), including section 110(a)(2)(D), which imposes limits on sources that affect the ability of downwind areas to attain and maintain the NAAQS. Because many areas are currently required to attain two ozone NAAQS—the 1-hour standard and the 8-hour standard—with different SIP planning requirements, EPA proposes that section 110(a)(2)(D) be applied in different ways with respect to each of the ozone NAAQS.

Under the 1-hour ozone NAAQS, each area is currently required to have a SIP in place. Moreover, EPA has determined that the 1-hour standard will continue to apply to areas designated nonattainment for the 1-hour NAAQS until EPA determines that the area has air quality meeting this standard (40 CFR 50.9(a) (62 FR 38894 (July 18, 1997)). Accordingly, each area is under a current obligation to include in its SIP, provisions that meet the requirements of section 110(a)(2)(D) for the 1-hour NAAQS.

This obligation to meet section 110(a)(2)(D) under the 1-hour standard applies even after EPA determines that an upwind area has attained the 1-hour standard, and the applicability of that standard thereby terminates for the upwind area. Regardless of the status of the 1-hour standard with respect to the upwind area's air quality, a downwind area may continue to have a nonattainment problem under the 1-hour standard, and the upwind area's sources may continue to impact that downwind nonattainment problem. Under these circumstances, the upwind area would be required to retain or adopt SIP provisions that meet the requirements of section 110(a)(2)(D).

To assure that SIPs include required controls, section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet an CAA requirement, and to require (''call for'') the State to submit, within a specified period, a SIP revision to correct the inadequacy. This EPA requirement for a SIP revision is known as a ''SIP call.'' Specifically, section 110(k)(5) provides, in relevant part:

> Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS], to mitigate adequately the interstate pollutant transport described in section 176A or section 184, or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.

By today's action, EPA is proposing to determine that the SIPs under the 1-hour ozone NAAQS for the States identified in today's action are substantially inadequate to comply with the requirements of section 110(a)(2)(D) and to mitigate adequately the regional, interstate ozone transport described in section 184, because ozone precursor emissions and transported ozone from those States contribute significantly to nonattainment downwind. Based on these findings, EPA today proposes a SIP call to require the identified States to reduce emissions to mitigate their contribution.

If a State fails to submit the required SIP provisions in response to this SIP call, EPA is required to issue a finding that the State failed to make a required SIP submittal under section 179(a). This finding has implications for sanctions as well as EPA's promulgation of a Federal implementation plan (FIP). Sanctions and a FIP are discussed in section V., SIP Revisions and Approvability Criteria.

Under the 8-hour ozone NAAQS, areas have not yet been designated as attainment, nonattainment, or unclassifiable, and are not yet required to have SIPs in place. When those SIPs become due, they must meet the applicable requirements of section 110, which apply to all areas, and SIPs for areas designated nonattainment must also meet the additional requirements in subpart 1 of part D applicable to nonattainment areas.

Section 110(a)(1) provides, in relevant part—

> Each State shall * * * adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) * * * a plan which provides for implementation, maintenance, and enforcement of such primary standard in each (area) within such State.

Section 110(a)(2) provides, in relevant part—

> Each implementation plan submitted by a State under this CAA shall be adopted by the State after reasonable notice and public hearing. Each such plan shall (meet certain requirements, including those found in section 110(a)(2)(D)).

These two provisions, read together, require SIP revisions under the revised NAAQS within 3 years of the date of the revision, or earlier if EPA so requires, and require that those SIP revisions meet the requirements of section 110(a)(2), including subparagraph (D). It should be noted that the schedule for these section 110(a)(2) SIP submissions for all ozone areas differs from the schedule for the SIP submissions required under section 172(b) for part D SIP submissions for ozone nonattainment areas. These part D SIP submissions are required for all areas that are designated nonattainment under the 8-hour NAAQS and must be submitted within 3 years of the date of designation. The submission of SIP revisions containing the regional NO_X reductions proposed under this rulemaking earlier than the part D nonattainment submissions will assist the downwind nonattainment areas in their attainment planning.

The EPA believes it has the authority to establish different submittal schedules for different parts of the section 110(a)(1) SIP revision. Specifically, EPA proposes to require first the portion of the section 110(a)(1) SIP revision that contains the controls required under section 110(a)(2)(D). The EPA proposes to require the section 110(a)(2)(D) submittal first for the purpose of securing upwind reductions at an earlier stage in the regional SIP planning process. This information on controls in upwind States is essential to the downwind States in the latter States' attainment planning.

In summary, EPA is proposing to determine, under section 110(k), that the 1-hour ozone NAAQS SIPs for certain States are deficient because the SIPs do not impose sufficient controls on their sources to meet the requirements of section 110(a)(2)(D), and EPA is proposing to require those States to submit SIP revisions containing adequate controls. The EPA is proposing to require, under section 110(a)(1), that certain States must submit SIP revisions under the 8-hour ozone NAAQS to meet the requirements of section 110(a)(2)(D). For simplicity, today's rulemaking occasionally uses the term ''SIP call'' to describe both EPA actions.

2. Overview of Elements of Section 110(a)(2)(D)

a. *Summary of Section 110(a)(2)(D).* As noted above, section 110(a)(2)(D) is the operative provision for determining whether additional controls are required to mitigate the impact of upwind sources on downwind air quality, with respect to both the 1-hour and 8-hour ozone NAAQS. Separate determinations must be made for each NAAQS.

Section 110(a)(2)(D) provides, in relevant part, that each SIP must:

> * * * contain adequate provisions * * * prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will * * * contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard * * *.

According to section 110(a)(2)(D), the SIP for each area, regardless of its designation as nonattainment or attainment (including unclassifiable), must prohibit sources within the area from emitting emissions that: ''contribute significantly'' to ''nonattainment'' in a downwind State, or that ''interfere with maintenance'' in a downwind State.

b. Significant Contribution to Nonattainment. The initial prong under section 110(a)(2)(D) is whether sources ''contribute significantly'' to ''nonattainment in * * * any other State'' with respect to the NAAQS. The initial inquiry for this prong is to identify and determine the geographic scope of ''nonattainment'' downwind. The EPA proposes to interpret this term to refer to air quality and not to be limited to currently-designated nonattainment areas. Section 110(a)(2)(D) does not refer to ''nonattainment areas,'' which is a phrase that EPA interprets to refer to areas that are designated nonattainment under section 107 (section 107(d)(1)(A)(I)). Rather, the provision includes only the term ''nonattainment'' and does not define that term. Under these circumstances, EPA has discretion to give the term a reasonable definition, and EPA proposes to define it to include areas whose air quality currently violates the NAAQS, and will likely continue for some time to violate,

regardless of the designation of those areas (compare section 181(b)(2)(A) (referring to ozone ''nonattainment area'' which EPA interprets as an area designated nonattainment) and section 211(k)(10)(D)).

For present purposes, EPA is examining the air quality for the 1993–1995 years, but EPA expects to refer to 1996 (and perhaps 1997) data as the rulemaking proceeds.

As discussed below, to determine whether emissions from sources in an upwind area significantly contribute to nonattainment downwind, EPA proposes to compare NO_X emissions reductions upwind with ozone reductions downwind. For this purpose, EPA assumes that areas with current air quality indicating nonattainment for the 1-hour standard will be required to implement certain controls under the CAA, through the year 2007, which is the attainment date for ozone nonattainment areas classified as severe-17. Accordingly, EPA proposes to determine, through air quality modeling, which areas with current air quality indicating nonattainment for both the 1-hour and 8-hour standards will continue to be in nonattainment in the year 2007, even after implementation of controls specifically required under the CAA. Because this projection is occurring through the year 2007, it is also necessary to take into account growth in emissions, generally due to economic growth and greater use of vehicles, to that time. If an area with air quality currently indicating nonattainment is modeled to continue to be in nonattainment as of the year 2007, then emissions from sources in upwind areas may be considered to ''contribute significantly'' to the current nonattainment problem, depending on the factors described below. On the other hand, if an area the current air quality of which measures nonattainment is modeled to be in attainment in the year 2007 due to imposition of required CAA controls, then EPA proposes not to consider emissions from sources in upwind areas to ''contribute significantly'' to that downwind area.

The EPA's decision is explained below for choosing the year 2007 as the date for assuming the implementation of controls and for modeling air quality.

The EPA proposes a similar analysis for purposes of the 8-hour NAAQS. The EPA will consider as ''nonattainment'' any area that has monitored nonattainment air quality currently, and for which modeling shows is likely to continue to be in nonattainment in the year 2007 after application of controls specifically required under the CAA.

After determining the scope of the downwind nonattainment problem, EPA must next analyze whether the emissions from sources in the upwind area ''contribute significantly'' to the nonattainment problem. As described below, EPA analyzed all NO_X emissions in specified upwind areas, made proposed determinations as to significant contributions based on the entire inventory of the area's NO_X emissions and is requiring SIP revisions that address overall levels of NO_X emissions. By contrast, EPA is not, in this rulemaking, determining whether particular sectors of the NO_X inventory ''contribute significantly'' and is not mandating controls on particular sectors of that inventory.

Neither the CAA nor its legislative history provides meaningful guidance for interpreting the term, ''contribute significantly'' (H.Rept. 101–491, 101st Cong., 2d sess., 1990, 218). The simpler part of the analysis concerns the term, ''contribute.'' In EPA's view, if emissions have an impact on downwind nonattainment, those emissions should be considered to contribute to the nonattainment problem. Generally, because ozone is a secondary pollutant formed as a result of complex chemical reactions, it is not possible to determine downwind impact on a source-by-source basis. However, if air quality modeling shows that the aggregation of emissions from a particular geographic region affect a nonattainment problem, then all of the emissions in that region should be considered as contributors to that nonattainment problem.

Whether a contribution from sources in a particular upwind area is ''significant'' depends on the overall air quality context. The EPA is proposing a ''weight of evidence'' test under which several factors are considered together, but none of them individually constitutes a bright-line determination.

The EPA is proposing and soliciting comment on two alternative interpretations of section 110(a)(2)(D). Each of the two interpretations relies on a set of factors to make the determinations required under section 110(a)(2)(D). In addition, each of the two relies on the same factors. However, each relies on different factors in different parts of the analysis.

Under the first interpretation of section 110(a)(2)(D), the weight of evidence test for determining significant contribution focuses on factors concerning amounts of emissions and their ambient impact, including the nature of how the pollutant is formed, the level of emissions and emissions density (defined as amount of emissions per square mile) in the particular upwind area, the level of emissions in other upwind areas, the amount of contribution to ozone in the downwind area from upwind areas, and the distance between the upwind sources and the downwind nonattainment problem. Under this approach, when emissions and ambient impact reach a certain level, as assessed by reference to the factors identified above, those emissions would be considered to ''contribute significantly'' to nonattainment. The EPA would then determine what emissions reductions must be required in order to adequately mitigate these contributions. Evaluation of the costs of available measures for reducing upwind emissions enters into this determination, as well as to the extent known (at least qualitatively), the relative costs of, amounts of emission reductions from, and ambient impact of, measures available in the downwind areas. The EPA proposes to require upwind areas to implement a NO_X budget reflecting cost-effective controls that compare favorably, at least qualitatively, with the costs of controls downwind and that reduces ozone levels downwind.

Under the second interpretation of section 110(a)(2)(D), the weight of evidence test for determining significant contribution includes all of the factors identified immediately above, including the factors that comprise the adequate mitigation test. That is, the relevant factors concern upwind emissions and ambient impact therefrom, as well as the costs of the available measures for reducing upwind emissions and, to the extent known (at least qualitatively), the relative costs of, amounts of emissions reductions from, and ambient impact of measures available in the downwind areas. Thus, under this second interpretation, the cost effectiveness of controlling upwind emissions would be an important, but not necessarily a controlling factor in evaluating whether emissions meet the significant contribution test. As a result, EPA may conclude that a certain amount of the upwind emissions contributes significantly to downwind problems because, among other things, that amount may be eliminated through controls that are relatively more cost effective. However, EPA would not conclude that the remaining emissions contribute significantly because the additional available controls that might be implemented are not as cost effective. Under this second interpretation, once EPA determines what amount of emissions contribute significantly to problems downwind, the remedy would be for EPA to require the elimination of

that amount of upwind emissions and to determine the NO_X budgets accordingly.

Under either the first or second interpretation of section 110(a)(2)(D), EPA would be considering the relative costs and cost effectiveness of various controls in deciding how much each State would need to reduce its emissions. The methodology EPA would employ to reach this result under either interpretation is set forth more fully in sections II and III of today's action.

As discussed above, unhealthful levels of ozone result from emissions of NO_X and VOC from thousands of stationary sources and millions of mobile sources across a broad geographic area. Each source's contribution is a small percentage of the overall problem; indeed, it is rare for emissions from even the largest single sources to exceed 1 percent of the inventory of ozone precursors for a single metropolitan area. Under these circumstances, even complete elimination of any given source's emissions may well have no measurable impact in ameliorating the nonattainment problem. Rather, attainment requires controls on numerous sources across a broad area. Ozone is a regional scale problem that requires regional scale reductions.

The National Academy of Sciences (NAS) study, ''Rethinking the Ozone Problem in Urban and Regional Air Pollution'' (2) emphasized this aspect of ozone formation. According to this report, high concentrations of ozone occur concurrently in the Eastern United States in urban, suburban and rural areas on scales of over 1000 kilometers. The NAS report describes a ''persistent blanket of high ozone in the Eastern United States'' that can last for several days. Since rural ozone values commonly exceed 90 parts per billion (ppb) on these occasions, an urban area needs an ozone increment of only 30 ppb to cause an exceedance of the 1-hour ozone standard in a downwind area. Clearly, attainment strategies must include controls on numerous sources across broad areas.

In light of this ''collective contribution'' characteristic of ozone formation and control, EPA proposes that if contributions from an upwind area's emissions, taken together, are considered to be an important portion of the downwind area's nonattainment problem, then this factor tends to indicate that the upwind emissions as a whole, as well as each of the upwind emitters, make a ''significant'' contribution. The fact that emissions from any particular source, or even a group of sources, may in-and-of-themselves be small, does not mean those sources' emissions are not ''significant'' within the meaning of section 110(a)(2)(D). Those sources' emissions are generally ''significant'' if, when they are combined with emissions from other sources in the same upwind area, they total upwind emissions that are ''significant.'' Even so, it should be noted that the collective contribution factor is only one of various factors that EPA proposes to consider in determining whether emissions from an area constitute a ''significant'' contribution to a downwind problem. The amounts of emissions from the area and, in certain cases, emissions density, remain important factors. Depending on all the facts and circumstances, these other factors may tend to indicate that emissions from a particular area should not be considered to contribute significantly, notwithstanding the fact that those emissions may be linked in some manner with emissions from other upwind areas that are considered to be significant contributors.

In several rulemakings promulgated and court decisions handed down, in the 1980's, EPA interpreted and applied the predecessors to sections 110(a)(2)(D) and 126 (e.g., *State of New York* v. *EPA*, 852 F.2d 574 (D.C. Cir. 1988); *Air Pollution Control District of Jefferson County, Kentucky* v. *EPA*, 739 F.2d 1071 (6th Cir. 1984); *Connecticut* v. *EPA*, 696 F.2d 147 (2d Cir. 1982)). Although these rulemakings and court decisions generally employed multifactor formulas for the ''significant contribution'' test that bear some similarity to the formula EPA is proposing today, they have limited relevance to the issues in the present rulemaking because of the numerous differences in the relevant factors. For example, in the earlier rulemakings compared to the present rulemaking, the pollutants and precursors are different, and the inventories of emissions and number of emitters in the upwind and downwind areas are different. The significant contribution test is a facts-and-circumstances analysis that depends on these factors, and differences among these factors may yield different results under this test. Accordingly, the differences in the key factors between the earlier decisions and today's proposal means that those earlier decisions are not determinative for today's proposed action.

For purposes of today's rulemaking, EPA determined the amount of contribution to downwind air quality, under both the 1-hour NAAQS and the 8-hour NAAQS, by employing an air quality model that assumed a zero level of anthropogenic emissions from the various upwind areas. The results of those model runs, as well as their other assumptions and characteristics, are described in detail below.

As described below, EPA made separate determinations as to which upwind areas ''contribute significantly'' to nonattainment under the 1-hour NAAQS and under the 8-hour NAAQS. Those separate determinations resulted in identifying the same States for both the 1-hour and the 8-hour NAAQS.

c. Interfere with Maintenance. Section 110(a)(2)(D) also prohibits emissions that ''interfere with maintenance'' of the NAAQS in a downwind State. An area is obligated to maintain the NAAQS after the area has reached attainment. This requirement of section 110(a)(2)(D) does not, by its terms, incorporate the qualifier of ''significantly.'' Even so, EPA believes that for present purposes, the term ''interfere'' should be interpreted much the same as the term ''contribute significantly,'' that is, through the same weight of evidence approach.

With respect to the 1-hour NAAQS, the ''interfere-with-maintenance'' prong appears to be inapplicable. The EPA has determined that the 1-hour NAAQS will no longer apply to an area after EPA has determined that the area has attained that NAAQS. Under these circumstances, emissions from an upwind area cannot interfere with maintenance of the 1-hour NAAQS.

With respect to the 8-hour NAAQS, the ''interfere-with-maintenance'' prong remains important. After an area has reached attainment of the 8-hour NAAQS, that area is obligated to maintain that NAAQS (sections 110(a)(1) and 175A). Emissions from sources in an upwind area may interfere with that maintenance.

The EPA proposes to apply much the same approach in analyzing the first component of the ''interfere-with-maintenance'' issue, which is identifying the downwind areas whose maintenance of the NAAQS may suffer interference due to upwind emissions. The EPA has analyzed the ''interfere-with-maintenance'' issue for the 8-hour NAAQS by examining areas whose current air quality is monitored as attaining the 8-hour NAAQS, but for which air quality modeling shows nonattainment in the year 2007. This result is projected to occur, notwithstanding the imposition of certain controls required under the CAA, because of projected increases in emissions due to growth in emissions generating activity. Under these circumstances, emissions from upwind areas may interfere with the downwind area's ability to maintain the 8-hour NAAQS. Ascertaining the impact on the

downwind area's air quality of the upwind area's emissions aids in determining whether the upwind emissions interfere with maintenance.

d. Remedying the Significant Contribution. After identifying States whose sources do ''contribute significantly'' to a nonattainment problem or interfere with maintenance downwind, it is necessary to determine the appropriate limit on emissions required in each upwind SIP. The EPA is proposing, in the alternative, two different analyses for the remedies which are tied to the two alternatives for the ''weight of evidence'' test.

i. Adequate Mitigation. Under the first interpretation of section 110(a)(2)(D), EPA does not consider costs in determining whether upwind emissions contribute significantly to nonattainment or interfere with maintenance. Instead, once EPA determines, on the basis of factors generally related to emissions, that those emissions do contribute significantly to nonattainment (or interfere with maintenance), EPA then determines what emissions reductions must be required in order to adequately mitigate these contributions. Evaluation of relative costs enters into this determination.

Adequate mitigation would amount to eliminating a sufficient portion of the upwind emissions so that they no longer contribute significantly to nonattainment or interfere with maintenance.

In the present case, EPA proposes to determine an allowable level of NO_X emissions for each of the 23 jurisdictions with sources that trigger the requirements of section 110(a)(2)(D). Given the need to reduce this overall regional level of ozone, as discussed earlier, EPA determined this ''budget'' of emissions by, in the first instance, calculating the emissions achievable by applying the most reasonable, cost-effective controls on NO_X emissions in the 23 jurisdictions. The control measures considered and those determined to be the most reasonable and cost-effective are detailed below. In selecting those control measures determined to be the most reasonable and cost-effective, EPA carefully considered the recommendations made by OTAG on July 8, 1997. (The OTAG process is described in section I.F. of this rulemaking.) The budget calculations described below generally fall within the range of OTAG's recommendations.

The statewide emissions budgets proposed in this rulemaking were not modeled directly to determine their air quality benefits. The EPA believes, however, that the air quality impact of implementing these reductions would be very similar to results previously modeled by OTAG. This modeling is identified in section IX, Air Quality Analyses. The downwind air quality benefits from these reductions are sufficient for EPA to conclude that they would adequately mitigate the contribution from the upwind sources.

ii. Elimination of Contribution. Under the second interpretation of section 110(a)(2)(D), costs are considered as part of the calculation as to what (if any) amount of emissions contribute significantly to nonattainment or interfere with maintenance. The EPA proposes to determine those amounts for each State by considering the factors described above and the extent to which the State's emissions can be reduced through the most cost-effective controls that reduce ozone levels downwind. Once EPA makes this determination, EPA would conclude that requiring those cost-effective controls is mandated under the provisions of section 110(a)(2)(D) that require SIP provisions ''prohibiting'' that amount of emissions. Thus, under this alternative interpretation, a SIP meets the requirement for ''prohibiting'' emissions that contribute significantly to nonattainment, or interfere with maintenance, downwind, by implementing cost-effective controls determined to improve air quality downwind.

iii. Comparison of the Two Legal Interpretations of Section 110(a)(2)(D). The EPA solicits comments on which of the two legal interpretations of section 110(a)(2)(D), as described above, should be used. Each interpretation relies on the same factors (although certain factors enter into different parts of the analysis under the two interpretations). Because each relies on the same factors, there is little technical difference between the two interpretations. Each requires the same determinations as to, for example, the ambient impact of upwind emissions and the cost effectiveness of controls.

Moreover, as proposed in today's action, each interpretation leads to the same conclusion as to which States are considered to have emissions that significantly contribute to downwind problems, and as to the amounts of NO_X budgets that those States should meet.

However, the two interpretations have different legal justifications. As noted above, section 110(a)(2)(D) provides that the SIP for the upwind area must ''contain adequate provisions * * * prohibiting * * * [sources] from emitting any air pollutant in amounts which will * * * contribute significantly to nonattainment in, or interfere with maintenance by, any other State * * *'' Under the first interpretation, EPA may determine that a relatively larger inventory of emissions contributes significantly to nonattainment (or interferes with maintenance) in light of the fact that the costs of controlling those emissions are not considered in determining significant contribution. The EPA would then require adequate mitigation of the full set of emissions that contribute to nonattainment or interfere with maintenance.

Other relevant provisions indicate that the CAA could be construed to require mitigation, and not necessarily complete elimination, of emissions that contribute to air quality problems downwind. Section 110(k)(5) authorizes the Administrator to promulgate a SIP call whenever she finds that a SIP is ''substantially inadequate to attain or maintain the relevant [NAAQS], *to mitigate adequately the interstate pollutant transport described in section 176A or 184*, or to otherwise comply with any requirement of this Act'' (emphasis added). Section 176A describes interstate transport of air pollutants generally, and section 184 describes ozone transport in the northeast region in particular, which constitutes part of the transport phenomenon at issue in today's proposal. Section 176A authorizes the creation of a transport region when emissions from one or more States contribute significantly to a NAAQS violation in another State and further authorizes a transport commission to, among other things, assess strategies for mitigating the interstate pollution. These provisions, read together, indicate that adequate mitigation of transport is an appropriate response to a SIP call. Arguably, this interpretation should hold when EPA issues a SIP call based on section 110(a)(2)(D), and when EPA mandates a SIP revision under section 110(a)(1), based on section 110(a)(2)(D).

The second interpretation focuses on the provisions of section 110(a)(2)(D) that the SIP must include provisions to ''prohibit'' any emitting activity from emitting in ''amounts'' that contribute significantly to downwind nonattainment or interfere with maintenance. The EPA has determined the States whose full set of NO_X emissions contribute markedly to downwind problems. The term ''prohibit'' could be interpreted to require EPA, upon finding that a State's full set of emissions ''contribute significantly'' to nonattainment, must then require the SIP to eliminate that full set of emissions. This construction

could mean that EPA must require the State to shut down all of the emission-generating activities. It is doubtful Congress would have intended this result.

The EPA's second interpretation avoids this possible result by taking into account the relative cost effectiveness of the upwind and downwind controls in defining the ''amounts'' of emissions in each State that contribute significantly to the downwind problem. Once EPA has set those ''amounts'' in light of its consideration of the cost factors, the SIPs for the affected States would then need to prohibit only those amounts.

iv. Other Issues. States will have the flexibility to choose their own mix of control measures to meet the proposed statewide emissions budgets. That is, States are not constrained to adopt measures that mirror the measures EPA used in calculating the budgets. In fact, EPA believes that many control measures not on the list relied upon to develop EPA's proposed budgets are reasonable—especially those like enhanced vehicle inspection and maintenance programs that yield both NO_X and VOC emissions reductions. Thus, one State may choose to primarily achieve emissions reductions from stationary sources while another State may focus emission reductions from the mobile source sector. Furthermore, States may choose to pursue cost-effective energy efficiency opportunities as a means to reduce the control measures necessary to meet their statewide emission budgets.

e. Control Implementation and Budget Attainment Dates. The EPA proposes to require that the SIP revisions impose an implementation date for the required controls of 3 years from the date of the required SIP submission, which would result in compliance by those sources by no later than September 2002. However, the EPA is soliciting comments on the range of implementation dates from between September 2002 and September 2004. The EPA seeks comment on which date within this 2-year range is appropriate, in light of the feasibility of implementing controls and the need to provide air quality benefits as expeditiously as practicable. The EPA is proposing an implementation date of September 2002 in order to allow coordination of this rulemaking with its response to 8 section 126 petitions which are discussed below in section I.E, Section 126 Petitions. Although the EPA's actual proposed compliance date is September 2002, because the Agency is seeking comment on a range from September 2002 to September 2004, the Agency refers to the range of implementation dates throughout this rulemaking. The EPA further proposes that States be required to meet the mandated budgets by the end of the year 2007, by which time additional reductions from various Federal measures will also be achieved.

The EPA believes that requiring implementation of the upwind controls, and thereby mandating upwind reductions, by no later than these 2002–4 dates, is consistent with the attainment schedule for the downwind areas. Because the downwind areas depend on upwind reductions to reach attainment, mandating upwind controls on a schedule consistent with downwind attainment requirements is appropriate.

A review of the attainment schedule under the 1-hour NAAQS would be useful. Under the attainment schedule, serious areas are required to attain by the end of 1999, severe-15 areas are required to attain by the end of 2005, and severe-17 areas are required to attain by the end of 2007 (section 181(a)(1)). If a serious area fails to meet its 1999 attainment date, it is to be reclassified (''bumped up'') to severe-15 (section 181(b)(2)). However, an area may fail to reach attainment by its attainment date, but avoid bump up, if EPA grants a 1-year extension. An area is eligible for a 1-year extension if, among other things, it has no more than one exceedance of the NAAQS in the attainment-date year. The EPA may grant another extension for the next year under the same conditions (section 181(a)(5)). If an area receives two 1-year extensions, it may reach attainment in the following year (the second year after the attainment-date year) if, again, it has no more than one exceedance of the NAAQS. Under these circumstances, the area will have had no more than three exceedances over a 3-year period (the attainment-date year and the 2 next years), which would qualify it for attainment under the 1-hour NAAQS. The EPA has indicated that once it determines that an area has achieved air quality that satisfies the 1-hour NAAQS, the NAAQS will be rescinded with respect to that area.

Although controls on upwind emissions are designed to assist downwind nonattainment areas in reaching the NAAQS, EPA is aware that at this point, it is not possible for EPA to mandate controls on upwind areas within the OTAG region in sufficient time to help serious areas reach attainment by their end-of-1999 attainment date. The amount of time that is necessary to assure that the rulemaking proposed today is well considered by all affected parties, added to the amount of time necessary for the States to adopt the required SIP revisions, and the amount of lead-time necessary to implement the required controls, means that those controls cannot be expected to be in place in time to assist the serious areas in reaching their attainment date.

The next attainment date is 2005, which applies to severe-15 areas, such as the Baltimore area, and which would apply to any serious area that is bumped up. The EPA's proposal to require upwind controls to be implemented by no later than September 2004—in time for the beginning of the ozone season for the affected States—is sensible in light of this 2005 attainment date. Implementing controls earlier than September 2004, or at least phasing in some controls, if not all of them, prior to that date, would improve the chance for minimizing exceedances during the 3-year period up to, and including, 2005, which will facilitate reaching attainment as of this date. In particular, to the extent that the State chooses controls on major stationary sources of NOx, EPA believes it would be feasible to implement some of those controls earlier than September 2004. However, EPA is aware that implementation of controls for other sources may be more problematic. The EPA solicits comments on what dates within the range of 3 to 5 years of the required SIP submission would be appropriate for implementation of the controls.

Full implementation by no later than September 2004 would mean that all of the upwind controls required under the rulemaking proposed today would be in place as of the November 15, 2005 attainment date for the downwind severe-15 areas. Failure to implement those controls prior to September 2004 may mean that the downwind area may record too many exceedances in the 3-year period prior to the end of 2005, so that it would not be possible to reach attainment as of that time. However, implementation of these reductions by September 2004, coupled with any necessary additional reductions from the downwind sources, may result in no more than one exceedance in the downwind area during the attainment year and during each of the next 2 years thereafter. Under these circumstances, the downwind area would be eligible for the 1-year extensions described above and would reach attainment by the year 2007.

Similarly, full implementation by September 2004 would mean that severe-17 areas would receive the benefit of reduced upwind emissions during the 3-year period up to, and including, their 2007 attainment year. In the OTAG region, the severe-17 areas

include the Philadelphia, New York, Milwaukee, and Chicago areas. These reductions should greatly assist the downwind areas in reaching attainment by the end of 2007.

An implementation date of between September 2002 September 2004 is also consistent with the attainment date scheme for the 8-hour NAAQS. The EPA intends to promulgate designations for areas under the 8-hour NAAQS by the year 2000. The CAA provides for attainment dates of up to 5 years or 10 years after designation. Therefore, the first attainment date for many areas under the 8-hour standard could be 2005. Section 172(a)(2)(C) has a two, 1-year extension scheme applicable for areas under the 8-hour NAAQS that is similar to that described above, under section 181(a)(5), applicable to areas under the 1-hour NAAQS. Accordingly, full implementation of mandated SIP controls in the upwind areas by no later than September 2004 may allow downwind areas to reach attainment of the 8-hour NAAQS by 2007, counting the two 1-year extensions in the same manner as for severe-15 areas under the 1-hour NAAQS. In addition, the EPA believes that compliance no later than September 2004 by the utility and nonutility sector, with the emission limits assumed in setting the emission budgets or application of controls to other source categories, is feasible.

Further, EPA notes that the September 27, 1994 OTC NO_X Memorandum of Understanding (MOU) provides that large utility and nonutility NOx sources should comply with the Phase III controls by the year 2003. The levels of control in the MOU are 75 percent or 0.15 lb/10^6 btu in the inner and outer zones, levels comparable to the controls assumed in setting the budget for this rulemaking. In addition, in comments to EPA's proposed Phase II NOx reduction program under the Acid Rain provisions of the CAA [3], the Institute of Clean Air Companies (ICAC) stated that more than sufficient vendor capacity existed to supply retrofit of selective catalytic control to the boilers affected by the proposed rule. The ICAC in fact indicated that additional catalyst capacity could be added if needed.

Although EPA is proposing today that SIPs mandate implementation of the required SIP controls by a date within a range of September 2002 and September 2004, EPA is also proposing that the affected States demonstrate achievement of their NO_X budgets as of the end of the year 2007. In addition, EPA used the 2007 date to analyze for modeling purposes the impact of upwind emissions on nonattainment air quality. Using the 2007 date means that the States will be able to account for the additional reductions from Federal measures occurring between the date that SIP controls are implemented and the end of 2007, although the State must also account for growth in emissions during this time. Using the 2007 date is sensible in part because OTAG used this date for these purposes and compiled substantial technical information—such as information concerning inventories—based on this date. It is, therefore, efficient for EPA to use this same information. Developing comparable information for an earlier date would be time consuming and resource intensive. In addition, it is uncertain that there would be significant differences in amounts of emissions and impact on ambient air quality between an earlier date and 2007, in light of the fact that during this period, emissions would generally increase somewhat as a result of growth in activities that generate emissions, but would also decrease due to continued application of federally mandated controls. Accordingly, requiring accounting for a budget as of the 2007 date is both practicably indicated and is a reasonable surrogate for requiring this accounting as of September 2004.

E. Section 126 Petitions

The EPA has received section 126 petitions from eight States: Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont. The petitions vary as to the type and geographic location of sources they identify as meriting a finding of significant contribution. The petitions also vary as to the levels of controls they recommend. In addition, EPA has received a petition from the State of Wisconsin asking EPA to promulgate a SIP call under section 110(k)(5) requiring the States of Illinois, Indiana, Iowa, Kentucky and Missouri to submit SIP revisions addressing the purported impact of their emissions on Wisconsin. By letter dated August 8, 1997, from Mary D. Nichols, Assistant Administrator for Air and Radiation, to Michael J. Walls, Chief, Environmental Protection Bureau, Office of the Attorney General, State of New Hampshire, EPA provided technical guidance concerning section 126 petitions. The EPA is now studying the petitions and will prepare a notice(s) of proposed rulemaking to grant or deny them.

The EPA's response to a section 126 petition differs from today's action in several ways. Today's action is a proposed SIP call under section 110(k)(5) for SIP provisions meeting the requirements of section 110(a)(2)(D) for the 1-hour ozone NAAQS, coupled with a proposed requirement under section 110(a)(1) for submission of SIP provisions meeting the requirements of section 110(a)(2)(D) for the 8-hour ozone NAAQS. The EPA bases this action on a technical analysis as to whether the entire NO_X emissions inventory of an individual upwind State contributes significantly to an ozone nonattainment problem downwind. If EPA concludes that the NO_X emissions from that State make such a significant contribution, EPA will require the State to submit SIP provisions that limit the State's NO_X emissions to the level mandated by EPA, but through any combination of measures affecting any sector of the inventory chosen by the State. If the State does not make the required submission, EPA may, among other things, promulgate a FIP in accordance with section 110(c).

By comparison, a section 126 petition, by the terms of section 126(b)–(c), is limited to upwind major stationary sources and not other sectors of the upwind emissions inventory. Moreover, a section 126 petition may seek a finding concerning upwind sources in more than one State. Further, if EPA grants the petition, it is EPA, and not the States, that promulgates direct controls for the major sources.

The EPA's response to section 126 petitions would bear relevance to today's action. The section 126 petitions and section 110(k)(5)/110(a)(1) action both require technical analysis of whether upwind sources contribute significantly to a downwind nonattainment or maintenance problem. However, EPA's section 110(k)(5)/110(a)(1) action results in a mandate for the States to submit SIP revisions that conform to only minimum guidance provided by EPA. On the other hand, the section 126 petitions, if granted, would result in EPA selection and imposition of controls directly on major stationary sources. These controls could provide a template for the SIP provisions the States must include in their rulemaking response to EPA's section 110(k)(5)/110(a)(1) rulemaking or, if necessary, a FIP.

EPA believes that both the 110 process as outlined and 126 petition processes are aimed at addressing regional transport of ozone forming pollutants and can be fully coordinated. The 110 process outlined provides the potential to deal comprehensively with

[3] Letter of January 29, 1997 from Jeffrey C. Smith, Executive Director, Institute of Clean Air Companies, to Docket No. A–95–28: Acid Rain Program, Nitrogen Oxides Emission Reduction.

transported pollutants that contribute significantly to downwind nonattainment, and importantly, allows individual States to make choices about cost-effective source controls best fitting their unique State situations. The 126 petition process provides assurance to petitioning States that upwind sources of air pollution will be addressed in a timely manner. Thus, each of these processes may provide important and complementary tools to address the regional ozone transport problem.

Over the next several months, EPA will be working with the affected States to ensure these two processes are fully coordinated. This will provide maximum certainty for State and business planning requirements. The EPA's goal in this effort will be to ensure that States achieve the air quality reductions EPA determines through rulemaking are necessary to address regional transport while providing the maximum flexibility to those States in identifying the appropriate means to meet those goals.

F. OTAG Process

The OTAG has completed the most comprehensive analysis of ozone transport ever conducted. The process has resulted in more technical information being gathered and more modeling and monitoring analyses on regional ozone transport than ever before. The OTAG process was fundamentally different from previous efforts undertaken by the Federal Government and the States to assess and solve air pollution problems. What was unique about the multistate, multistakeholder OTAG process is that for the first time, the Federal Government has looked to the States involved to provide the necessary technical information and to aid in determining an outcome which has local, regional and national implications.

The OTAG was organized into a number of subgroups and work groups that included members from the States, EPA, industry and environmental groups. The OTAG's Policy Group, comprised of the State Environmental Commissioners, provided overall direction to its subgroups for the assessment of ozone formation and transport, as well as the development of control strategies that will reduce concentrations of ozone and its precursors. The subgroups within OTAG addressed issues relating to emissions inventories, monitoring, modeling, and evaluated the availability, effectiveness, and costs of potential national, regional and local air pollution control strategies. Specific issues such as trading and market-based incentives were also addressed.

The OTAG's initial meetings were on May 18, 1995, in Reston, VA, and June 19, 1995, in Washington, DC. The OTAG continued to meet regularly for 2 years until their final meeting in Washington, DC on June 19, 1997. The goal of OTAG was to:

> * * * identify and recommend a strategy to reduce transported ozone and its precursors which, in combination with other measures, will enable attainment and maintenance of the national ambient ozone standard in the OTAG region. A number of criteria will be used to select the strategy including, but not limited to, cost effectiveness, feasibility, and impacts on ozone levels. (1)

To meet its goal, OTAG used technical information from air quality analyses and photochemical modeling. The OTAG modeled three rounds of emission reduction scenarios and strategies, including varying control measures geographically. The first round of modeling was performed during September and October 1996 and provided an initial evaluation of possible OTAG emission reduction scenarios. The second round was performed during November and December 1996 and refined the emission reduction level for the strategies. The third round was performed during January through March 1997 and evaluated the geographic applicability of the OTAG strategies. These geographic modeling runs provided information on applying different levels of controls on utilities and nonutility point sources at incremental steps. Round-3 also included a limited number of additional modeling runs needed to address comments made by a number of States related to the geographical boundaries of the zones defined for round-3 modeling. The OTAG modeling results are discussed in section II, Weight of Evidence Determination of Significant Contribution, and are also available on the OTAG webpage. This modeling, along with other OTAG-generated information, provided the technical information necessary to make recommendations to the Policy Group and to EPA on what is needed to meet the OTAG goal. The EPA received OTAG's final recommendations on July 8, 1997. These recommendations are included in Appendix B.

II. Weight of Evidence Determination of Significant Contribution

A. Introduction

This section documents the technical information and analyses for the factors concerning emissions and contributions to ambient air quality that EPA uses to determine which States in the OTAG domain make a significant contribution to nonattainment in downwind States.[4] To a large extent, this assessment is based upon the results of OTAG modeling and air quality analyses as well as information from other non-OTAG modeling studies. The OTAG modeling available for this analysis includes a set of initial emissions sensitivity runs, the regional strategy runs in rounds 1, 2, and 3, and the geographic sensitivity runs performed to support the design of strategies in round-3.

B. Background Technical Information

The importance of interstate transport to the regional ozone problem and contributions from upwind States to downwind States is supported by numerous studies of air quality measurements and modeling analyses. In general, ozone episodes can occur on many spatial and temporal scales ranging from localized subregional events lasting a day or 2, up to regionwide episodes lasting as long as 10–14 days. The frequency of localized versus regional episodes depends on the characteristics of the large-scale meteorological patterns which control the weather in a particular summer season. Local controls alone are not sufficient to reduce ozone during regionwide episodes since a substantial amount of ozone may be transported into the area from upwind sources. The National Research Council report, ''Rethinking the Ozone Problem in Urban and Regional Air Pollution'', (2) cites numerous studies of widespread ozone episodes during summertime meteorological conditions in the East. These episodes typically occur when a large, slow-moving, high pressure system envelopes all, or a large portion of, the Eastern United States. The relatively clear skies normally associated with such weather systems favor high temperatures and strong sunlight, which enhances the formation of high ozone concentrations. In addition, the wind flow patterns can lead to a build up of ozone concentrations and the potential for long-range ozone transport. Specifically, winds are generally light in the center of high pressure systems so that areas

[4] Under the two alternative interpretations of section 110(a)(2)(D) that EPA is proposing today, if upwind emissions meet the factors related to emissions and contribution to ambient air quality, EPA would conclude either that the emissions significantly contribute to a nonattainment problem, or the emissions may significantly contribute, depending on further analysis of other factors, including costs.

under the center may have near-stagnation conditions resulting in the formation of high ozone levels. As the high pressure system moves eastward, winds become stronger on the ''backside'' which increases the potential for these high ozone levels to be transported to more distant downwind locations. Over several days, the emissions from numerous small, medium and large cities, major stationary sources in rural areas, as well as natural sources, combine to form a ''background'' of moderate ozone levels ranging from 80 to 100 ppb (2) of which 30 to 40 ppb may be due to natural sources. Concentration levels in the range of 80 to 100 ppb and higher have also been measured by aircraft aloft, upwind of the Lake Michigan area (3), as well as the Northeast Corridor (4). Because this level of background ozone is so close to the NAAQS, even a small amount of locally-generated ozone will result in an exceedance.

The importance of the episodic meteorological conditions is heightened by the spatial distribution of emissions across the region. The EPA has examined the State total emissions and emissions density projected by OTAG to 2007, as described in section B.2, OTAG Strategy Modeling. Both of these measures of emissions (i.e., total and density) are important considerations for ozone formation. Total emissions indicate the amount of mass emitted by a State while emissions density indicates the degree to which those emissions are concentrated within the State and provides a way to compare emissions between geographically large and small States on a more equivalent basis. The State total emissions in Table II–1 indicate that there is no single State or group of adjacent States that stand out as the major contributors to the total manmade emissions in the OTAG region. Rather, many States in the Midwest, Northeast and Southeast have high levels of emissions. For example, Illinois, Indiana, Ohio, Kentucky, Michigan, Pennsylvania, New York, Alabama, Georgia, Florida, North Carolina and Tennessee each have total NO_X emissions exceeding 1000 tons per day. Even some other smaller States like Connecticut, Delaware, Maryland, Massachusetts, and Rhode Island, along with the District of Columbia, have a high spatial density of NO_X emissions as indicated in Table II–2. Thus, considering the distribution of emissions, a broad range of emissions from many States contribute to the regional background ozone during episodic meteorological conditions. In this situation, there is a cumulative effect in that the thousands of stationary sources and millions of motor vehicles throughout the OTAG region collectively cause downwind contributions as they generate emissions and those emissions interact over multiple days.

1. OTAG Modeling Process

As described in the OTAG Modeling Protocol (5), state-of-the-science models and data bases were used in OTAG for simulating the physical and chemical processes involved in the formation and transport of ozone and precursor species over multiday episodes and regional scales. As such, the OTAG modeling system provides the most complete, scientifically-credible tools and data available for the assessment of interstate transport. All of the OTAG model runs were made for an area covering a large portion of the Eastern United States, as shown in Figure II–1. This area includes all or portions of 37 States, the District of Columbia and southern Canada. In general, the OTAG ''modeling domain'' (*i.e.*, OTAG region) was set large enough to encompass the widespread spatial extent of high ozone levels measured during multiday episodes in the eastern half of the United States. As such, the domain is designed to handle the synoptic (*i.e.*, large) scale meteorological conditions associated with regional transport and to include the major emissions source areas in the East. The horizontal grid configuration used by OTAG (see Figure II–1) includes a ''Fine Grid'' at 12 km resolution ''nested'' within a ''Coarse Grid'' at 36 km resolution. The size and location of the ''Fine Grid'' was determined based on the location of areas with high ozone concentrations, the geographic variations in emissions density, the meaningful resolution of some model inputs, computer hardware limitations, and model run times. As described in section B.3, OTAG Geographic Modeling, OTAG applied different levels of controls in the ''Fine Grid'' versus the ''Coarse Grid'' as part of the round-3 modeling.

Four specific episodes were selected by OTAG for model simulations in order to provide information on a range of meteorological conditions which occur during periods of elevated ozone levels. These episodes are: July 1–11, 1988; July 13–21, 1991; July 20–30, 1993 and July 7–18, 1995. Each of these episodes represents somewhat different episodic characteristics in terms of transport patterns and the spatial extent of high ozone concentrations in the East (6). The 1988 and 1995 episodes featured high ozone concentrations in the Northeast, Midwest, and Southeast with wind regimes that provided the meteorological potential for intra- and inter-regional transport. During the 1991 episode, high ozone was confined mainly to the northern portion of the OTAG domain, whereas the 1993 episode was a ''Southeast'' episode with relatively low ozone levels outside this region. It should be noted that none of the OTAG episodes include extensive periods of high ozone in the far western portions of the domain nor in areas along the gulf coast.

As part of OTAG, an objective evaluation of model predictions was conducted for each of these four episodes in order to determine the performance of the modeling system for representing regional ozone concentration levels. This evaluation focused on a number of statistical metrics comparing predicted ozone to ground-level ozone measurements (7). The results indicate generally good agreement between simulated and observed values. Most importantly, areas of predicted high ozone correspond to areas of observed high ozone. However, a few relatively minor concerns were found, such as:

- A tendency to underestimate concentrations in the North and overestimate concentrations in the South;
- Concentrations at night are somewhat underestimated relative to daytime predictions;
- Low observed concentrations tend to be overestimated and higher observed values tend to be underestimated; and
- Concentrations at the start of the episode tend to be underestimated with a tendency for concentrations at the end of the episode to be overestimated.

The success of the model for predicting pollutant concentrations aloft is also important from a transport perspective. During the day, when the atmosphere is ''well mixed,'' ground-level ozone values can serve as a good measure of both local formation and transport. However, at night, ozone is depleted in a very shallow layer near the ground due to deposition and nighttime chemical reactions. Thus, during the overnight and early morning, ground-level measurements and predictions do not adequately reflect pollutant transport. Aircraft-measured pollutant data and model predictions during these periods indicate moderate to high levels of ozone aloft which can then mix down during the day and further elevate ground-level concentrations. A limited amount of measured data aloft are available from non-OTAG field studies for several of the days in the 1991 and 1995 episodes. An initial comparison of these data to

the model predictions (6) indicates that model performance aloft is not as good as for ground-level ozone. In general, the model tends to underestimate ozone aloft. This suggests that the model may somewhat underestimate the amount of ozone transport aloft, especially overnight into the early morning hours. Thus, the contribution of upwind source regions to ozone levels in downwind areas may actually be greater than estimated by the model.

2. OTAG Strategy Modeling

The OTAG strategy modeling was conducted in several phases. In each phase, the effects on ozone [5] of various changes in emissions were examined relative to a future-year baseline. This baseline reflects the projection of emissions from 1990 to 2007. Included in the 2007 baseline are the net effects of growth and specific control programs prescribed in the 1990 Amendments. The control measures included in the 2007 baseline are listed in Table II–3. Overall, domainwide emissions of NO_X in the 2007 baseline are approximately 12 percent lower than 1990 while emissions of VOC are approximately 20 percent lower. The procedures for developing the 1990 base inventory and the 2007 baseline are described by Pechan (8). The key findings (6) from comparing the model predictions for the 2007 baseline to the 1990 base case scenario are:

- Ozone levels are generally reduced across most of the region, including nonattainment areas;
- Some increases in ozone are predicted in areas where higher economic growth is expected to occur, especially in the South;
- Ozone levels aloft along regional ''boundaries'' are reduced, but average concentrations above 100 ppb and peak concentrations above 120 ppb are still predicted on several days; and
- Ozone concentrations above the 1-hr and/or 8-hr NAAQS may still occur in the future under similar meteorological conditions in many of the counties currently violating either or both of these NAAQS.

The 2007 baseline emissions were reduced in an initial set of sensitivity modeling performed to assess several broad strategy-relevant issues. All of these model runs involved ''across-the-board'' emissions reductions (i.e., no source category-specific reductions). The results (6) of these simulations are as follows:

- Regional reductions in NO_X emissions decrease ozone across broad portions of the region including ozone in areas violating the NAAQS;
- Regional reductions in VOC emissions decrease ozone in and near the core portions of urban areas with relatively small regional benefits;
- Both elevated and low-level NO_X reductions decrease ozone concentrations;
- NO_X reductions can produce localized, transient increases in ozone (mostly due to low-level, urban NO_X reductions) in some areas on some days; most increases occur on days and in areas where ozone is low (i.e., below the NAAQS);
- NO_X plus VOC reductions lessen ozone increases in urban areas, but provide little additional regional benefits compared to NO_X-only reductions; and
- The magnitude and spatial extent of changes in 8-hour ozone concentrations are consistent with the changes predicted in 1-hour concentrations.

Based upon the findings of the sensitivity runs, OTAG subsequently developed and simulated source-specific regionwide control strategies in two rounds of modeling. These strategies were derived from a range of control measures applied to individual source categories of VOC and NO_X (8). The controls were grouped into various levels of relative ''stringency'' as listed in Tables II–4a and II–4b. The round-1 and round-2 modeling consisted of strategies that contained various combinations of controls from the least (level ''0'') to most stringent (level ''3'') for each source category. The control levels and domainwide emissions associated with these strategies are given in Tables II–5a and II–5b.

The round-1 modeling was a ''bounding analysis'' with runs that ranged from the lowest level of control on all source categories (Run 1) to the highest level of control on all sources (Run 2). Runs 3 and 4b were included to isolate the effects of the most stringent OTAG controls on utilities only, versus this level of control on the other source categories. In the round-2 modeling, eight runs were simulated to examine the relative benefits of progressively increasing the level of control on utilities, under two alternative levels of control applied to area, nonroad and mobile sources. The results (6) of the round-1 and round-2 modeling are given in Table II–6.

The findings from the round-1 and round-2 OTAG strategy modeling which are particularly relevant to this analysis are:

- Clean Air Act programs will likely provide a reduction in ozone concentrations in many nonattainment areas; however, some areas currently in nonattainment will likely remain nonattainment in the future and new 8-hr nonattainment and/or maintenance problem areas may develop as a result of economic growth in some areas;
- NO_X reductions from elevated and low-level sources are both beneficial when considered on a regional basis; and
- Further mitigation of the ozone problem will require regional NO_X-oriented control strategies in addition to local VOC and/or NO_X controls necessary for attainment in individual areas.

3. OTAG Geographic Modeling

In the round-1 and round-2 strategy modeling, controls were applied across the entire domain. In round-3, controls were applied on a geographic basis in order to assess the relative effects of different strategies in various portions of the region. Prior to developing these strategies, a series of sensitivity tests was conducted by OTAG to provide information on the spatial scales of transport in order to help determine where to apply various levels of control. The most relevant tests are the ''subregional'' modeling and the ''rollout'' modeling. The base case for these tests was the 2007 baseline scenario. In the subregional modeling, the domain was divided into the 12 subregions shown in Figure II–2. For one set of subregional modeling, all anthropogenic emissions were eliminated from each subregion, individually in separate model runs. These runs, called the ''zero-out'' subregional scenarios, were performed for the 1988 and 1995 episodes. In a second set of subregional modeling, emissions were reduced, but not eliminated in each subregion. The level of reductions were 60 percent for elevated point-source NO_X emissions, 30 percent from all other sources of NO_X, and 30 percent from all sources of VOC. These runs are referred to as the ''5c'' subregional scenarios. The ''5c'' scenarios were run for most, but not all, subregions for the 1988, 1991 and 1995 episodes. In addition to looking at individual subregions, there were runs for 1988 and 1991 which applied the ''5c'' reductions in subregions 5, 6, and 9 (Figure II–2) combined in order to determine the relative impacts of expanding the size of the area of emissions reductions.

In the rollout modeling, the ''5c'' emissions reductions were applied first within selected areas and, then, outward

[5] Although the OTAG assessments focussed on 1-hour concentrations, the impacts on 8-hr average concentrations were found to be similar to these for 1-hour values.

in incremental steps (rollouts) of approximately 200 km from these areas, in subsequent runs. Three major nonattainment areas in the region (Atlanta, the Lake Michigan Area, and New York City) were selected by OTAG for this type of modeling.

The results (6) of the OTAG geographic modeling indicate the following:

- Emissions reductions in a given multistate region/subregion have the most effect on ozone in that same region/subregion;
- Emission reductions in a given multistate region/subregion also affect ozone in downwind multistate regions/subregions;
- Downwind ozone benefits decrease with distance from the source region/subregion (i.e., farther away, less effect);
- Downwind ozone benefits increase as the size of the upwind area being controlled increases, indicating that there is a cumulative benefit to extending controls over a larger area; and
- Downwind ozone benefits increase as upwind emission reductions increase (the larger the upwind reduction, the greater the downwind benefits).

The round-3 strategies were based in large part on the results of the geographical sensitivity runs. The cornerstone of round-3 was a set of geographic ''zones'' (see Figure II–3) which was used to vary the level of control across the OTAG region. For the most part, OTAG focussed the round-3 controls on zones in the ''Fine Grid.'' This was based upon an analysis indicating that, in general, the greatest potential for regional transport leading to inter-state impacts of concern occurs within the ''Fine Grid'' portion of the OTAG region. The individual zones were used to differentiate the impacts of controls in and close to the three major 1-hour nonattainment areas of the ''Fine Grid'' (i.e., the Northeast Corridor, Atlanta, and Chicago/Milwaukee) versus controls in zones farther upwind of these areas. Specifically, in round-3 various levels of utility and nonutility controls were applied by zone in different runs. The level of control for each strategy is given in Table II–7. In general (except for Run F), the round-3 runs progressively increase the level and spatial extent of utility and nonutility controls starting with the reference run (Run A) through the most stringent run (Run I). In addition, there were a number of supplemental round-3 runs (6) performed using a modified version of the zones. The most relevant of these were Runs CA and CB which altered the configuration of zones II, III, and IV to correspond more closely to the borders of the OTR.

The results (6) of the OTAG round-3 runs indicate the following:

- The greater the emissions reductions the greater the ozone benefits (Run I was the most effective strategy and Run A the least);
- There was no bright-line between the incremental application of controls nor any leveling off of benefits with the more stringent controls;
- Increasing the spatial extent of emissions reductions increases the amount and spatial extent of ozone benefits downwind; areas farther upwind may need a higher level of control to have a given effect in a particular downwind area;
- In general, emissions reductions in a given zone have the greatest effects within that zone; but there are also impacts on high ozone concentrations in other zones downwind;
- Emissions reductions in zones I, III, and V are ''effective and necessary'' (6) to reduce ozone in the Lake Michigan area, the Northeast Corridor, and Atlanta, respectively which are the closest downwind areas to each of these zones;
- Emissions reductions in more distant zones also help reduce ozone in these three major nonattainment areas; emissions reductions in zone II benefit the Northeast Corridor and the Lake Michigan area; emissions reductions in zone IV benefit Atlanta and the Lake Michigan area;
- Emissions reductions in zones II and IV are also ''effective and necessary'' (6) to reduce ozone in ''problem areas'' within these zones (e.g., Birmingham, Nashville, Charlotte, Richmond, Louisville, and Cincinnati);
- When viewed on a regional basis, it may be ''difficult to geographically distinguish between control levels'' (6) because there are ozone problem areas in every zone within the ''Fine Grid'' and there are clearly interzonal impacts;
- Additional emissions reductions in ''Coarse Grid'' States ''are not very effective'' (6) in reducing high ozone levels downwind in problem areas of the ''Fine Grid''; and
- Although the OTAG assessments focused on 1-hour concentrations, the impacts on 8-hour average concentrations were found to be similar to those for 1-hour peak values, suggesting that ''a regional strategy designed to help meet'' the 1-hour NAAQS ''will also help meet'' the 8-hour NAAQS (6).

Overall, the findings from the OTAG sensitivity and strategy modeling indicate that:

- Areas of high ozone, both measured and predicted for the future, occur, or will occur, in most portions of the modeling domain;
- Several different scales of transport (i.e., inter-city, intra-state, inter-state, and inter-regional) are important to the formation of high ozone in many areas of the East;
- The greatest potential for inter-state and inter-regional impacts associated with transport occurs between States within the multistate ''Fine Grid'' area;
- A regional strategy focussing on NO_X reductions across a broad portion of the region will help mitigate the ozone problem in many areas of the East;
- There are ozone benefits across the range of controls considered by OTAG; the greatest benefits occur with the most emissions reductions; there was no ''bright line'' beyond which the benefits of emissions reductions diminish significantly;
- Even with the large ozone reductions that would occur if the most stringent controls considered by OTAG were implemented, there may still remain high concentrations in some portions of the OTAG region;
- A regional NO_X emissions reduction strategy coupled with local NO_X and/or VOC reductions may be needed to enable attainment and maintenance of the NAAQS in this region.

It should be noted that urban-scale analyses will be necessary in order for States to develop local attainment plans. These analyses will take into account more geographically refined emissions and local meteorological factors, such as lake and sea breezes and/or topography. Urban-scale modeling is also necessary to more precisely evaluate the degree and extent of any NO_X disbenefit.

4. Other Relevant Analyses

In addition to the OTAG modeling described above, the potential for regional ozone transport has been examined by the OTAG Air Quality Assessment Work Group using trajectory analyses, wind vector characterization, and statistical analyses of ozone measurements. The trajectory analyses (9) were used to identify a ''distance scale'' indicative of the 1- to 2-day transport distance of ozone and precursors. The results suggest that ozone-laden air may travel distances of 150 miles to 500 miles or more into and across the Midwest and Northeast. Analyses, as part of the Southern Oxidants Study (10), indicate that most southern episodes may be more closely linked to near-stagnation conditions and thus, shorter transport distances might

be expected within the Southeast. Additional information on regional transport patterns comes from an analysis conducted by OTAG to characterize the regional wind flow patterns typically associated with high ozone in the Northeast, Southeast, and Midwest (9). These wind vectors (Figure II–4) indicate that regional episodes are typically associated with broad-scale anticyclonic (i.e., clockwise) flow regimes centered over the Ohio-Tennessee Valley area. Under these conditions, there are typically lighter winds and weaker transport within the South compared to other regions. However, the information also indicates the potential for transport from the South to other portions of the region. For example, in the Midwest, high ozone is generally associated with wind flows from States located to the south and southwest. For the Northeast, the data suggest a strong westerly flow favoring transport from States farther to the west.

Another method for estimating the potential range of transport was developed by Rao (11) based on correlating daily ambient ozone measurements between monitoring sites for the period 1985 through 1994 for several nonattainment areas (i.e., Atlanta, Washington DC, Cincinnati, Pittsburgh and Chicago). The analysis indicates the presence of ''ozone clouds'' surrounding these areas which are likely the result of pollutant transport, spatial patterns in emissions, and weather conditions conducive to ozone formation. The spatial extent of these ''ozone clouds'' is on the order of 300 miles or more, extending from the central portion of the nonattainment area along the axis of the major transport direction.

The importance of mitigating transported ozone for solving the nonattainment problem for many cities in the East has been examined as part of ongoing urban scale modeling analyses by various State agencies. In urban scale modeling, transport into the nonattainment area is represented by specifying pollutant concentrations along the sides and top of the modeling domain. These ''boundary condition'' concentrations reflect ozone transport into the urban area at the surface and aloft. As such, incoming ozone (as well as precursor chemical species) moves into the urban area and mixes with local emissions to increase the formation of ozone. The available urban scale modeling work is summarized in a report commissioned by OTAG (12). It should be noted that these modeling analyses were conducted to address 1-hour attainment problems. Still, the information is expected to be generally applicable to 8-hour ozone concentrations as well. The findings from this report which are relevant include:

- New York City—a reduction in transport into the New York area associated with upwind emissions reductions on the order of 75 percent for NO_X and 25 percent for VOC along with local VOC and NO_X reductions may be needed for attainment in New York;
- Philadelphia—transport appears to be a major component in peak ozone concentrations in the Philadelphia domain, contributing 90 percent to the peak in one of the scenarios modeled;
- Lake Michigan—transported ozone levels coming into the Lake Michigan area contribute 40–60 percent to the peak concentration downwind of urban centers in this area; background concentrations in the range of 80–100 ppb may need to be reduced to around 60 ppb for attainment in this region;
- Southeast Michigan—ozone transport into this area ''contributed significantly to the simulated peak ozone concentrations on many of the episode days;
- St. Louis—predicted ozone concentrations in this area are sensitive to incoming levels of ozone/precursor transport;
- Atlanta—the amount of ozone transported into the area was found to be one of the factors contributing to the difficulty for this area to demonstrate attainment;
- Richmond—transported ozone contributes to predicted high ozone on certain episode days, and regional controls on upwind sources may be necessary to reduce ozone in this area during some of the episode days modeled;
- Charlotte—transported ozone appears to be a ''significant component'' of ozone in the area during some episodes, particularly with winds from a northerly direction; and
- Nashville—transported ozone was predicted to be a major contributor to ozone in this area on 1 of the 2 high ozone days modeled.

In addition to the preceding qualitative analyses, there are several non-OTAG regional modeling analyses which provide information on interstate contributions due to transport. First, modeling by EPA for the OTC, using the Regional Oxidant Model (ROM), examined the impact of controls outside the OTR on ozone within this region (13). The results indicate that a 0.15 lb/MMBtu NO_X emissions limit on certain stationary sources outside the OTR, together with other controls, would likely have the following effects within the OTR:

- Reductions of up to 15–18 ppb in daily maximum 1-hour ozone in the western part of the OTR, and
- Reductions of up to 6–9 ppb along the Northeast Corridor from Washington, DC to northern New Jersey.

Second, a new modeling technique, the ''Comprehensive Air-quality Model with extensions'' (CAMx), has been developed (14) in an attempt to identify the contribution of upwind source areas to specific downwind locations. The Ozone Source Apportionment Technology (OSAT) in CAMx was used by the Midwest Ozone Group (MOG) to quantify the contributions of emissions from upwind sources on high ozone concentrations in the Northeast Corridor and the Lake Michigan area. The CAMx analysis modeled the OTAG July 1991 episode only and considered 1-hour ozone predictions above two cut-points: 100 ppb and 120 ppb. Also, the MOG CAMx report (14) did not examine the contributions from emissions in individual upwind States, but rather, the analysis examined the impacts of emissions from concentric geographic ''rings'' upwind of the Northeast Corridor and Lake Michigan areas. In general, the results are consistent with the OTAG geographic sensitivity modeling in that much of the contribution to ozone in a particular multistate area comes from sources within that same multistate area, considerable contributions also come from sources outside the multistate area, and anthropogenic NO_X emissions in upwind areas contribute much more to transport than upwind VOC emissions. Some of the findings from the CAMx analysis relative to the contributions to high ozone in the Northeast Corridor and Lake Michigan area are as follows:

- On average, nearly 50 percent of the high ozone levels in these two areas come from upwind (mostly NOx) sources;
- On average, for the Northeast Corridor a large portion (90 percent) of the contribution from upwind sources comes from States to the west and south within approximately 390 km of the Corridor (this may include all or portions of States as far upwind as Ohio, North Carolina, and West Virginia); nearly all (95 percent) of the contribution comes from upwind sources within approximately 570 km of the Corridor (this may add portions of Kentucky, Tennessee, and South Carolina as potential upwind contributors);
- On average, for the Lake Michigan area a large portion (90 percent) of the contribution from upwind sources

comes from States to the west and southwest within approximately 650 km of this area (this may include all or portions of States as far as Iowa, Minnesota, Missouri, and Tennessee); nearly all (95 percent) of the contribution comes from upwind sources within approximately 770 km of the Lake Michigan area (this adds portions of Arkansas, Kansas, Nebraska, North Dakota, and South Dakota); and

- Transport distances for individual high ozone days are even longer, in some cases, than the episode averages indicated above.

A third non-OTAG modeling study that is relevant to this assessment was performed by a group of northwest OTAG States (Iowa, Minnesota, Nebraska, North Dakota, and South Dakota) (15). One part of this study included modeling similar to the OTAG subregional modeling, except that ''zero-out'' and ''5c'' emissions reductions were applied in various combinations in these States only, using the OTAG July 1995 episode. In these runs, emissions in all other States in the OTAG region were simulated with the 2007 baseline emissions. The modeling results were analyzed in terms of the contributions of emissions in these five States to daily maximum 1-hour ozone above 100 ppb in downwind areas. The results indicate the following:

- Emissions in Minnesota, Nebraska, North Dakota, South Dakota, and the ''Coarse Grid'' portion of Iowa (see Figure II–1) collectively contribute less than 2 ppb to downwind ozone above 100 ppb; and
- Emissions from these States including the ''Fine Grid'' portion of Iowa, contribute in the range of 2 to 6 ppb to ozone above 100 ppb in grid cells downwind near Lake Michigan, Detroit, and Cincinnati.

Collectively, the studies cited here indicate that:

- The meteorological conditions and air trajectories during regional-scale, high ozone episodes provide the potential for multistate ozone transport;
- Ambient measurements indicate that ozone episodes can have a large multistate spatial extent within which 1-to 2-day transport may occur;
- Examination of emissions data indicates that numerous sources of NO_X may be contributing to high regional background ozone concentrations;
- State urban-scale modeling analyses for areas in various portions of the OTAG region indicate that transport from upwind areas is an impediment to attainment of the NAAQS;
- Regional modeling studies indicate contributions to high ozone in the Northeast Corridor and the Lake Michigan area may come from States as far away as 570 km and 770 km, respectively; and
- Non-OTAG multistate modeling indicates that emissions from States in the northwest portion of the ''Coarse Grid'' may not make large contributions to high ozone in downwind States elsewhere in the OTAG region.

C. Technical Analysis of Significant Contribution

1. Criteria for Determining Significant Contribution

Whether a contribution is ''significant'' depends on the overall context. There may be no single amount of contribution which could be considered as a bright line indicator of ''significant'' that would be applicable and appropriate in all circumstances. As described above, under one interpretation of the CAA's section 110(a)(2)(D), factors to be considered in determining whether a contribution is significant include:

- The level of emissions in the area upwind of a nonattainment area;
- The amount of the contribution (ppb above the level of the standard) made to the downwind nonattainment area;
- The transport distance between the upwind source area and the downwind problem area; and
- The geographic extent of the contribution downwind. For example, ozone is generally the result of emissions of NO_X and VOC from hundreds of stationary sources and millions of vehicles, each of which is likely to be responsible for much less than 1 percent of the overall inventory of precursor emissions. A source or group of sources should not be exempted from treatment as a significant contributor merely because it may be a small part, in terms of total emissions, of the overall problem when all or most other contributors, individually, are also relatively small parts of the overall problem. This situation, in which a number of individual (and sometimes small) sources collectively cause a significant impact, is a major aspect of the contribution issue. The moderate-to-high ozone levels which cover broad regions are the result of emissions from millions of individual sources interacting over multiple days. The contribution to downwind nonattainment results from the cumulative contribution from all sources involved in this process. Given these issues, it is not appropriate to define a bright line test for ''significant contribution.'' Rather, EPA is using a ''weight of evidence'' approach, based on a range of information, for determining whether a State makes a significant contribution to downwind nonattainment. The EPA is also proposing a second, alternative interpretation to section 110(a)(2)(D), under which the weight of evidence approach incorporates other factors, including the relative costs of controlling downwind emissions, as described in section I.D.2.b., Significant Contribution to Nonattainment.

2. Overview of Technical Approach

The findings from the relevant background studies and the OTAG modeling results provide a basis for concluding that ozone transport results in interstate contributions to high ozone levels during multiday episodic conditions within portions of the OTAG region. An overview of the approach for analyzing this information in an assessment of States that make a significant contribution to downwind nonattainment is as follows:

- The air quality and modeling analyses cited in section B.4, Other Relevant Analyses, were considered in a qualitative manner to identify, from a regional perspective, States which may contribute to multistate transport;
- The results of the OTAG subregional modeling runs were used to quantify the extent that each subregion contributes to downwind nonattainment for the 1-hour and/or 8-hour NAAQS; and
- State NO_X emissions data were used to translate the findings from the subregional modeling to a State-by-State basis.

The specific model runs used in this analysis include the ''zero-out'' runs in which all anthropogenic emissions from individual subregions (comprised of portions of small groups of States) are removed, and the contributions to downwind ozone are predicted. This set of model runs was chosen since it provides an appropriate way to quantify the contribution of the full set of anthropogenic emissions in one area to ozone concentrations in another. As described in section B.2, OTAG Strategy Modeling, zero-out runs were made for the 1988 and 1995 episodes only. The results for both episodes were combined in this assessment. Also, the analysis of emissions data focussed on NO_X since the OTAG and non-OTAG modeling results indicate that NO_X emissions reductions lower ozone transport across broad portions of the OTAG region, whereas, VOC emissions reductions have primarily local benefits.

The air quality, modeling, and emissions information was used

collectively to determine, based on the weight of evidence, which States make a significant contribution to downwind nonattainment.

3. Identification of Ozone ''Problem Areas''

As described above, in order to quantify the contribution from upwind States to nonattainment downwind, EPA identified areas which currently have a 1-hour and/or 8-hour ozone nonattainment problem and are expected to continue to have a nonattainment problem in the future, based on modeling. In addition, EPA considered areas which may have a future maintenance problem for the 8-hour NAAQS. For current nonattainment areas, EPA used air quality data for the period 1993 through 1995 to determine which counties are violating the 1-hour and/or 8-hour NAAQS. These are the most recent 3 years of fully quality-assured data which were available in time for this assessment. A list of these counties is provided in Tables II–8a and II–8b. The EPA is reviewing more recent air quality data for 1996 and 1997. In the event that these data alter the results of this assessment in any meaningful way, EPA will make the appropriate adjustments to the findings. Concerning projected future nonattainment areas, EPA used the OTAG model predictions for the 2007 baseline, as described in section II.C.5, Approaches for Analyzing Subregional Modeling Data. For ease of communication, the technical discussions frequently use the term ''nonattainment'' to refer to these areas. It should be noted that this use of the term ''nonattainment'' in reference to a specific area is not meant as an official designation or determination as to the attainment status of the area.

4. Analysis of Air Quality, Trajectory, and Non-OTAG Modeling Information

The EPA examined the findings from the air quality, trajectory, and non-OTAG modeling analyses in section B.4. to identify certain States which may potentially contribute to nonattainment in downwind areas. First, EPA applied both the lower and upper ends of the OTAG transport distance scale (i.e., 150 miles and 500 miles (9)) to 1-hour nonattainment areas in the northern half of the OTAG region. Using the lower end of the transport scale indicates that the following States and Washington DC may potentially contribute to ozone in downwind nonattainment areas: Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, Wisconsin and Vermont. Using the upper limit of transport distance indicates that the following additional States may potentially contribute to downwind nonattainment areas: Alabama, Arkansas, Georgia, Iowa, Kansas, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma and South Carolina. Also, examining the findings from the non-OTAG regional modeling results (13, 14, 15) indicates that collectively, a large portion of the contributions to high ozone in the Northeast Corridor and/or the Lake Michigan area may come from States as far upwind as: Missouri, North Carolina, Ohio, Tennessee and West Virginia.

5. Approaches for Analyzing Subregional Modeling Data

The subregional modeling runs provide a method to quantify the amount of contribution by upwind States to downwind nonattainment. Four approaches were included in the analysis of subregional modeling results. Approaches 1 and 2 were designed to address the contribution to 1-hour nonattainment and Approaches 3 and 4 the contribution to 8-hour nonattainment. Approaches 1 and 3 examine the contributions in areas which have both monitored and modeled nonattainment. Approaches 2 and 4 examine the contributions in areas with modeled nonattainment. The rationale for each approach is described below.

a. Approaches for 1-Hour Nonattainment. Approach 1 was designed to focus on contributions to areas that have an observed 1-hour ozone problem and in which the model predicts an ozone problem. In this regard, the analysis was restricted to those grid cells in the domain that had 1-hour daily maximum ozone predictions ≥125 ppb[6] in the 2007 baseline, and were within one of the counties currently violating the 1-hour NAAQS. However, the requirement that high ozone predictions spatially coincide with violating counties may be overly restrictive given the uncertainties in the modeled wind regimes associated with the regional nature of the meteorological inputs. Also, the analysis was limited to only two episodes, only one of which, July 1995, actually occurred during the 3-year period used to identify the violating counties. Another limitation of Approach 1 was that it excludes all grid cells that are over water and not touching any State land areas. This may be too restrictive since, in the real atmosphere, sea breeze and lake breeze wind flows can transport high ozone levels that occur over water back on-shore to affect coastal land areas. This meteorological process, often associated with high ozone along the shoreline of Lake Michigan and along the New England coast, is not adequately treated by the regional scale meteorological inputs used in OTAG. Thus, high concentrations predicted just offshore may be inappropriately excluded from the analysis. Approach 2 was designed to address these concerns. In this approach, all grid cells over land that had a 1-hour daily maximum ozone prediction ≥125 ppb in the baseline were included. Also included were grid cells with predictions ≥125 ppb over each of the Great Lakes and in a band 60 km (5 grid cells) wide along the East Coast.

b. Approaches for 8-Hour Nonattainment. The two approaches for assessing contribution for 8-hour nonattainment were similar in design to those used for 1-hour nonattainment. However, the inconsistency between the form of the 8-hour NAAQS, which considers 3 years of data, and the limited predictions available from the OTAG episodes introduced a complication to the analysis. Basically, it was not possible to use the model predictions in a way that explicitly matches the 3-year average of the 4th highest 8-hour form of the NAAQS. Instead, an analysis was performed to link the model predictions to the NAAQS as closely as possible. This analysis consisted of comparing the average 4th highest 8-hour concentrations, based on 3 years of ambient data, to the average 1st, 2nd, 3rd, and 4th highest 8-hour values using ambient data limited to the three most recent OTAG episodes (i.e., 1991, 1993, and 1995). The results of this analysis indicate that the average of the episodic 2nd highest 8-hour ozone concentration corresponds best, overall, to the average of the 4th highest 8-hour NAAQS.

Approach 3 is intended to focus on the contributions to areas that have an observed 8-hour ozone problem and where the model predicts an 8-hour ozone problem. The analysis for this approach was restricted to those grid cells in the domain that had an average (over the 1988 and 1995 episodes) 2nd high 8-hour ozone prediction ≥85 ppb in the 2007 baseline, and were within one of the counties currently violating the 8-

[6] Values above 124 ppb are considered to be exceedances of the 0.12 ppm 1-hour ozone NAAQS in view of the rounding convention established for monitoring data whereby ozone concentrations between 125 ppb and 129 ppb are rounded up to 0.13 ppm.

hour NAAQS. The same technical concerns and limitations discussed above for Approach 1 are also applicable to Approach 3. To address these concerns for the 8-hour analysis, Approach 4 was constructed to include all grid cells that had an average 2nd high 8-hour ozone prediction ≥85 ppb over land areas, the Great Lakes, and in the offshore waters, as in Approach 2 for the 1-hour NAAQS. In addition, by including all grid cells with predicted nonattainment in 2007, Approach 4 provides a way to consider areas which are currently measuring attainment, but which may become nonattainment for the 8-hour NAAQS in the future.

c. Methods for Presenting 1-Hour and 8-Hour Assessments. All of the approaches for both 1-hour and 8-hour nonattainment quantify the impacts of emissions in each subregion on ozone concentrations in downwind States (*i.e.*, States outside the particular subregion). It should be noted that the calculated contributions represent the impacts from individual upwind subregions and not the cumulative impacts from multiple subregions, which would be even greater in magnitude. In Approaches 2 (1-hour) and 4 (8-hour), grid cells off the East Coast were added to the totals of the adjacent States, whereas the impacts for areas over each of the Great Lakes were tabulated separately. In all cases, the ozone impacts were quantified by calculating the difference in predicted ozone between each subregional zero-out run and the 2007 baseline scenario. The contributions from emissions in each subregion to nonattainment in downwind States are summarized for all approaches in Tables II–9a and II–9b. This summary shows the contributions in terms of both the frequency of impacts and the number of downwind States impacted for specific concentration ranges, as described below. More detailed information including the contributions to individual States is provided in Tables II–10 through II–13, for Approaches 1 through 4, respectively. The contributions are grouped into one of six ranges: >2 to 5 ppb, >5 to 10, >10 to 15, >15 to 20, >20 to 25, and >25 ppb. A value of 2 ppb was chosen as the minimum level for this analysis following the convention generally used by OTAG for evaluating the impacts of emissions changes. As an example, Table II–10 shows the frequency of contributions from each subregion to nonattainment in downwind States for Approach 1. Note that the frequency of contributions for the 1-hour NAAQS is determined by tallying the total ''number of days and grid cells'' with impacts within the specified range. However, the frequency of contributions for the 8-hour NAAQS includes the total ''number of grid cells'' only. That is, the averaging procedure used to reflect the form of the 8-hour NAAQS results in a single ''average'' value for each grid cell, instead of values for each day modeled. In the following sections, Approach 1 and Approach 3 are referred to as the ''violating-county'' approaches, whereas Approach 2 and Approach 4 are referred to as the ''all grid-cell'' approaches for the 1-hour and 8-hour NAAQS, respectively. Also, as mentioned previously, the term ''nonattainment'' is used to refer to those areas (grid cells) which meet the criteria for a given approach. For example, in the analysis of Approach 1, ''nonattainment'' refers to those areas which have both measured violations and model predictions of 1-hour ozone ≥125 ppb.

6. Contributions to 1-Hour Nonattainment

The information from the subregional modeling analyses provided in Tables II–10 and II–11 were examined from both a ''receptor'' and ''source'' perspective. The results for the ''county-violation'' approach (Approach 1—Table II–10) and the ''all grid-cell'' approach (Approach 2—Table II–11) are both considered. Examining the data in Table II–10 indicates that many nonattainment areas are affected by multiple source areas. Considering the impacts on violating counties indicates, for example, that:

- Nonattainment areas in Pennsylvania receive contributions of more than 2 ppb from Midwest and Southeast States located in five subregions (2, 5, 6, 7, and 8) with contributions over 25 ppb from States in subregions 6 and 7;
- Nonattainment areas in New Jersey receive contributions of more than 2 ppb from Midwest States as well as adjacent States in six subregions (1, 2, 3, 5, 6, and 7) with contributions over 25 ppb from subregions 3 and 7;
- Nonattainment areas in Maryland receive contributions of more than 2 ppb from Midwest States and adjacent States in six subregions (1, 2, 3, 4, 5, and 6) with contributions in the range of 15 to 20 ppb from subregions 3 and 6;
- Nonattainment areas in Illinois receive contributions of 5 to 10 ppb from Southeast States in subregion 9; and
- Nonattainment areas in Georgia and Alabama receive contributions of 15 to 20 ppb from Midwest States in subregion 5 as well as from adjacent Southeast States in subregion 8.

Considering the ''all grid cell'' approach increases the frequency and magnitude of impacts, as would be expected. For example, the contributions from States in subregion 2 to nonattainment in Pennsylvania increase to the range of 10 to 15 ppb; contributions from Southeast States in subregion 9 in the range of 2 to 5 ppb are evident in nonattainment in Maryland; and Midwest States in subregions 1 and 5 contribute 5 to 10 ppb to nonattainment in Ohio.

As indicated above, the subregional modeling results were also examined in terms of the impact of each subregion on ozone in downwind States outside the particular subregion. The following results highlight the contributions of each subregion to downwind nonattainment (see Tables II–10 and II–11). Results are presented for the ''violating county'' approach (Approach 1) and supplemented with results from the ''all grid-cell'' approach (Approach 2) to the extent that this later approach adds key information to the findings.

Subregion 1 (portions of Illinois, Wisconsin, Indiana, and Iowa): emissions in this subregion contribute 2 to 5 ppb on numerous occasions to nonattainment in violating counties in four States along the Northeast Corridor having serious or severe nonattainment (i.e., Connecticut, Maryland, New Jersey, and New York); downwind contributions as high as 5 to 10 ppb are evident near Detroit over Lake St. Clair, as well as over Lakes Erie and Ontario based on the ''all grid-cell'' approach.

Subregion 2 (portions of Michigan, Indiana, and Ohio): emissions in this subregion contribute 5 to 10 ppb to nonattainment in violating counties in five downwind States; contributions over 10 ppb are evident in seven downwind States from the ''all grid-cell approach.''

Subregion 3 (portions of Pennsylvania, New York and Delaware): emissions in this subregion contribute over 2 ppb to violating counties in nine downwind States with contributions of 15 ppb or more in three States.

Subregion 4 (New Jersey, Connecticut and portions of New York, Pennsylvania and Delaware): emissions from this subregion contribute more than 25 ppb on numerous occasions to three downwind States along the Northeast Corridor.

Subregion 5 (portions of Illinois, Indiana, Kentucky, Missouri, and Tennessee): emissions from this subregion contribute 2 to 5 ppb to violating counties in three downwind States along the Northeast Corridor with contributions of over 10 ppb in three other downwind States in the region;

considering the ''all grid-cell'' approach shows contributions of over 20 ppb to the south in Alabama and 5 to 10 ppb over Lakes Erie and St. Clair.

Subregion 6 (portions of Ohio, Indiana, Kentucky, Tennessee, West Virginia and Virginia): emissions in this subregion contribute over 5 ppb to violations in eight States (and as far downwind as Massachusetts with the ''all grid-cell'' approach); contributions over 15 ppb are predicted in two of the eight States.

Subregion 7 (Maryland, Washington, DC, and portions of Delaware, North Carolina, Virginia and West Virginia): emissions in this subregion contribute more than 15 ppb to violating counties in downwind States along the Northeast Corridor with over 25 ppb contribution on numerous occasions to two of these States; the ''all grid-cell'' approach indicates contributions from this subregion to South Carolina as well as to Kentucky and Ohio.

Subregion 8 (portions of North Carolina, South Carolina and Georgia): emissions in this subregion contribute 2 to 5 ppb to violating counties in four States including several which are relatively far downwind (i.e., Missouri and Illinois) with contributions over 15 ppb to one other State; considering the ''all grid-cell'' approach indicates contributions of over 10 ppb to two States along the Northeast Corridor.

Subregion 9 (portions of Tennessee, Georgia, Alabama, Mississippi, North and South Carolina and Arkansas): emissions in this subregion contribute over 2 ppb to violating counties in four downwind States with contributions over 10 ppb in Indiana; contributions over 10 ppb are evident in three downwind States and far away as Lakes Michigan from the ''all grid-cell'' approach.

Subregion 10 (Florida and portions of Mississippi, Alabama, Georgia and Louisiana): emissions in this subregion do not contribute above 2 ppb to violating counties in any other States; considering the ''all grid-cell'' approach indicates one occurrence of a contribution in the range of 2–5 ppb.

Subregion 11 (portions of Texas, Louisiana, Arkansas and Oklahoma): emissions in this subregion contribute 2 to 5 ppb to violating counties in two downwind States.

Subregion 12 (portions of Missouri, Iowa, Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, Kansas and Oklahoma): emissions in this subregion contribute 2 to 5 ppb in violating counties in two downwind States with 5 to 10 ppb contributions also evident in one of these States (i.e., Michigan, including Lake Michigan).

The results presented in Tables II–10 and II–11, and discussed above, indicate that in general, large contributions to downwind nonattainment occur on numerous occasions even though the analysis was limited to only two episodes. Although the level of contribution varies from subregion to subregion, a consistent pattern is apparent. In view of the relatively high magnitude of the contributions, and/or the relatively high frequency of the contributions, and/or the distance downwind to which the contributions occur, and/or the geographic extent of the downwind contributions, EPA believes that emissions from subregions 1 through 9 make a marked contribution to 1-hour nonattainment in numerous downwind States. Contributions to downwind nonattainment were also evident from subregions 10, 11, and 12, although to a lesser magnitude and extent.

7. Contributions to 8-Hour Nonattainment

In general, the downwind contributions to 8-hour nonattainment are more geographically extensive than those for 1-hour nonattainment. This is not unexpected because there are many more violating counties for the 8-hour NAAQS and, likewise, the model predicts ''nonattainment'' over a much broader portion of the region. The following examples illustrate the extent and magnitude of contributions to violating counties (Approach 3—Table II–12) that are beyond what was found for the 1-hour assessment:

- Contributions to nonattainment areas in Pennsylvania from States in subregion 2 are over 25 ppb rather than 2 to 5 ppb;
- In addition to the contributions from States in subregions 1, 2, 3, 5, 6, and 7 (ranging up to 15 to 20 ppb from subregion 3), nonattainment areas in New Jersey also receive a 2 to 5 ppb impact from southeastern States in subregion 8;
- Nonattainment areas in Illinois receive contributions of 5 to 10 ppb from States to the east in subregion 6 and south in subregion 9;
- Nonattainment areas in Ohio receive contributions of 5 to 10 ppb from States in five subregions in the Midwest, Northeast, and Southeast (1, 3, 5, 7, 8, 9) with contributions over 10 ppb from States in subregion 5;
- Nonattainment areas in North Carolina receive contributions of 5 to 10 ppb from two subregions (7 and 9) with contributions of over 25 ppb from Midwest States in subregion 6; and
- Nonattainment areas in Tennessee receive contributions of 10 to 15 ppb from three subregions (5, 6, and 8) with 15 to 20 ppb contributed by Midwest States in subregion 6.

Highlights of the 8-hour contributions from a ''source'' perspective are given below based on the information in Tables II–12 and II–13. The following discussion is structured similar to that for the 1-hour nonattainment analysis in that results are presented for the ''violating county'' approach and supplemented with results from the ''all grid-cell'' approach.

Subregion 1 (portions of Illinois, Wisconsin, Indiana, and Iowa): emissions in this subregion contribute over 25 ppb to nonattainment in Michigan with contributions of 5 to 10 ppb in Ohio as well as contributions of 2 to 5 ppb to six other States.

Subregion 2 (portions of Michigan, Indiana, and Ohio): emissions in this subregion contribute 2 to 5 ppb to 16 States as far downwind as New Hampshire and Maine with contributions of 5 to 10 ppb or more in five States.

Subregion 3 (portions of Pennsylvania, New York and Delaware): emissions in this subregion contribute 10 to 15 ppb to three States along the Northeast Corridor with contributions of 5 to 10 ppb in Massachusetts and New Hampshire.

Subregion 4 (New Jersey, Connecticut and portions of New York, Pennsylvania and Delaware): emissions from this subregion contribute over 25 ppb to Rhode Island and Massachusetts with contributions of 15 to 20 ppb in Maine.

Subregion 5 (portions of Illinois, Indiana, Kentucky, Missouri, and Tennessee): emissions from this subregion contribute 2 ppb or more to 13 States with contributions of 10 to 15 ppb in two States.

Subregion 6 (portions of Ohio, Indiana, Kentucky, Tennessee, West Virginia and Virginia): emissions in this subregion contribute 5 to 10 ppb or more to 10 States with contributions of 15 ppb or more in two States.

Subregion 7 (Maryland, Washington, DC, and portions of Delaware, North Carolina, Virginia and West Virginia): emissions in this subregion contribute 10 to 15 ppb or more to four States with contributions of 5 to 10 ppb as far downwind as Rhode Island and Massachusetts and 2 to 5 ppb in Maine.

Subregion 8 (portions of North Carolina, South Carolina and Georgia): emissions in this subregion contribute 10 to 15 ppb to three States and 15 to 20 ppb to one of these States; multiple contributions of 2 to 5 ppb are predicted as far downwind as New Jersey.

Subregion 9 (portions of Tennessee, Georgia, Alabama, Mississippi, North

and South Carolina and Arkansas): emissions in this subregion contribute 5 to 10 ppb to six States with contributions of 10 to 15 ppb in two States.

Subregion 10 (Florida and portions of Mississippi, Alabama, Georgia and Louisiana): emissions in this subregion contribute 2 to 5 ppb in two States and 5 to 10 ppb in one State.

Subregion 11 (portions of Texas, Louisiana, Arkansas and Oklahoma): emissions in this subregion contribute 2 to 5 ppb in six States.

Subregion 12 (portions of Missouri, Iowa, Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, Kansas and Oklahoma): emissions in this subregion contribute 2 to 5 ppb in three States; considering the ''all grid-cell'' approach indicates multiple contributions of 2 to 5 ppb downwind over Lake Michigan and Lake Erie.

The results indicate that the contributions to 8-hour nonattainment are very consistent with those for 1-hour nonattainment. Subregions 1 through 9 have a much greater magnitude, frequency, and geographic extent of contribution compared to the other subregions. Thus, based on this assessment, EPA believes that emissions from subregions 1 through 9 make a marked contribution to downwind nonattainment for the 8-hour NAAQS. In fact, the extent of contributions from most of these subregions (i.e., 1 through 9) is even larger for 8-hour nonattainment while the contribution from the other subregions (i.e., 10, 11, and 12) still remains relatively low by comparison.

8. Assessment of State Contributions

The preceding air quality, trajectory, emissions, and modeling analyses provide a number of pieces of information for determining, based on the weight of evidence, which States make a significant contribution to downwind nonattainment. The assessment of the State contributions is divided into three parts. States which are wholly or partially contained within subregions 1–9 are considered first since emissions from these States make a marked contribution to downwind nonattainment for both the 1-hour and 8-hour NAAQS, based upon the subregional modeling. States which were not included in any of the OTAG subregions (i.e., some of the New England States) are considered second. States located in subregions 10, 11 and 12, which did not have a marked contribution to downwind nonattainment for either the 1-hour or 8-hour NAAQS, are discussed last.

The subregional modeling results indicate that emissions from States in subregions 1 through 9 produce large downwind contributions in terms of the magnitude, frequency, and geographic extent of the downwind impacts. In addition, nonattainment areas within many States in the OTAG region receive large and/or frequent contributions from emissions in these subregions. The EPA believes that the following States whose emissions are wholly or partially contained within one or more of these subregions (i.e., Alabama, Connecticut, Delaware, Washington DC, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin) is making a significant contribution to downwind nonattainment. In addition to the marked levels of contributions described above, this finding is based on:

- OTAG strategy modeling and non-OTAG modeling indicates that NO_X emissions reductions across these States would produce large reductions in 1-hour and 8-hour ozone concentrations across broad portions of the region including 1-hour and 8-hour nonattainment areas;
- The air quality, trajectory, and wind vector analyses indicate that these States are upwind from nonattainment areas within the 1- to 2-day distance scale of transport;
- These States form a contiguous area of manmade emissions covering most of the core portion of the OTAG region;
- 11 of the States that are wholly within these nine subregions (i.e., Illinois, Indiana, Kentucky, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia) have a relatively high level of NO_X emissions from sources in their States; these States are ranked in the top 50 percent of all States in the region in terms of total NO_X emissions and/or have NO_X emissions exceeding 1000 tons per day, as indicated in Table II–1;
- States wholly within subregions 1 through 9 with lesser emissions (i.e., Connecticut, Delaware, Maryland) and Washington, DC have a relatively high density of NO_X emissions, as indicated in Table II–2;
- For the nine States that are only partially contained in one of subregions 1 through 9 (i.e., Arkansas, Iowa, Michigan, Mississippi, Missouri, Alabama, Georgia, Wisconsin, and New York) the State total NO_X emissions in Table II–1 as well as each State's contribution to NO_X emissions in the subregions (see Tables II–14a and II–14b) indicate that six of these States (i.e., Michigan, Missouri, Alabama, Georgia, Wisconsin, and New York) each have: NO_X emissions that are generally more than 10 percent of the total NO_X emissions in one of these subregions, and either NO_X emissions in the top 50 percent among all States, and/or a majority of the State's NO_X emissions are within one of these subregions.

For the New England States that were not included in any of the OTAG zero-out subregions (i.e., Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), State emissions data indicate that both Massachusetts and Rhode Island have a high density of NO_X emissions (see Table II–2). Also, the trajectory and wind vector analyses indicate that these States are immediately upwind of nonattainment areas in Maine and New Hampshire. Thus, EPA believes that these two States (i.e., Massachusetts and Rhode Island) also make a significant contribution to downwind nonattainment for both the 1-hour and 8-hour NAAQS.

In summary, based on the weight of evidence, EPA believes that the 22 States plus the District of Columbia's consolidated metropolitan statistical area which make a significant contribution to downwind nonattainment for both the 1-hour and 8-hour NAAQS are:

Alabama,
Connecticut,
Delaware,
District of Columbia,
Georgia,
Illinois,
Indiana,
Kentucky,
Maryland,
Massachusetts,
Michigan,
Missouri,
New Jersey,
New York,
North Carolina,
Ohio,
Pennsylvania,
Rhode Island,
South Carolina,
Tennessee,
Virginia,
West Virginia,
Wisconsin.

It should be noted that under EPA's alternative interpretation of section 110(a)(2)(D), these areas would be determined to significantly contribute to nonattainment problems downwind only after consideration of additional factors, including the respective costs of controls on emissions in upwind and

downwind areas, to the extent this information is at least qualitatively available. Those additional factors, discussed in section II.D. below, leads EPA to propose to conclude that these areas contribute significantly under this interpretation as well.

For the nine States in the OTAG region which are wholly within subregions 10, 11, and 12 (i.e., Florida, Kansas, Louisiana, Minnesota, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas), the OTAG and non-OTAG modeling information indicates that emissions from these States make at most a relatively small contribution to downwind nonattainment. Also, most of these States are relatively distant from many of the downwind nonattainment areas in the OTAG region and have a relatively low amount of manmade NO_X emissions and/or NO_X emissions density. Thus, as discussed in section VI, States Not Covered By This Rulemaking, the weight of evidence available does not support a finding that these States make a significant contribution to downwind nonattainment.

D. Comparison of Upwind and Downwind Contributions to Nonattainment and Costs of Controls

Important parts of EPA's determination of whether, and to what extent, to require controls on upwind NO_X emissions that are linked to regional transport are comparing the contribution to downwind nonattainment problems of upwind NO_X emissions as opposed to local, downwind NO_X or VOC emissions; as well as comparing the costs of achieving downwind ozone reductions through upwind emissions reductions, as opposed to through downwind emissions reductions. Depending on the interpretation for section 110(a)(2)(D), the relative downwind contribution and the respective costs are either a factor in the determination of what emissions limitations constitute adequate mitigation of that contribution, or they are a factor in the significant contribution test.

Under the CAA requirements, downwind nonattainment areas are already obligated to implement significant controls. The provisions for classified areas mandate cascading control requirements so that higher classified areas must implement the same controls as lower classified areas, plus additional controls. These mandated controls generally are assumed in the OTAG/EPA modeling for the 2007 base case, as described above. These mandated controls may be viewed as the first increment of required controls that will bring the nonattainment areas into attainment. Today's proposal indicates that the next increment of controls should be the regional controls, for the reasons described below.

The EPA has developed preliminary data indicating that regional NO_X emissions reductions in the OTAG region are a cost-effective means for reducing ozone levels in nonattainment areas downwind, compared to the costs of further reductions in local VOC and NO_X emissions in those nonattainment areas. The EPA developed this information based on data from the recent regulatory impact analysis (RIA) for the new ozone standard. The EPA estimated the amount of VOC and/or NO_X emissions reductions which would be needed for areas to attain the new standard as well as the air quality improvement resulting from a regional NO_X strategy. The EPA then compared the potential cost of achieving attainment through a strictly local emission reduction approach alone to the cost of a regional NO_X strategy.

The preliminary cost comparison was based on a simplified analysis that illustrates the potential control cost difference between a regionally-coordinated NO_X strategy and a collection of local control strategies in projected ozone nonattainment areas. The analysis estimates that the existence of a 22-States and the District of Columbia (''23 jurisdiction'') regional NO_X strategy has the potential to avoid from $2.9 to $12.8 billion dollars of the total annual cost that would be incurred under the alternative local control strategy. This ''cost avoided'' can be compared to the estimated annual cost of $2.8 billion for the regional NO_X strategy assumed in the RIA to evaluate the relative efficiency of a regional strategy.

The EPA's analysis is based on two runs of the ROM. The first run, called the local control strategy (LCS) run, estimates ozone air quality based on a 2007 emissions projection assuming CAA-mandated controls, but not including a regional NO_X strategy. The second run, called the regional control strategy (RCS) run, estimates ozone air quality based on a 2007 emissions projection with a regional NO_X strategy. This strategy includes a regionwide emissions cap based on a 0.15 lb/MMBtu NO_X limit on utilities and large industrial boilers, and the National Low Emission Vehicle (NLEV) program. While not identical to the regional control assumptions in this rulemaking, the RCS run is similar enough to offer insights for this cost comparison.

Using the LCS ROM runs, EPA estimated the potential local NO_X and/or VOC emission reductions needed in 17 projected ozone nonattainment areas to attain the new 8-hour ozone standard. An additional 13 areas are also projected to be nonattainment under the LCS scenario, but emission reduction targets were not established for these areas. These additional areas are not included in this analysis; thus, the estimates presented in this analysis of the potential local control cost avoided due to the regional NO_X strategy are likely underestimated.

Based on the ROM run for the RCS scenario, EPA estimated the effect of the regional NO_X strategy on future ozone concentrations for the 17 areas. Seven of these 17 areas are projected to attain the new ozone standard as a result of controls in the RCS scenario. These 7 areas are given a 2007 RCS reduction target credit of 100 percent (i.e., further local reductions may not be needed for attainment). For the 10 remaining nonattainment areas, the RCS is estimated to be 32 percent effective [7] toward achieving the air quality attainment target relative to the LCS. This is based on a comparison of ROM predictions for the LCS and RCS scenarios versus the air quality target (0.08 ppm/8-hour/4th max ozone standard). Therefore, all remaining areas are given a 32 percent credit toward their respective VOC and/or NO_X emission reduction targets. For the regional NO_X strategy, the total avoided local VOC reductions are over 513,000 tons, and the total avoided local NO_X reductions are nearly 767,000 tons. This analysis indicates that the regional NO_X emissions reductions provide equivalent air quality benefits to a large portion of the local VOC and/or NO_X emissions reductions which may be needed to attain in these areas. This finding weighs in favor of concluding that the regional NO_X reductions are appropriate to mitigate the upwind contribution or, under the second interpretation of section 110(a)(2)(D), that the relevant upwind areas significantly contribute to nonattainment problems downwind.

As discussed in the next section, EPA has identified a set of regional NO_X controls in a cost range of $1,650 to $1,700 per ton. These regional upwind and downwind control costs appear to compare favorably to the potential control costs associated with the downwind local controls, as indicated in Table II–15. The avoided cost of local VOC control is assumed to range from

[7] 32 percent is the median effectiveness of the RCS considering all nonattainment areas in the OTAG region.

a low-end cost of $2,400 per ton to a high-end cost of $10,000 per ton. The avoided cost of local NO_X control is assumed to range from a low-end cost of $2,200 per ton to a high-end cost of $10,000 per ton. The low-end costs are derived from the nationwide average incremental costs of VOC- and NO_X-related control measures selected in the RIA for the new ozone standard. The high-end cost of $10,000 per ton is assumed based on the Presidential Directive for the Administrator of EPA regarding ''Implementation of Revised Air Quality Standards for Ozone and Particulate Matter'' issued by President Clinton.

The foregoing analysis suggests, at least directionally, that the regional NO_X reductions that would result from today's proposal may have the same ambient impact, but at lower cost, than available local VOC and NO_X reductions. Thus, this analysis is another factor supporting EPA's proposed conclusion that the SIPs for States in this region are required, under section 110(a)(2)(D), to reduce NO_X emissions.

III. Statewide Emissions Budgets

A. General Approach for Calculating Budgets

This section describes the general approach EPA is proposing to use to develop emission budgets under today's action and the rationale for that approach. In addition to a description of how control measures were selected, this section addresses other issues related to calculating budgets, including: relationship to OTAG recommendations, uniform application of controls, seasonal versus annual controls, and treatment of areas with NO_X waivers.

1. Overview

In earlier parts of today's action, EPA proposed to determine that NO_X emissions from 23 jurisdictions contribute significantly to nonattainment problems in downwind areas in the OTAG region. In this and subsequent parts, EPA proposes to require a NO_X budget for each of these jurisdictions for those emissions that will result in sufficient reductions to adequately mitigate the contribution. The EPA proposes as the criteria for establishing the budget the relative cost effectiveness of the emissions reductions associated with the available controls, combined with reference to the ambient impact of the emissions reductions. The EPA solicits comment on alternative approaches for establishing State emissions budgets that factor in the differential effects of NO_X reductions in different geographic locations on downwind air quality.

Specifically, for the proposed approach, EPA employed the following steps in determining the budget levels that EPA proposes constitute adequate mitigation under the first interpretation of significant contribution. First, EPA compiled a list of available NO_X control measures for the various emissions sectors in the upwind areas. For the control measures on this list, EPA estimated the average cost effectiveness of those controls. The average cost effectiveness is defined as the cost of a ton of reductions from the source category based on full implementation of the proposed controls, as compared to the pre-existing level of controls.

Second, EPA developed a rationale for determining which of the NO_X control measures should form the basis of the budget. The EPA focused on average cost effectiveness of the controls. As a point of comparison, EPA determined the average cost effectiveness of a representative sample of recent current and planned State and Federal controls. The EPA believes that the average cost effectiveness for the measures proposed today to form the basis for the budgets should be comparable to the average cost effectiveness of those recently undertaken and planned controls.

Third, EPA evaluated control measures to determine whether they should be assumed in the budget calculation based on this rationale. The EPA proposes that when controls on utilities in the 23 jurisdictions are extended to the level proposed today, and when controls on nonutility point sources are similarly extended, then the average cost effectiveness of the utility controls and of the nonutility point source controls are both comparable to the average cost effectiveness of recently undertaken and planned controls.

At the same time, EPA analyzed the average cost effectiveness for NO_X reductions from source categories other than utilities or other point sources. The EPA is today proposing that additional controls (beyond the current and planned measures described in section III.B.2.b) from those categories should not form the basis for any of the budgets because their costs, for the purpose of reducing only NO_X emissions, are significantly higher than those of the utilities and other point sources and/or additional feasible controls have either not been identified or are more appropriate for local, not regional, implementation.

Fourth, EPA determined the state-by-state budgets for NO_X emissions based on the selected controls.

Fifth, EPA determined that these budget levels—or generally comparable levels—result in an adequate level of ambient reductions downwind. The EPA did not conduct ambient air quality modeling for the level of emissions contained in the budgets proposed today. However, OTAG conducted air quality modeling for a set of controls that, although somewhat different from the utility and point source controls EPA is today proposing to rely on, yielded comparable emission levels, on a regionwide basis, to those proposed today. This modeling indicated a noticeable improvement in ozone concentrations due to implementation of the required emissions budget. The Agency intends to include air quality analyses of the proposed NO_X emissions budgets in the SNPR. Although EPA is proposing that States be required to achieve the emissions budgets specified and has based those budgets on a particular set of cost-effective controls, States may select their own mix of controls that meet this budget.

Sixth, EPA determined that, based on current information, requiring upwind NO_X emissions reductions, based on an assessment of their costs and ambient impact, is more appropriate than requiring downwind VOC emissions reductions, based on an assessment of their costs and ambient impacts. The EPA's current information is limited for this aspect of today's rulemaking, but generally consists of the analyses performed for the RIA for the revised ozone and particulate matter NAAQS.

The alternative interpretation for section 110(a)(2)(D) of the CAA, which EPA is also proposing today, should also be noted. Under this interpretation, the various factors included in the weight of evidence approach discussed above concerning the upwind emissions and ambient contributions, therefore, would be part of the determination as to whether the emissions contribute significantly to nonattainment problems (or interfere with maintenance downwind). The EPA would then undertake the same cost analysis as described above as an additional factor in the weight of evidence test. If EPA concluded that the regional NO_X emissions controls are appropriately cost effective, EPA would conclude, on the basis of all the factors, that the emissions subject to those controls are considered to contribute significantly to nonattainment. Under this interpretation of section 110(a)(2)(D), the State budget levels, which are based on the cost-effective control measures, are necessary to prohibit the amount of the State's emissions determined to

contribute significantly to nonattainment.

2. Relationship of Proposed Budget Approach to the OTAG Recommendations

In selecting those control measures determined to be the most reasonable and cost effective for the purpose of achieving regional NO_X reductions, EPA carefully considered the recommendations made by OTAG on July 8, 1997 (Appendix B). The OTAG process is described in section I.F, OTAG Process, of this rulemaking. The control measures assumed in the proposed budget calculations described below generally fall within the range of OTAG's recommendations.

The OTAG recommendations call for implementation of several Federal measures to achieve NO_X emissions decreases through a NLEV program, inspection and maintenance (I/M) programs (where required by the CAA), and reformulated gasoline (RFG) in mandated and current opt-in areas. Emissions reductions following these recommendations are included in EPA's calculation of the highway vehicle budget component as part of the 2007 Clean Air Act base.

The OTAG recommendations endorse the development and implementation of ozone action-day programs. The recommendations also encourage EPA to evaluate emission benefits of cetane adjustments with respect to diesel fuel. While EPA supports these recommendations, it should be noted that they do not translate into specific emissions reductions at this time and, thus, EPA did not calculate emissions reductions from these programs as part of the proposed budget calculation.

The OTAG recommendations also cover electric utilities and other large- and medium-sized point sources. Specifically, OTAG recommended controls discussed below in all of the ''fine grid'' areas. The OTAG recommended that emissions from sources in the portion of States that are in the ''coarse grid'' be exempted from the budget calculation. The EPA is proposing to include entire States rather than exempting portions based on the division between coarse and fine grid. This affects New York, Michigan, Wisconsin, Missouri, Alabama and Georgia. The EPA proposes to take this approach because the division between fine and coarse grid areas was based, in part, on technical modeling limitations; because the additional emissions decreases will help the downwind nonattainment areas; and because a statewide budget creates fewer administrative difficulties than a partial-state budget. The OTAG fine grid States are the same as the 23 jurisdictions proposed in this rulemaking as having a significant contribution, with the exception of the States of Maine, New Hampshire and Vermont. The portion of these three States in the OTAG fine grid are included in the OTAG recommendation for additional controls, but are not included in today's proposal for the reasons described in section II, Weight of Evidence Determination of Significant Contribution, of this rulemaking. The EPA is soliciting comments on this approach; specifically, whether partial States should be included, which States or parts of States should be excluded, the appropriate rationale for excluding States or parts of States, and how to address administrative difficulties associated with excluding parts of a State.

For electric utilities, OTAG recommended that the range of utility NO_X controls in the fine grid fall between CAA controls (about a 30 percent reduction from 1990 levels) and the less stringent of 85 percent reduction from the 1990 rate or 0.15 lb/MMBtu. As discussed below, EPA's proposed utility budget component calculation is based on the 0.15 lb/MMBtu emission rate without the 85 percent reduction option. Thus, EPA's proposed utility budget component calculation is similar to the upper bound recommended by OTAG, but with a slightly lower overall emission rate (since it excludes the 85 percent reduction criterion) and slightly different total area (since whole States—not just the fine grid portion—but fewer States are included). The alternatives considered and explanation of the methodology proposed to make these calculations are more fully discussed below and in the technical support document (TSD) which is included in the Docket to this rulemaking.

For nonutility point sources, OTAG recommended that the stringency of controls for large sources be established in a manner equitable with utility controls. The OTAG recommendation includes a definition of large sources (e.g., industrial boilers with a heat input greater than 250 MMBtu) and recommends control levels ranging from 55–70 percent reduction. The OTAG Policy Group further recommended that RACT should be considered for individual medium-sized nonutility point sources (e.g., industrial boilers with a heat input between 100 and 250 MMBtu). The EPA-proposed nonutility budget component calculations generally follow the OTAG recommendations. Missing data in the OTAG emissions inventories, however, preclude EPA from precisely following the recommended definitions of large- and medium-sized sources. The alternatives considered and explanation of the methodology proposed to make these calculations are more fully discussed below.

3. Uniform Application of Control Measures

The EPA is proposing that the budget for each State that has been determined to contribute significantly to nonattainment in a downwind State be calculated using the same control measure assumptions. This is true under either interpretation, described above, of section 110(a)(2)(D). An alternative approach would be for EPA to attempt to identify for each State or a group of adjacent States (e.g., Ohio Valley, Great Lakes, Southern, or Northeastern States) a unique set of control levels on which to base emissions budgets that, together with other States' emission budgets, would eliminate significant contribution to downwind nonattainment areas. The EPA is soliciting comment on methodologies that might be used to implement such an approach. The decision to propose to calculate budgets based on uniform control measures is based primarily on cost effectiveness (cost per ton removed) and also in consideration of the OTAG recommendations, collective contribution, equity concerns, modeling assumptions and concerns over emissions shifting. These are discussed further below.

a. OTAG. Although OTAG did note that the range of transport is generally longer in the North than in the South, the OTAG recommendations did not specifically indicate whether controls should be applied at differing levels over the fine grid.

b. Collective Contribution and Equity Considerations. The EPA believes that certain downwind States receive amounts of transported ozone and ozone precursors that significantly contribute to their nonattainment. The EPA further believes that it is the ''collective'' emissions of ''several'' upwind States that result in significant contributions. All States included within a group of States whose collective emissions significantly contribute to nonattainment may be assumed to contribute significantly. Because each State's contribution is viewed with reference to other States' contributions, EPA believes it is appropriate to require the same type of remedial action for each State.

The proposed approach results in the calculation of statewide emissions

budgets based on the consistent application of potential controls across the States determined to contribute significantly. This approach treats the 23 jurisdictions in a like manner for the purpose of calculating the proposed statewide emissions budgets.

c. Modeling Assumptions and Potential Synergistic Effects. In theory, it would be possible to derive more precise contributions made by individual States to collective transport of ozone and precursors to downwind States. In practice, however, this is a more challenging analysis. First, the relative impact of individual States, within a collective group of States, on transport varies as a function of meteorology. For example, the impact of more distant States may be relatively greater when there is a well defined windfield. In contrast, effects of nearby States may be most pronounced under stagnant or semi-stagnant conditions. Modeling may therefore not sufficiently characterize the relative importance of emissions in individual States to regional transport, unless many days reflecting a variety of meteorological conditions are modeled.

Second, the impact of an individual State on downwind transport of ozone and precursors depends on what is assumed about emissions in other States in the collective group shown to result in significant transport. This is exacerbated by the fact that ozone formation and transport is not a linear function of precursor emissions. Rather, there is likely to be a synergistic effect which arises from reducing emissions in several neighboring States. Thus, the predicted relative importance of emissions from a single State might change substantially if emissions from other States in the group were reduced. There is a myriad of assumptions which can be made about emission controls in neighboring States. It is not feasible to model them all. Thus, a definitive, precise estimate of the relative importance of a single State's contribution to transport is unlikely. On the other hand, OTAG has performed modeling showing the air quality impacts of applying differential levels of controls in different zones of the OTAG domain (see section II.B.3, OTAG Geographic Modeling). In section III.A.3.e below, EPA is requesting comment on the possibility of using this or some other analysis as a means for considering an alternative approach to developing NO_X budgets.

d. Electrical Generation and Emissions Shifting. Among many factors that EPA considered in weighing whether to propose uniform or variable emissions limits in calculating States' emission budgets was the concern that different controls in one part of the OTAG fine grid region in combination with an interstate emissions trading program may lead to increases in pollution within areas having more restrictive controls. That is, if unrestricted interstate emissions trading were allowed, emissions reductions might be expected to shift away from States assigned more restrictive controls to States which received less restrictive control requirements due to the lower control costs likely to exist in States with less restrictive controls. This may result in emissions above the budget level in areas with more restrictive controls. Such shifts are an important concern and may be most significant for large combustion sources because they emit a large portion of the total regional NO_X emissions and dominate point source emissions.

On the other hand, having the interstate trading program incorporate control levels that vary from State to State by varying the value of an emission credit or allowance would complicate administration of the trading program. Such complexity would increase transaction costs and could discourage emissions trading which may result in higher regionwide control costs. Alternatively, the scope of the trading program could be confined to those States with similar control levels. However, each subregional trading program would have fewer participants. A trading program that covers a smaller market area will provide less flexibility and reduce the possible savings for the affected sources as compared with larger trading programs.

e. Alternative Approaches Based on Non-Uniform Application of Control Measures. The EPA is proposing to derive State NO_X emissions budgets using uniform control measures. As discussed earlier in this section, EPA believes it is appropriate to require comparable levels of control of NO_X emissions throughout the 23 jurisdictions covered by today's action. The EPA selected these proposed levels primarily by considering the cost effectiveness of control at the source (*i.e.,* the control cost per ton of NO_X reduced for each type of source). Although not all such emissions reductions are equally effective in reducing ozone concentrations in target nonattainment areas, EPA believes that other benefits of NO_X reductions and equity considerations are also important and support this type of approach.

In a July 1997 Memorandum to the EPA Administrator, the President directed the Agency to maximize common sense, flexibility, and cost effectiveness in implementing the revised ozone and particulate matter standards. Fulfilling this mandate by developing the least burdensome strategy for achieving air quality improvements, and ultimately attainment in nonattainment areas, requires technically complex analysis of regional transport, similar to that undertaken as part of the OTAG process. As noted elsewhere in this package, a number of other factors, including distance and meteorology, influence how effective different tons of emissions reductions are in reducing ambient ozone concentrations in nonattainment areas.

The EPA recognizes that analytic approaches other than one based on using uniform control measures might be useful in deriving State NO_X emissions budgets. For example, one approach would be to attempt to quantify more explicitly the cost effectiveness in terms of the ambient ozone improvement in nonattainment areas (measured, for example, as cost per population weighted changes in parts per billion of peak ozone concentrations) taking into account the location of control measures through regional modeling. This alternative, if feasible, would clarify the linkage between the budget calculation and ambient ozone improvement in nonattainment areas and, depending on its effect on interstate emissions trading, could thereby lower the overall cost of achieving comparable ambient ozone improvements in nonattainment areas. Alternative approaches to measuring cost effectiveness that would more directly link cost effectiveness to improvements of air quality in nonattainment areas could also be adopted.

The EPA solicits comment on alternative approaches for establishing State emissions budgets that factor in the differential effects of NO_X reductions in different geographic locations on downwind air quality. Comments advocating alternative approaches would be most helpful if they set forth concrete proposals on what analysis should form the basis for budget calculations. The EPA plans to review alternative approaches and perform additional air quality and economic analysis in developing the final rule. If, after review of alternative approaches, EPA concludes that a new basis for the State emissions budgets is appropriate, EPA would issue a SNPR.

4. Seasonal vs Annual Controls

Today's proposal is for the purpose of helping attain and maintain the NAAQS for ozone. High ambient concentrations

of ozone are associated with periods of elevated temperature and solar radiation. Thus, in most parts of the country, high ozone episodes occur only during summer months. Accordingly, the control of NO_X emissions primarily on a summer season basis may be part of some areas' strategies to attain the ozone standard at least cost. The OTAG analyses have assumed that the control requirements flowing from this process would be required only over the ozone season, which OTAG considered to be May 1 through September 30. For the purpose of decreasing the regional transport of ozone and ozone precursors, EPA agrees that control measures that focus over the ozone season may be appropriate and is proposing seasonal NO_X budgets.

Because NO_X emissions have adverse impacts on the environment in several ways (as described in section IX., Nonozone Benefits of NO_X Reductions), it should be noted that the timing of the NO_X emissions can be important to the subsequent environmental impacts. For example, year-round reductions in NO_X emissions are more helpful than seasonal approaches at minimizing the impacts of acid deposition and eutrophication, although summertime NO_X emissions reductions are most helpful in attaining the ozone standard. Application of NO_X emissions controls that focus emissions reductions in the summer will, in many cases, also achieve significant emission reductions on a year-round basis. For example, efforts to decrease emissions from large boilers will usually include installation of low NO_X burners—which will achieve year-round moderate amounts of emission reductions—and may include, in addition, some type of summer season control, such as switching to a cleaner fuel or post-combustion technology. Therefore, while the purpose of this rulemaking is to address ozone transport that significantly contributes to downwind nonattainment, which is primarily a concern during the ozone season, States may wish to consider the total environmental impacts when adopting measures to achieve the NO_X emissions decreases.

The OTAG modeling used emissions inventory information that represented typical summer day emissions. In this rulemaking, EPA is proposing seasonal emission budgets for each of the 23 affected jurisdictions. Thus, in developing the budget, a conversion is needed to arrive at a seasonal budget. As in the OTAG process, EPA is proposing to use May 1 through September 30 as the ozone season. The detailed procedures for converting the daily emissions into the seasonal budgets are described below for each source sector. The proposed budgets are in units of tons of anthropogenic NO_X for the season May 1 to September 30. Since States will generally only be able to affect anthropogenic sources, the proposed budget does not include biogenic or geogenic sources.

5. Consideration of Areas With CAA Section 182(f) NO_X Waivers

The OTAG process included lengthy discussions on the potential increase in local ozone concentrations in some urban areas that might be associated with a decrease in local NO_X emissions. The OTAG modeling results indicate that urban NO_X emissions decreases produce increases in ozone concentrations locally, but the magnitude, time, and location of these increases generally do not cause or contribute to high ozone concentrations. That is, NO_X reductions can produce localized, transient increases in ozone (mostly due to low-level, urban NO_X reductions) in some areas on some days, but most increases occur on days and in areas where ozone is low. The OTAG recommended that the States work together and with EPA toward completing local SIPs, including evaluation of possible local NO_X disbenefits. The EPA agrees that further analysis of this effect is needed as part of the development of local attainment plans. With respect to regional ozone transport and today's proposed action, EPA believes it is not appropriate to give special treatment to areas with NO_X waivers as discussed below.

In calculating the proposed statewide NO_X emissions budget, EPA considered the options of: (1) requiring less reductions from a State that had been granted a NO_X waiver under section 182(f) of the CAA, or (2) ignoring the NO_X waiver for purposes of calculating the transport budget. As described below, EPA believes it is inappropriate to give special treatment to areas with NO_X waivers when considering measures to reduce the regional transport of ozone and ozone precursors. Therefore, EPA is proposing to calculate the statewide emissions budget without special consideration for areas with NO_X waivers. The EPA views the effect of NO_X waivers on air quality as appropriate for further analysis by each State as part of its local attainment planning process, and EPA will consider such results when working with each State's attainment plan.

In option (1), the upwind States with NO_X waivers would achieve only a portion of the emissions decreases otherwise required under the statewide emissions budget. Thus, the downwind nonattainment areas would receive less improvement in air quality and would need to adopt additional control measures in their States. To some degree this approach defeats the purpose of today's action because fewer emissions reductions in the upwind areas would lead to higher ozone concentrations in the downwind areas.

In option (2), the upwind States may be able to achieve the NO_X emissions decreases needed to meet their budgets in those portions of the State where NO_X emissions decreases are not a problem. On the other hand, the State may need to implement some NO_X emissions decreases in areas where such decreases may lead to increases in ozone concentrations on some days. Thus, additional VOC control measures may be needed to offset associated ozone increases due to NO_X emissions decreases in the sensitive areas. This approach is more consistent with the purpose of today's action and may or may not result in additional VOC controls being needed.

In proposing option (2), it is helpful to look more closely at why the NO_X waivers were initially granted and the manner in which they were granted. Most of the NO_X waivers granted were not supported by local or regional scale air quality modeling analyses indicating that NO_X emissions decreases would result in ozone increases. In fact, most of the waivers were granted based solely on local air quality data indicating the areas were already attaining the ozone standard. Thus, technical support for option (1) is substantially incomplete. In addition, relevant modeling analyses completed by OTAG and others regarding the issue of NO_X waiver areas need to be considered as described below.

The CAA requires EPA to view NO_X waivers in a narrow manner. In general, section 182(f) provides that waivers must be granted if states show that reducing NO_X within a nonattainment area would not contribute to attainment of the ozone NAAQS within the same nonattainment area. Only the role of local NO_X emissions on local attainment of the ozone standard is considered in nonattainment areas outside an ozone transport region. The role of NO_X in regional attainment is addressed separately under section 110(a)(2)(D) of the Act, which prohibits one State from significantly polluting another State's downwind areas.

In response to State NO_X waiver petitions submitted between 1992–1995, EPA granted NO_X waivers under section 182. Most waivers were granted on the basis that the area had already attained

the ozone standard and, thus, additional NO_X (or VOC) reductions ''would not contribute to ozone attainment in the area.'' In some cases, the waivers were granted based on dispersion modeling which showed that the area would attain just as expeditiously based solely on additional VOC reductions or that local NO_X reductions increased local peak ozone concentrations; this also meets the above test that additional NO_X reductions would not contribute to ozone attainment in the area.

Specifically, the EPA received petitions for a NO_X waiver for 51 ozone nonattainment areas. Of these petitions, EPA has approved waivers for 48 nonattainment areas and 3 are pending. Most of the waivers granted (28 of 48) were simply based on air quality monitoring data over a period of 3 or more years indicating the area had attained the ozone standard (and, thus, additional NO_X reductions were not needed for attainment). Several States submitted NO_X waiver petitions (7 of 48) accompanied by an attainment plan showing achievement of the ozone standard by the statutory deadline through additional VOC controls only. None of these 35 nonattainment areas with approved NO_X waivers have demonstrated or even sought to demonstrate that NO_X reductions might increase ozone concentrations in specific areas. Only in the cases of the Lake Michigan (9 nonattainment areas), Phoenix AZ, Baton Rouge LA and the Houston/Beaumont TX areas was information submitted to show that, in some episodes, NO_X emissions decreases lead to increases in peak ozone concentrations (13 of 48). Thus, the technical support for option (1) is substantially incomplete. Even for the few areas which had modeling information, those analyses were generally considered preliminary analyses that would be replaced with more complete modeling associated with attainment plans.

In the **Federal Register** notices approving individual waiver petitions, EPA gave notice that approval of the local petition, under section 182(f) of the CAA, is on a contingent or temporary basis because subsequent modeling or monitoring data for an area may show attainment benefits from NO_X reductions, and stated that additional local and regional NO_X emissions reductions may be needed to reduce the long range transport of ozone. Where such additional NO_X reductions are necessary to reduce the long range transport of ozone, EPA stated that authority provided under section 110(a)(2)(D) of the CAA would be used and that a section 182(f) NO_X waiver would, in effect, be superseded for those control requirements needed to meet the section 110(a)(2)(D) action. Further, EPA noted that States may require additional NO_X reductions in these nonattainment areas for nonozone purposes, such as attainment of the PM–10 standard or achieving acid rain reduction goals.

The OTAG addressed the complex issue of regional impacts due to transport of NO_X and VOC emissions. The OTAG modeling results indicate that urban NO_X reductions produce widespread decreases in ozone concentrations on high ozone days. In addition, urban NO_X reductions also produce limited increases in ozone concentrations locally, but the magnitude, time, and location of these increases generally do not cause or contribute to high ozone concentrations. Most urban ozone increases modeled in OTAG occur in areas already below the ozone standard and, thus, in most cases, urban ozone increases resulting from NO_X reductions do not cause exceedance of the ozone standard. There are a few days in a few urban areas where NO_X reductions are predicted to produce ozone increases in portions of an urban area with high ozone concentrations.

In other words, modeling analyses conducted as part of the OTAG process indicated that, in general, NO_X reduction disbenefits are inversely related to ozone concentration. On the low ozone days leading up to an ozone episode (and sometimes the last day or so), the increases are greatest, and on the high ozone days, the increases are least (or nonexistent); the ozone increases occur on days when ozone is low and the ozone decreases occur on days when ozone is high. This indicates that, in most cases, urban ozone increases may not contribute to exceedances of the ozone standards. Overall, OTAG modeling thus suggests that the ozone reduction benefits of NO_X control may outweigh the disbenefits of urban ozone increases in both magnitude of ozone reduction and geographic scope.

It should be noted that the modeling analyses completed within the OTAG process necessarily utilized a larger grid size than States are likely to use in their attainment plans. That is, future analyses by States will likely use smaller grid sizes. The smaller grid sizes may provide additional information on effects such as local NO_X emissions reacting with local ozone. The additional information will be important as States develop their attainment plans.

In summary, the EPA views ozone pollution as a regional problem as well as a local problem. Thus, achieving ozone attainment for an area, and thereby protecting its citizens from ozone-related health effects, often depends on the ozone and precursor emission levels of upwind areas. In order to achieve the needed upwind NO_X emissions decreases, areas that were granted NO_X waivers may need to control NO_X emissions for transport purposes, even if the waivers remain in place. Today's action is part of the process that is leading to additional NO_X reductions requirements in attainment and nonattainment areas across broad parts of the Nation to reduce interstate transport of ozone. The requirements of today's action apply both to areas with approved NO_X waiver petitions and areas without such petitions. That is, any nonattainment areas with NO_X waiver petitions approved by EPA in the past or in the future are not proposed to be exempt from today's action.

At the same time, EPA is sensitive to the concerns of those areas (primarily in the Lake Michigan area) that may be required to achieve NO_X reductions that produce local increases in ozone concentrations in order to reduce concentrations in downwind areas. The EPA is, thus, taking comments on approaches that might be used to address such concerns on a case-by-case basis. The EPA wishes to stress that it would only consider an approach that targets areas with concrete modeling results documenting a likelihood of local disbenefits from NO_X reductions at locations and on days with high ozone concentrations. As already discussed, EPA does not believe adjustments to NO_X budgets are appropriate for areas with waivers based solely on their ability to attain the NAAQS without further reductions.

6. Relation of OTC NO_X MOU to Budgets in the Ozone Transport SIP Rulemaking

The 2007 Budgets for the electric utilities and the nonutilities were developed independently of the OTC NO_X MOU. The Ozone Transport SIP Rulemaking allows States flexibility to achieve reductions from any source category; however, implementation of these requirements could be coordinated. The MOU covers large boilers, both utility and nonutility boilers. The Ozone Transport SIP Rulemaking covers these sources as well as other categories of major NO_X stationary sources. Although the OTC NO_X MOU does not cover these other categories, the OTC States regulated emissions from these categories through

implementation of the RACT program, beginning in 1995.

The EPA believes that implementation of Phase II of the MOU should proceed as scheduled, with achievement of the reductions by May 1999. These emissions reductions are needed to help reduce ozone transport and make progress toward attainment. Further, these reductions do not conflict with the requirements imposed by the Ozone Transport SIP Rulemaking because they do not exceed the required reductions. In Phase III of the MOU, however, the timing and the amount of the reductions required by the OTC's MOU and RACT provisions are much closer to the timing and reductions from the Ozone Transport SIP Rulemaking. The emissions reductions required by the Ozone Transport SIP Rulemaking are likely to be somewhat more stringent overall than the OTC's Phase III requirements, and Phase III implementation could occur about the same time as the Ozone Transport SIP Rulemaking reductions. Therefore, EPA intends to work with the OTC States to coordinate Phase III implementation with implementation of the emissions reductions required by the Ozone Transport SIP Rulemaking.

The States in the OTC not covered by the Ozone Transport SIP Rulemaking should continue to develop, adopt and implement Phases II and III of the MOU. Such reductions may be necessary to provide for attainment of the ozone NAAQS in those areas, although they may not be significant with respect to long distance transport. Further, such reductions may help to attain and/or maintain the new 8-hour ozone standard.

B. Budget Development Process

1. Overview

The EPA is proposing to develop seasonal budgets for each State by determining the amount of emissions that would remain in each State after application of reasonable, cost-effective control measures. For all sectors except electric utilities and nonutility point sources, EPA proposes using the 2007 Clean Air Act inventory developed by OTAG as the starting point for this calculation. This inventory reflects implementation of all mandatory national and nonattainment area Clean Air Act controls, plus any additional regional and State-specific controls. It also includes growth assumptions between 1990 and 2007. The specific assumptions on which this inventory is based are documented in a June 1997 draft Emissions Inventory Development Report (8). To determine the overall State budgets, EPA proposes applying controls to various source sectors, as discussed below, calculating budget components based on these controls, and summing the budget components for each sector to get the total budget.

In the case of electric utilities, EPA proposes using a slightly different approach. Instead of using the OTAG 2007 emissions and applying controls, EPA proposes to calculate the utility component of the budget using data provided by utilities to EPA for 1995 and 1996 and increasing the emissions to reflect activity growth projected for 2007. This is discussed in more detail below in section III.B.3.

In the case of nonutility point sources, EPA proposes using the OTAG 2007 emissions with one adjustment. The inventory needs to be adjusted to represent uncontrolled levels, rather than CAA control levels, because the OTAG recommendation is based on uncontrolled levels. This is discussed in section III.B.4, Proposed Assumptions for Area and Nonutility Point Sources.

2. Description of and Rationale for Proposed Control Assumptions

An important issue to be addressed in today's action is the reasonableness of the cost of control of emissions in States that significantly contribute to another State's ozone nonattainment. The EPA proposes to address this issue by examining the cost effectiveness of various regionwide ozone season control measures and determining what measures can be considered the most reasonable in light of other actions taken by EPA and States to control NO_X.

a. Considering the Cost Effectiveness of Other Actions. The EPA is proposing to base the budget component levels on NO_X emissions controls that are available and the most cost effective in relation to other recently undertaken or planned NO_X measures. Table III–1 provides a reference list of measures that EPA and States have undertaken to reduce NO_X and their average annual costs per ton of NO_X reduced. Most of these measures fall in the $1,000 to $2,000 per ton range. With few exceptions, the average cost effectiveness of these measures is representative of the average cost effectiveness of the types of controls EPA and States have needed to adopt most recently, since their previous planning efforts have already taken advantage of opportunities for even cheaper controls. The measures listed in Table III–1 represent costs that the Nation has been willing to bear to date to reduce NO_X. The EPA believes that the cost effectiveness of measures that it or States have adopted, or proposed to adopt, forms a good reference point for determining which of the available additional NO_X control measures can most reasonably be implemented by upwind States that significantly contribute to nonattainment.

TABLE III–1.—AVERAGE COST EFFECTIVENESS OF NO_X Control Measures Recently Undertaken

[In 1990 dollars]

Control measure	Cost per ton of NO_X removed
NO_X RACT	150–1,300
Phase II Reformulated Gasoline	[1] 3,400
State Implementation of the Ozone Transport Commission Memorandum of Understanding	950–1,600
Proposed New Source Performance Standards for Fossil Steam Electric Generation Units	1,290
Proposed New Source Performance Standards for Industrial Boilers	1,790

[1] Average cost representing the midpoint of $1,500 to $5,300 per ton. This cost represents the projected additional cost of complying with the Phase II RFG NO_X standards, beyond the cost of complying with the other standards for Phase II RFG.

The Federal Phase II RFG costs presented in Table III–1 are not strictly comparable to the other costs cited in the table. Federal Phase II RFG will provide large VOC reductions in addition to NO_X reductions. Federal RFG is required in nine cities with the Nation's worst ozone nonattainment problems; other nonattainment areas have chosen to opt into the program as part of their attainment strategy. The mandated areas and those areas in the OTAG region that have chosen to opt into the program are areas where significant local reductions in ozone precursors are needed; such areas may value RFG's NO_X and VOC reductions differently for their local ozone benefits than they would value NO_X reductions from RFG or other programs for ozone transport benefits.

The EPA notes that there are also a number of less expensive measures recently undertaken by the Agency to reduce NO_X emission levels that do not appear in Table III–1. These actions include: (1) The Title IV NO_X reduction program, (2) the Federal locomotive standards, (3) the 1997 proposed Federal nonroad diesel engine standards, (4) the Federal heavy duty highway engine 2g/bhp-hour standards, and (5) the Federal marine engine standards. These lower cost actions do not represent a useful measure of the

willingness to make reasonable expenditures to reduce NO_X emissions in order to achieve air quality goals. Decisions to undertake these measures are low cost steps toward NO_X reduction. Though these actions are very cost effective, the Agency must now focus on what other measures exist, at a potentially higher cost-effectiveness value, that can further reduce NO_X emissions. The Agency is focusing on these other actions because they may also be of reasonable cost effectiveness and obtaining these reductions are less costly than further local reductions of VOC and NO_X in nonattainment areas. Table III–1 is thereby useful as a reference of the next higher level of NO_X reduction cost effectiveness that the Agency considers reasonable to undertake.

The Agency is also aware that to come into attainment with the new ozone NAAQS, many localities will spend several thousand dollars per ton of NO_X or VOC reduction.

b. Determining the Cost Effectiveness of NO_X Controls. In an effort to consider a cost-effective mix of controls on which to base each component of the proposed budget (i.e., electricity generating sources, nonutility point sources, area sources, and mobile sources) the Agency considered the average cost effectiveness of alternative levels of controls for each source. Among the plausible levels of control are the controls included in OTAG's recommendations.

The average cost effectiveness of the controls assumed in calculating each sector's budget component was calculated from a baseline level that included all currently applicable Federal or State NO_X control measures. The baseline did not include Phase 2 and Phase 3 of the OTC NO_X MOU since they have not yet been adopted by all the involved States[8]; if the MOU were included in the baseline, the overall costs would be lower. The costs and emissions reductions for point sources are determined using an emissions cap-and-trade approach since EPA believes that this approach is the most cost-effective way for point sources to meet an emissions budget, and EPA expects that States are also interested in employing the most cost-effective approach. Table III–2 shows in the first column of numbers the average cost per ton of NO_X removed during the ozone season of various potential EPA actions, arranged by source sector. The action is presented in the form of a regionwide budget for each source sector (i.e., the electric power industry and other stationary sources), and the cost-effectiveness values are for the ozone season. The Agency used its estimates of the average cost effectiveness of reducing NO_X emissions during the ozone season to develop the budget components for the electric power industry and other stationary sources.

The next three columns in the Table contain the average cost per ton of NO_X annually reduced, the incremental cost per ton of NO_X reduced during the ozone season, and the incremental cost per ton of NO_X annually reduced. The average cost per ton of NO_X reduced annually is the annual costs of a source category complying with a NO_X budget component option divided by the NO_X emissions reductions that occur throughout the entire year. The incremental cost per ton of NO_X reduced during the ozone season is the difference in the annual cost of the option examined and the next cheapest option divided by the difference in seasonal NO_X reduction in these two options. The incremental cost per ton of NO_X reduced annually is the difference in the annual cost of the option examined and the next cheapest option divided by the difference in the annual NO_X reduction in these two options. For the option with the lowest annual cost for each source category's NO_X budget component, the average and incremental costs are the same, which assumes that ultimately the cheapest option is no additional controls, or the baseline.

The EPA has provided these other measures of cost effectiveness to provide additional perspective on the decision that the Agency made for the level of each source category budget component. Each of these cost-effectiveness measures has advantages in being used in conjunction with other factors to make a decision on environmental controls under certain circumstances. They each also have limitations. The annual measures are valuable since there are NO_X reduction benefits that the public will gain throughout the year from controls on the sources covered in this rulemaking. They do not, however, focus as well on the primary objectives of the ozone transport rule of providing reductions of ozone during the time of year when it does the most harm and in which exceedances of the ozone standards are likely to occur. The incremental measures are valuable since they show the additional costs of the additional reductions from increasing the stringency of pollution controls. However, for this rulemaking, it is difficult to compare the incremental costs of increasing levels of stringency for large stationary sources with other Agency and State analyses that have been developed in the past. For instance, because incremental cost comparisons will differ depending on the size of the increment in stringency being considered, care must be used in using incremental cost estimates from earlier rulemakings.

The Agency solicits comments on its use of average seasonal cost effectiveness as the measure it wants to rely on to judge the cost effectiveness of the NO_X reductions that will occur from the NO_X budget components that EPA has chosen for the electric power industry and other stationary sources. Commenters offering other measures, or combinations of cost-effectiveness measures, that EPA needs to consider, should provide their rationale for their views.

The EPA is not choosing to base its proposed budgets on an expansion of I/M programs beyond the extent required by the CAA or otherwise reflected in existing SIPs in its calculation of State NO_X budgets. The cost effectiveness of I/M programs in reducing ozone precursors (including both NO_X and VOC) can vary widely due to differences in the design and operation of individual I/M programs. The EPA's current estimate of the cost effectiveness of I/M programs ranges from $500 to $3,000 per ton of ozone precursor, on an annualized summer ton basis.[9] Although this range suggests that the cost effectiveness of I/M programs in reducing ozone precursors (including both NO_X and VOC) may be comparable to the cost of the utility NO_X reductions proposed in today's rulemaking, the cost effectiveness of I/M programs in reducing NO_X alone would be significantly higher since most of the ozone precursor reductions from enhanced I/M programs are VOC reductions. Both VOC and NO_X reductions are valuable for achieving local attainment, but as discussed in section II, Weight of Evidence Determination of Significant Contribution, today's rulemaking

[8] However, in the Regulatory Analysis of this action, EPA evaluates the economic impact of including the MOU in the baseline for the electric power industry.

[9] All estimates of I/M program cost effectiveness in this rulemaking are presented in terms of the cost per annualized summer ton of ozone precursor, i.e., the cost per ton of VOC or NO_X. Cost per annualized summer ton is calculated as the total cost of the program divided by the number of tons that would be reduced annually if the level of reduction achieved during the summer were achieved year round. It thus understates the cost per actual ton of reduction of ozone precursors. The EPA believes this procedure is appropriate because I/M programs reduce other pollutants beside ozone precursors (e.g., air toxics and carbon monoxide (CO)).

focuses on reducing NO_X emissions since such reductions offer greater potential for reducing regional transport than would VOC reductions.

Similarly, EPA is not choosing to base its proposed budgets on an expansion of Federal Phase II RFG beyond its current extent in its calculation of State NO_X budgets. The EPA's current estimate of the cost effectiveness of Federal Phase II RFG ranges from $2,600 to $3,500 per ton of ozone precursor, on an annualized summer ton.[10] This cost exceeds the cost of the utility NO_X reductions proposed in today's rulemaking. Furthermore, the cost effectiveness of Federal Phase II RFG programs in reducing NO_X alone would be significantly higher since most of the ozone precursor reductions from RFG would be in the form of VOC reductions which, while valuable for achieving local attainment, are not the focus of today's action since NO_X reductions offer greater potential for reducing regional transport.

TABLE III–2.—COST EFFECTIVENESS OF OPTIONS FOR THE OZONE SEASON NO_X BUDGET COMPONENTS FOR SELECTED SOURCE CATEGORIES

[In 1990 dollars per ton of NO_X reduced]

Source category: Options for ozone season NO_X budget components	Average cost per ton of NO_X reduced during the ozone season	Average cost per ton of NO_X reduced annually	Incremental cost per ton of NO_X reduced during the ozone season	Incremental cost per ton of NO_X reduced annually
Electric Power Industry:				
815 thousand tons	$1,100	$850	$1,100	$850
652 thousand tons	1,300	1,050	2,100	2,100
489 thousand tons	1,700	1,400	3,600	3,400
391 thousand tons	2,100	1,750	6,350	5,200
326 thousand tons	2,450	2,000	8,700	6,850
Other Stationary Sources				
484 thousand tons[1]	1,450	750	1,450	750
466 thousand tons[2]	1,650	900	4,400	2,150
380 thousand tons[3]	2,750	1,400	6,300	3,050

[1] This measure approximates the emission reductions that would be obtained if Level 1 controls were placed on medium sized sources and Level 2 controls were placed on large sized sources. The calculation process used to calculate cost for nonutility units selects control measures (at a State level) so that the cost minimizing set of controls that meet the required emissions reductions are chosen. This approach provides a downward bias to the costs and cost-effectiveness values compared to any way the States might obtain the emission reductions, including consideration of other factors (e.g., administrative costs that are not included in this analysis). While a least-cost approach simulates either costless emissions trading or a cost minimizing command and control approach with perfect information, either approach is unlikely to include the smaller sources used in this analysis.

[2] This option considers a 70 percent reduction of summer NO_X emissions from large sources and RACT controls on medium size sources. This approach is what OTAG recommended occur, if EPA considered reductions of electric power industry emissions of equivalent to .15 pounds of NO_X per MMBtus, or an 85 percent reduction of uncontrolled levels, whichever is less stringent. The EPA's proposal for the NO_X budget component for the electric power industry is based on a comparable level of controls to the .15/85 percent reduction.

[3] This measure approximates budgets of an 80 percent control of baseline emissions for large sized sources and Level 1 control on the medium sources. The calculation process used to calculate cost effectiveness on nonutility units provides a downward bias for the reasons explained in the above footnote.

NOTE: The options for electric power industry NO_X budget component are based on pollution controls on electric generation units meeting summer season NO_X emission limitations in pounds of NO_X per million Btus of heat input of .25, .20, .15, .12, and .10, respectively. The cost-effectiveness calculations are based on implementing these controls through a cap-and-trade program. The controls on which the options for the NO_X budget component for Other Stationary Sources are based are provided in the footnotes. The cost-effectiveness calculations are based on each State implementing a least-cost approach to compliance.

Considering the $1,000 to $2,000 per ton average cost-effectiveness range from Table III–1, and the level of control achievable with each sector's NO_X control technologies, EPA believes that it is reasonable to require the following levels of reductions: (1) For the electric power industry, a budget component of 489 thousand tons (which is equivalent to an average NO_X emission rate of 0.15 lb/MMBtu) since it is both cost effective and achievable, on average, by the affected sector sources; and (2) for other stationary sources, a budget component of 466 thousand tons, which is consistent with OTAG's recommendation that nonutility point source controls be comparable in stringency to the selected level of electric power industry controls, which for .15 lbs/MMBtus would be 70 percent control on large-sized sources (e.g., boilers greater than 250 MMBtu/hour) and RACT controls on medium-sized sources (e.g., sources emitting between 1 and 2 tons per day). The RACT controls result in NO_X reductions generally in the range of 25–50 percent. This corresponds closely with the OTAG recommendation given the proposed level of electric power industry controls, and EPA believes it is a reasonable level of control based on average cost effectiveness as discussed above.

For mobile sources, EPA proposes constructing the budget component by including: (1) those controls that would be implemented federally or by States in the absence of today's action, and (2) those controls that are viewed today as being feasible in the 2007 time frame and that meet EPA's proposed NO_X cost-effectiveness criterion. The EPA did not include in the proposed mobile source

[10] This cost represents the midpoint of the expected range of $2,600 to $3,500 per ton (depending on the degree of expansion of the program), on an annualized summer ton basis, for both VOC and NO_X. All estimates of RFG cost effectiveness in this rulemaking are presented in terms of the cost per annualized summer ton of ozone precursor, i.e., the cost per ton of VOC or NO_X. Cost per annualized summer ton is calculated as the total cost of the programs divided by the number of tons that would be reduced annually if the level of reduction achieved during the summer were achieved year round. It thus understates the cost per actual ton of reduction of ozone precursors. The EPA believes this procedure is appropriate because the use of RFG reduces other pollutants besides ozone precursors (e.g., air toxics and CO).

budget component a number of control measures that offer multipollutant benefits and hence may be attractive control measures for local attainment and maintenance. These measures include Tier 2 light-duty vehicle and light-duty truck standards and more extensive implementation of I/M and Federal Phase II RFG. When compared with other available options, these measures are reasonable control measures when these measures' full range of benefits are considered, including CO, toxic air pollutants, and VOC benefits in addition to their NO_X benefits. Some of these measures, such as I/M, RFG and Clean Fuel Fleets, can be implemented in specific areas seeking to meet local air quality objectives rather than region or nationwide. While EPA did not choose to assume their regionwide implementation in calculating NO_X budgets because their cost effectiveness for NO_X reductions alone did not justify including them in the set of assumed controls, EPA continues to believe that these measures' nonozone benefits and VOC benefits (which provide local ozone reductions but tend not to provide significant reductions in regional ozone transport) make them attractive for areas seeking to meet local ozone attainment, or maintenance objectives, or other air quality goals. Although these strategies were not included in the budget calculation, States can opt to implement these measures as part of their SIP revision in response to today's proposal. Each of these programs is discussed in more detail below.

The EPA's approach to the NO_X budget component for the electric power industry relies on the consideration of the States using a cap-and-trade program to reduce emissions from this source category. The Agency's analysis shows that this type of approach is 25 percent more cost effective (lower in cost per ton reduced) than the use of a comparable traditional command-and-control approach, such as setting rate-based NO_X emissions limitations at .15 lbs of NO_X per million Btus of heat input at every source.

The EPA did not examine the implications of each State setting up its own trading programs for the electric power industry, which could occur if the Agency is unable to work with the States to put together a viable trading program across the 23 jurisdictions covered in this rulemaking. Based on analysis done for OTAG in the past, the Agency believes this type of approach would lead to somewhat higher costs, but would still be less expensive than a command-and-control program in every State. This conclusion is based on work that EPA did for OTAG, where it divided a similar area to the one covered in this rule into five trading zones versus a single trading zone.[11] Although the costs did increase, they were not dramatically higher. Further support for this conclusion results from the examination of EPA's Regulatory Analysis supporting this proposed rulemaking. The Agency found that in the vast majority of States, electric generation units would make significant NO_X emissions reductions under a cap-and-trade system that allowed trading between all the States covered. This means that the electric power generation units that can reduce NO_X emissions most cost-effectively are spread throughout the region covered by the Ozone Transport SIP Rulemaking.

In calculating States' budgets, EPA assumed implementation of the following mobile source control measures in addition to those measures already implemented or otherwise promulgated in final form:

Nonroad

- Federal Small Engine Standards, Phase II
- Federal Marine Engine Standards
- Federal Heavy-Duty (≥50 hp) Nonroad Standards, Phase I
- Federal Reformulated Gasoline, Phase II (in statutory and current opt-in areas)
- Federal Locomotive Standards
- 1997 Proposed Nonroad Diesel Engine Standards

Highway

- Tier 1 Light-Duty and Heavy-Duty Vehicle Standards
- Enhanced I/M (serious and above areas)
- Low Enhanced I/M (rest of OTR)
- Basic I/M (mandated areas)
- Clean Fuel Fleets (mandated areas)
- Federal Reformulated Gasoline, Phase II (in statutory and current opt-in areas)
- National Low Emission Vehicle Standards
- Heavy-Duty Engine 2 g/bhp-hour standard
- Revisions to Emissions Test Procedure

With the exception of the Clean Fuel Fleets, I/M, and RFG programs, all of these control measures are or will be implemented nationally (or in the 49 States outside of California). The EPA assumed that the Clean Fuel Fleets, I/M, and RFG programs would be implemented to the extent required by the CAA or existing SIPs, or as reflected in current levels of State opt-in to these programs. The reader is referred to sections III.B.5 and III.B.6 for a more extensive discussion of the development of the highway vehicles and nonroad budget components, respectively.

At the current time, the standards presumed for locomotives, marine engines, small gasoline engine, nonroad diesel engines, and heavy-duty highway engines in calculating State NO_X budgets represent the most technically feasible emissions performance levels achievable in the 2007 time frame. For this reason, the Agency did not evaluate any more stringent standards for these sources in its calculation of State NO_X budgets.

c. Summary of Measures Assumed in Proposed Budget Calculation. The EPA is proposing to calculate the budgets described in this section by assuming the application of the most reasonable, cost-effective controls for the purpose of achieving regional NO_X reductions. Table III–3 summarizes the controls that were assumed for each source sector. More detailed discussions of the controls assumed are contained in the sections that describe each sector.

TABLE III–3.—SUMMARY OF NO_X CONTROL MEASURES APPLIED IN THE DEVELOPMENT OF PROPOSED STATEWIDE SEASONAL NO_X EMISSIONS BUDGETS*

Emissions Source Sector	Controls Applied in Developing Proposed Statewide NO_X Emissions Budgets for 2007
Large Electricity Generating Devices (fossil-fuel burning electric utility units and nonutility units serving electricity generators 25MWe or greater).	Statewide seasonal tonnage budget based on applying a NO_X emission rate of 0.15 lb/MMBtu on all applicable sources.

[11] U.S. Environmental protection Agency, ''Round 3 Analysis of Cap-and-Trade Strategies to Lower NO_X Emissions from Electric Power Generation in OTAG'', March 25, 1997.

TABLE III–3.—SUMMARY OF NO_X CONTROL MEASURES APPLIED IN THE DEVELOPMENT OF PROPOSED STATEWIDE SEASONAL NO_X EMISSIONS BUDGETS *—Continued

Emissions Source Sector	Controls Applied in Developing Proposed Statewide NO_X Emissions Budgets for 2007
Nonutility point sources (boilers, reciprocating internal combustion engines, turbines, cement kilns, etc.).	70 percent controls on large-sized sources (e.g., >250 MMBtu/hour) RACT controls on medium-sized sources (e.g., 100–250 MMBtu/hour).
Nonroad Sources (commercial marine engines, small engines such as lawn and garden equipment, and larger engines such as construction equipment and locomotives).	Federal small engine standards (Phase II) Federal marine engine standards (diesel >50 horsepower) Federal locomotive standards 1997 proposed nonroad diesel engine standards.
Highway Vehicle Sources (cars, trucks, buses, motorcycles—gas and diesel highway engines).	National Low Emission Vehicle Program 2004 Heavy-Duty Vehicle Standards. Revisions to Emissions Test Procedure **
Area (Small Stationary) Sources (open burning, small commercial, industrial and residential fuel combustion devices).	Full implementation of programs required by the CAA and outlined in existing State implementation plans.

*Controls already required under the 1990 Amendments to the CAA and those applied through existing SIPs were assumed in the development of the statewide NO_X budgets but are not explicitly listed in this table.

**Other measures used in developing some state budgets include I/M programs (where mandated), Federal Phase II RFG (where mandated or in areas which have already opted into the program as of the date of today's rulemaking), and clean fuel fleet programs. Potential reductions from Tier 2 light-duty vehicle standards were not incorporated since they are still under review.

In determining what controls to assume in calculation of the proposed budgets, EPA considered the conclusions that were reached in the OTAG process as well as the cost-effectiveness rationale described above. Any special effort to address ozone transport, such as today's action, must be part of an integrated regulatory solution developed by EPA and States to provide national compliance with the current (1-hour) and new (8-hour) NAAQS. The OTAG's air quality modeling showed that even with the most stringent control measures that were evaluated for NO_X and VOC, not all areas would come into attainment with the current ozone NAAQS. It is also evident that with no actions to address ozone transport, some areas will have ''background levels'' that will not allow even aggressive local controls to bring them into compliance, and others will face severe measures in an effort to do so. Therefore, today's action complements local programs to address attainment with the ozone NAAQS. The EPA recognizes the need to provide pollutant reductions where it would be more cost effective to do so rather than place all of the burden on localities. The recent RIA in support of the new ozone standard shows that the last tons of localized NO_X and VOC reduction needed for meeting that standard in some areas can easily cost from $5,000 to $10,000 a ton to achieve. Avoiding such expenditures is a major objective of today's action.

3. Proposed Assumptions for Electric Utilities

This section presents the rationale and resulting proposed State-by-State NO_X budget components for fossil fuel-burning electric utility units under today's action. Three different proposed NO_X emission scenarios and their resulting State-by-State emission allocations are presented.

a. Affected Entities. The sources of information used in this section are: (1) for electric utility units submitted by utilities to EPA under the requirements of 40 CFR part 75 (emissions monitoring provisions of title IV, section 412; and (2) for nonutility units (e.g., units owned by Independent Power Producers), projected by EPA using the Integrated Planning Model (IPM) from base year information supplied to the North-American Electricity Reliability Council (NERC), Energy Information Agency (EIA), and trade sources.

Utility emissions represent approximately 36 percent of the total anthropogenic NO_X emissions after application of current CAA controls in the States covered by today's action. The calculations described below apply to large sources that have generators greater than 25 MWe. The EPA believes that it is reasonable to assume no further control of emissions from smaller sources based on the current availability of emissions and utilization data for these sources. While EPA has quality-assured NO_X emissions and utilization data for electric utility units larger than 25 MWe, such data are not currently available for smaller units. Therefore, the contribution of the smaller sources to the utility component of each State's budget cannot currently be assessed with certainty. The EPA solicits comment on: (1) whether sources equal to or smaller than 25 MWe should be included in the utility component of each State's budget, and (2) sources of emissions and utilization data for sources equal to or smaller than 25 MWe.

Larger sources were found to be large contributors to NO_X emissions and, with the application of NO_X controls, were found to be able to achieve reductions cost-effectively. Specifically, EPA performed an analysis to determine the cost effectiveness of NO_X controls applied to large utility boilers and how it compared to other sector NO_X controls. The results indicate that controlling emissions to an average level of 0.15 lb/MMBtu was cost effective for large utility boilers (see section III.B.2.).

This section does not include combustion units which generate electricity for purposes internal to a plant. These units, for the purposes of the overall State budget, are considered industrial units and are included in the corresponding section. Some of these units (e.g., units with capacity greater than 25 MWe or the equivalent in thermal output, measured in MMBtu) may more appropriately be included with the utility sector emissions, with similar required levels of control, since controls for these units may be as cost effective as utility unit controls. Additionally, certain large industrial combustion sources (e.g., boilers with a heat input larger than about 250 MMBtu/hour, used only for steam, not electricity generation) may be able to achieve levels of control equal to that of the electric utility units with comparable cost effectiveness. The EPA solicits comment on the appropriateness of including such units in the utility emissions by assuming the same level of control from these units as from utility units.

b. Methodology Used to Determine the Proposed Electric Utility Budget Component. The proposed emissions budget component for electric utilities (in tons) is calculated as the product of

two separate components: (1) source activity level, measured in MMBtu; and (2) pollutant emission rate, measured in pounds of pollutant per MMBtu. Since both components influence the emissions, it is important to use the most accurate information when calculating each component.

i. Proposed Utility Budget Component Calculation and Alternatives. Four alternatives were considered for calculating the utility budget component (Table III–4).

TABLE III–4.—SUMMARY OF ALTERNATIVES

Alternative	Activity level (heat input)	NO_X rate (lb/MMBtu)
1	Future Activity (current with estimated growth to 2007)	Higher of: (1) 0.15 or (2) an 85% reduction of historic emission rate.
2	Current Activity	Higher of: (1) 0.15 or (2) an 85% reduction of current emission rate.
3	Future Activity (current with estimated growth to 2007)	0.15.
4	Current Activity	0.15.

After evaluating each alternative, EPA is proposing to base the electric utility emissions on a projected future activity level and a desired emission rate (scenario 3). The following subsections discuss each technique separately. Detailed results of each alternative are available in the TSD.

Alternative 1: Future Activity With Historic (or Desired) Emission Rates

This technique involves calculating the emissions based on a projected future activity level (e.g., using an electric utility generation forecasting model such as IPM) and the higher of: (1) a desired emission rate, or (2) a rate resulting from a percent reduction from some past baseline year emission rate (e.g., 1990). This was the technique used in many OTAG analyses. On its face, this approach may appear to equitably determine an emissions budget. However, this requires the determination of the NO_X emission rates from 1990 for every unit in a State's inventory. In addition to the accuracy problems encountered in determining an historic emissions rate, this approach relies on a percent reduction from an historic rate, which benefits States that were higher emitters over States that had cleaner fuels. Thus, EPA believes that this approach is neither the most technically accurate nor the most equitable.

Alternative 2: Current Activity With Current (or Desired) Emission Rates

This technique involves calculating emissions based on a current activity level (e.g., 1995 or 1996) and the higher of: (1) a desired emission rate, or (2) a rate resulting from a percent reduction from a current year (e.g., 1996) for which accurate emission rates per unit exist. The benefit of this approach is that both activity and emission rates are available for all utility units included in the emissions budget. This approach requires that all changes in the utilization of utility units be accommodated within the utility budget component. However, to the extent this approach relies on percent reduction, it would benefit currently high emitters and disadvantage units that installed controls in order to comply with other provisions of the Act. Thus, though simpler (because it relies on current actual data without projections), this approach may not be viewed as equitable.

Alternative 3: Future Activity With Desired Emission Rate

This technique involves calculating the utility budget component based on a future activity level (i.e., inflating the current measured utilization by an estimated growth factor) and a desired emission rate. The benefit of this approach is that it acknowledges the inherent inequity of using any past or current emission rates and treats all units equally based on a future standard emission rate (e.g., 0.15 lb/MMBtu). Further, by projecting future changes in utilization, this approach more directly accommodates changes in unit utilization to the extent such future utilization can be reasonably projected. The potential for error in making such projections is minimized when starting with actual unit-specific utilizations. Thus, though more complicated than the previous technique (because of its reliance on a projection of industry growth), this approach is viewed as more equitable, particularly since other source categories included in the overall State-specific budget reflect growth.

Alternative 4: Current Activity With Desired Emission Rate

This technique involves calculating emissions based on a current activity level (e.g., 1995 or 1996) and a desired future emission rate. Similar to the above approach, this approach acknowledges the inherent inequity of using any past or current emission rates and treats all units equally based on a desired standard emission rate (e.g., 0.15 lb/MMBtu). Unlike the above approach, however, it uses current activity to determine the utility budget component, providing for the highest degree of accuracy. Changes in the utilization of utility units must be accommodated within the utility budget component. This approach is simple (because it relies on current actual data without projections), but it may be viewed as less equitable for States with significantly higher projected utilization.

ii. Seasonal Utilization. The proposed utility budget component is based on utilization over the course of a summer season (i.e., May 1 to September 30). Utilization can be significantly different from season to season and the degree of this difference can vary from State to State (e.g., some States can have much higher utilization in the summer due, for example, to high usage of air conditioning or shifting load to another State). Thus, it is important to accurately characterize the summer usage of every State separately. Because of the high seasonal variability, it is less accurate to simply take total annual utilization and divide by the number of summer months. Similarly, because of the geographic variation, it is less accurate to take regionwide summer utilization and equally apportion the utilization to all States.

There are currently only two sources of information that provide actual data and take account for seasonal and State variations in utilization: (1) the EIA's Form 767, and (2) EPA's Emission Tracking System containing data reported by utilities in accordance with 40 CFR part 75. Both sources contain unit-by-unit utilization; EIA on a monthly basis and EPA on an hourly

basis. There is, however, one important difference: while the method used to determine and report utilization to EIA can differ significantly from utility to utility, the information submitted to EPA is determined and reported using consistent techniques as required by 40 CFR part 75.

Thus, EPA is proposing to use its information to determine each unit's (and thereby each State's) utilization for the period beginning May 1 and ending September 30. It should be noted that in the case of units owned by nonutility sources (e.g., Independent Power Producers), EPA does not have current utilization information available. For the purpose of estimating the emissions for these units, EPA is proposing to use the IPM-predicted utilization for the year 2007. The predicted utilizations are projected from base year information supplied to the NERC, EIA and trade sources.

One way of accounting for State-by-State shifts in electricity generation, from 1 year to the next, during the period beginning May 1 and ending September 30, is to calculate the utility budget component based on a composite utilization: using the State-by-State utilization for the higher of 1995 or 1996 (i.e., for each State, using the higher of its overall 1995 or 1996 summer utilization). This is the approach proposed by EPA. Though this approach results in a slightly exaggerated baseline utilization, the inflation to emissions is moderate and the equity that it provides is potentially significant for some situations. Table III–5 [12] compares the State-by-State utilizations using the composite method versus using 1996 only. The impact is most evident on the District of Columbia (which has a 1995 utilization substantially greater than its 1996 utilization) for which 1996 may have been an unrepresentative summer. Another option would be to use the annual average of the highest 2 out of 3 recent years (e.g., 1995, 1996, and 1997) when data for 1997 becomes available. The EPA solicits comment on both approaches.

TABLE III–5.—COMPARISON OF STATE-BY-STATE 1995, 1996 AND ''COMPOSITE'' UTILITY UNIT SUMMER UTILIZATIONS

State	1995 Utilization (MMBtu)	1996 Utilization (MMBtu)	State-by-State higher of 1995 or 1996 utilization
Alabama	342,060,000	349,950,000	349,950,000
Connecticut	26,500,000	40,890,000	40,890,000
Delaware	30,890,000	33,830,000	33,830,000
District of Columbia	2,030,000	130,000	2,030,000
Georgia	349,310,000	335,330,000	349,310,000
Illinois	331,120,000	344,470,000	344,470,000
Indiana	511,420,000	512,420,000	512,420,000
Kentucky	397,540,000	395,800,000	397,540,000
Maryland	130,530,000	123,060,000	130,530,000
Massachusetts	96,290,000	100,150,000	100,150,000
Michigan	280,730,000	287,790,000	287,790,000
Missouri	267,710,000	270,240,000	270,240,000
New Jersey	44,140,000	43,310,000	44,140,000
New York	249,260,000	223,360,000	249,260,000
North Carolina	286,710,000	310,600,000	310,600,000
Ohio	549,050,000	565,990,000	565,990,000
Pennsylvania	445,030,000	481,950,000	481,950,000
Rhode Island	320,000	11,940,000	11,940,000
South Carolina	130,150,000	150,370,000	150,370,000
Tennessee	279,730,000	268,880,000	279,730,000
Virginia	150,870,000	136,740,000	150,870,000
West Virginia	269,840,000	302,850,000	302,850,000
Wisconsin	196,840,000	191,730,000	196,840,000

iii. Growth Considerations. In general, new units built to meet economic growth are lower emitting than the older units they augment or replace. Thus, though the industry's fuel utilization may increase over time, the industry's average NO_X rate may decrease as newer, cleaner units are built and operated, and total emissions may or may not increase.

Two approaches were considered for accommodating potential emissions growth under an emissions budget. One approach was to calculate emissions based on recent historic utilization, as was done in the sulfur dioxide program under title IV of the Act. Under this approach, States with significant projected increases in utilization would be required to either: (1) reduce their NO_X rates further, or (2) burn fuel more efficiently in order to compensate. For such States, the ability to trade emissions regionwide is particularly attractive because States with low increases or decreases in utilization can trade emissions with States having significantly increased utilization.

An alternative approach was to project each State's change in utilization from current levels to some future year and set a budget based on that future year's utilization. This approach directly addresses industry growth. Additionally, this was the type of approach taken by OTAG in investigating various State budgets. Thus, EPA is proposing to use this type of approach for addressing activity growth and, as described below, using the IPM growth projections. However, there are several other ways in which growth can be reflected in budget allocations. For example, recognizing that several utility companies span more than one State and that electricity is dispatched across State boundaries, an average regional growth rate could be

[12] It should be noted that units owned by Independent Power Producers were not included in Table III–5 since neither their 1995 nor their 1996 utilizations are known. The projected 2007 utilization for these units is, however, included in the utility portion of each State's budget.

applied to each State's current utilization. The EPA solicits comment on these and other approaches addressing activity growth in establishing a statewide utility budget component.

c. Summary and Proposed Utility Budget Components. For reasons discussed in the previous section, EPA is proposing to calculate each State's summer season electric utility emissions using a specific NO_X emission rate and the projected summer season utilization of the year 2007. Specifically, EPA proposes calculating each State's utility NO_X budget component by multiplying: (1) each State's summer activity level, measured in MMBtu, (EPA selected the higher of each State's overall 1995 or 1996 summer utilization), by (2) each State's projected growth between 1996 and 2007 (using the IPM model), by (3) a NO_X rate of 0.15 lb/MMBtu. The resulting figure, in lbs, was divided by 2000 (lbs per ton) to determine tons. For electricity-generating units owned by nonutilities (e.g., Independent Power Producers), EPA used their IPM-predicted utilization for 2007 in place of steps (1) and (2). The EPA compared the IPM-generated growth factors of each State to those developed by OTAG for the electric utility sector in every State. In general, the IPM-predicted growth was about 60 percent higher than the growth projected by OTAG. Regionwide, the OTAG-predicted growth was about 6 percent from 1996 to 2007, and the IPM-generated growth was about 15 percent for the same period. However, for some States such as Alabama and New Jersey, the IPM growth factor was lower than the OTAG growth factor. The TSD describes in detail how the IPM and OTAG growth factors were calculated.

For the proposed rule, EPA selected the IPM's State-by-State growth factors over the growth factors developed by OTAG. Unlike the OTAG electric utility growth projections, the IPM's were not developed separately for each State, but were developed by analyzing performance of utilities as a regionwide system. Therefore, the IPM growth factors are considered to be more consistent than the OTAG growth factors. The EPA solicits comment on the appropriateness of using the IPM model to determine State-specific growth factors for the period between 1996 and 2007. Further, EPA solicits comment on what other reasonable regionwide approaches can be used to develop growth factors.

Table III–6 presents the resulting proposed utility (and electricity-generating nonutility) budget components per State along with the 2007 CAA base.

TABLE III–6.—STATE-BY-STATE BUDGET COMPONENT FOR ELECTRICITY-GENERATING UNITS

State	2007 CAA base (tons)	Proposed budget component (tons)	Percent reduction
Alabama	81,704	26,946	67
Connecticut	5,715	3,409	40
Delaware	10,901	4,390	60
District of Columbia	385	152	61
Georgia	92,946	30,158	68
Illinois	115,053	31,833	72
Indiana	177,888	48,791	73
Kentucky	128,688	35,820	72
Maryland	35,332	11,364	68
Massachusetts	28,284	12,956	54
Michigan	82,057	25,402	69
Missouri	92,313	22,932	75
New Jersey	14,553	5,041	65
New York	39,639	24,653	38
North Carolina	83,273	27,543	67
Ohio	185,757	46,758	75
Pennsylvania	125,195	39,594	68
Rhode Island	773	905	−17
South Carolina	43,363	15,090	65
Tennessee	71,994	19,318	73
Virginia	45,719	16,884	63
West Virginia	83,719	23,306	72
Wisconsin	51,004	15,755	69
Total	1,596,255	489,000	69

4. Proposed Assumptions for Other Stationary Sources

a. Affected Entities. This section presents the rationale and resulting proposed State-by-State NO_X budget components for other stationary sources, specifically, the area and nonutility point source sectors. Area sources of NO_X emissions include, for example, emissions from wildfires, open burning, and residential water heaters. Emissions from area sources represent only 7 percent of total anthropogenic NO_X emissions in the States covered by today's action (based on OTAG 2007 CAA emissions). The highest percentage in any one State is 18 percent. Nonutility point sources include boilers, process heaters, reciprocating internal combustion engines, turbines, cement kilns and other categories. Emissions from sources in this sector represent 14 percent of the total anthropogenic NO_X emissions in the States covered by today's action, with a range of 3–22 percent.

b. Methodology Used to Determine the Proposed Area and Nonutility Point Source Budget Components. The proposed State-by-State seasonal (May 1–September 30) budget components for the area and nonutility point sectors generally reflect the OTAG recommendations. For area sources, EPA proposes applying OTAG Level 0 (i.e., no new controls). The EPA is proposing this level of control because EPA and OTAG were not able to identify any reasonable control measures for sources in this sector. Controls for wildfires, feasible alternatives for open burning, and

reasonable cost-effectiveness levels for control of existing residential water heaters have not yet been identified for these States. Therefore, EPA believes that application of Level 0 controls for this sector is appropriate.

The OTAG recommendations for the nonutility point sector are to reduce emissions from medium- and large-sized units in a manner equitable with utility controls. Specifically, OTAG recommended that large nonutility sources should meet approximately 70 percent reduction and medium-sized sources should meet RACT if utilities are subject to the 0.15 lb/MMBtu utility limit.

As discussed in section III.B.2., EPA is proposing to apply the OTAG recommendations. The EPA believes that these are reasonable levels of controls for these sources for the reasons outlined in section III.B.2.

For purposes of the budget calculation, EPA believes that it is reasonable to not calculate reductions from sources with emissions less than 1 ton per day. The OTAG's recommendation to focus controls on the large sources rather than all sources for purposes of establishing the budget is a reasonable approach from an administrative and data availability perspective and does not preclude States from eventually adopting controls on other sizes or categories of sources as an alternative way of meeting their budgets.[13] In addition, emissions data for the smaller nonutility sources have more uncertainty, especially source size and utilization data which are important in making a budget calculation. As described in section III.B.2, EPA's cost analysis does not key on source sizes; rather, it is a least cost approach that considers small, medium and large sources in determining the overall cost of the sector budget. Further, controls on smaller sources are frequently less cost effective than the same controls on larger sources. It should also be noted that the 1 ton per day cutoff for nonutility sources approximately corresponds to the 25 MWe cutoff for utility sources. The EPA solicits comment on: (1) whether sources with NO_X emissions less than 1 ton per day should be included in the nonutility component of each State's budget, and (2) sources of emissions and utilization data for sources with NO_X emissions less than 1 ton per day.

Other approaches to calculating the nonutility point source budget component were considered, including a combined Level 2 for large sources and Level 1 for smaller sources, an 80 percent reduction from large sources with Level 1 for the smaller sources (see Table III–2), and Level 1 or Level 2 applied across the entire sector. A Level 1 approach across the entire sector has a relatively low cost effectiveness (less than $1000 per ton) and is not as equitable as the OTAG recommendations, considering the reductions calculated for the electric utility sector and the importance of the nonutility point source sector from a total emissions standpoint. On the other hand, EPA considered a Level 2 approach across the entire sector to be less cost effective and administratively more difficult than the OTAG recommendations. That is, Level 2 nonutility costs for some of the smaller sources are likely to be higher in some cases than the Level 3 utility costs and the number of units included in the nonutility point source category is large, creating an administrative burden. As discussed in section II.B.3, another alternative approach would be to assume a higher level of control for combustion units which generate electricity for purposes internal to a plant. Some of these units may more appropriately be included with the utility sector emissions, with similar required levels of control, since controls for these units may be as cost effective as utility unit controls. Additionally, certain large industrial combustion sources (e.g., boilers with a heat input larger than about 250 MMBtu/hour, used only for steam, not electricity generation) may be able to achieve levels of control equal to that of the electric utility units with comparable cost effectiveness. The EPA solicits comment on these and other approaches for calculating the nonutility point source budget component.

In applying the proposed controls, the EPA closely approximated but could not precisely calculate emissions based on the size of nonutility point sources as defined by OTAG because the emissions inventories available do not have the level of detail specified in the OTAG recommendation.

For example:

- The OTAG recommendation separates boilers by size (i.e., less than 100 MMBtu, between 100 and 250 MMBtu and greater than 250 MMBtu). Available emissions inventory data are incomplete especially for the smaller size boilers.
- The OTAG recommendation separates stationary reciprocating internal combustion engines by size (i.e., less than 4000 horsepower (hp), between 4000 and 8000 hp, and greater than 8000 hp). Available emissions inventory data generally does not include hp capacities.
- The OTAG recommendation separates gas turbines by less than 10,000 hp, between 10,000 and 20,000 hp, and greater than 20,000 hp. Available emissions inventory data generally do not include hp capacities.
- The OTAG recommendations also include application of RACT on medium-sized sources; RACT is generally considered equal to Level 1 OTAG measures. However, since RACT may be a case-by-case decision, a precise forecast of emissions decreases cannot be made.

In order to calculate the proposed budget components based on application to the controls discussed above, EPA applied 70 percent reduction controls for boilers greater than 250 MMBtu/hour and other large sources (see TSD for details). Boiler size was determined on an SCC basis (i.e., the same level of control was applied to all boilers within a specific SCC regardless of the size of individual boilers). In addition, EPA applied RACT controls for sources not classed ''large'' and emitting between 1–2 tons per day; these reductions are generally in the range of 25–50 percent emissions decrease. Where information on boiler size was not available, EPA assumed that the source was medium-sized and applied RACT controls. For other medium- and large-sized nonutility sources, EPA applied 70 percent reduction controls where information on size of sources was available, and RACT controls for the remaining sources (see Budget TSD for details). Due to the lack of data in the inventories, especially for internal combustion engines and turbines, EPA could not base a budget calculation precisely on OTAG's recommendation of 70 percent reduction for large sources.

The proposed procedures for calculating seasonal emissions for these sectors differs from that used for utilities because, unlike utilities, day specific emissions are not available for each day of the season. In general, a three-step process is proposed to obtain summer season emission totals for the area and nonutility sectors. First, OTAG emissions reflecting the above controls are obtained for ''typical'' summer weekday, Saturday, and Sunday operating conditions for each sector for each State. The underlying procedures and assumptions used for deriving these emissions are described in the OTAG Emissions Inventory Development Reports (8). Second, the weekday

[13] If States chose to not seek reductions from some smaller sources, then the overall costs estimated for this sector would be expected to increase.

emissions are multiplied by 109 (the total number of weekdays in the period May 1 through September 30), and the Saturday and Sunday emissions are each multiplied by 22 (the total number of weekends in the 5-month season). In the third step, these estimates are summed for each day-type to get the summer season total emissions by sector by State.

c. Summary and Proposed Area and Nonutility Point Source Budget Components. The resulting proposed nonutility point and area budget components are contained in Table III–7 below along with a comparison for nonutility point sources to the 2007 CAA base. The area budget components are not compared to the 2007 base because no reductions were calculated for this budget sector. For the nonutility point sources, EPA applied controls that approximate the OTAG recommendations. For the area and nonutility sectors, we used the summer weekday, Saturday, and Sunday emissions that were available in the OTAG data base for these control levels. The OTAG growth assumptions were used for area and nonutility point source sectors.

TABLE III–7.—PROPOSED BUDGET COMPONENTS FOR NONUTILITY POINT AND AREA SECTORS

[Tons of NO_X per Ozone Season]

State	2007 CAA base	2007 Budget components		Percent reduction
	Nonutility point	Nonutility point	Area	Nonutility point
Alabama	47,182	25,131	25,229	47
Connecticut	4,732	4,475	4,587	5
Delaware	5,205	3,206	1,035	38
District of Columbia	312	312	741	0
Georgia	34,012	20,472	11,901	40
Illinois	63,642	39,855	7,270	37
Indiana	51,432	35,603	25,545	30
Kentucky	18,817	12,258	38,801	35
Maryland	6,729	4,825	8,123	28
Massachusetts	10,683	7,590	10,297	29
Michigan	57,190	35,317	28,126	38
Missouri	12,248	8,174	6,626	33
New Jersey	32,663	26,741	11,388	18
New York	19,889	16,930	15,585	15
North Carolina	32,107	21,113	9,193	34
Ohio	50,946	32,799	19,446	36
Pennsylvania	64,224	59,622	17,103	7
Rhode Island	328	328	420	0
South Carolina	34,791	20,097	8,420	42
Tennessee	65,051	32,138	11,991	51
Virginia	23,333	15,529	25,261	33
West Virginia	41,510	31,377	4,901	24
Wisconsin	21,209	12,269	10,361	42
Total	698,235	466,158	302,350	33

5. Proposed Assumptions for Highway Vehicles

a. Affected Entities. The highway vehicle sector encompasses those sources that normally operate on roads and highways. All light-duty cars and trucks, medium-duty trucks, heavy-duty trucks, motorcycles, and buses are included in this category. NO_X emissions from these sources, including the effects of the fuel used to power these sources, are included in the estimate of emissions from the highway vehicle sector. These estimates also incorporate the effects of emission control programs which are intended to reduce emissions from these sources.

b. Methodology Used to Develop the Proposed Highway Vehicle Budget Component

i. Budget Component Determination Method and Alternatives Considered. The EPA proposes to derive States' highway vehicle budget component by estimating the State-by-State NO_X emissions from highway vehicles in 2007. These estimates were developed by modeling the emissions expected in 2007 from all highway vehicles. The estimates are based on: (1) a projection for each State's number of vehicle-miles-traveled (VMT) by vehicle category in 2007, as described in section III.B.5.b.iii; and (2) the estimated emission rate for each vehicle category in 2007, assuming implementation of those measures incorporated in existing SIPs, measures already implemented federally, and those additional measures expected to be implemented federally. The additional Federal measures include:

- National Low Emission Vehicle Standards
- 2004 Heavy-Duty Engine Standards
- Revisions to Emissions Test Procedure.

These measures either have been promulgated in final form or are expected to have been promulgated by the time today's proposal is made final. All of these measures are expected to be implemented nationwide or in the 49 States other than California and hence would be in effect in those States required to submit a transport SIP under this proposal. Since these measures would be in effect as of 2007, EPA believes it is appropriate to reflect the impact of these measures in 2007 in calculating States' highway vehicle budget components and proposes to do so. However, it should be noted that the NLEV program is a voluntary program that will not take effect until the Northeastern States and the auto manufacturers agree to participate. While EPA expects such an agreement to be reached, the Agency acknowledges that such an agreement is not certain at the current time. Should the

Northeastern States and the auto manufacturers fail to agree to implement NLEV, EPA proposes to revise States' highway vehicle budget components and overall NO_X budgets accordingly. This revision would increase States' NO_X budgets. The EPA requests comment on this proposal.

The EPA proposes not to incorporate in its calculation of the highway vehicle budget component any benefits from Tier 2 light-duty vehicle standards. The Agency's decision to go forward with such standards is contingent on the determination that such standards are necessary to achieve air quality objectives and can be done so in a cost-effective manner. The EPA is currently engaged in an investigation of these and other issues related to Tier 2 standards, and it is premature to assume that such standards will be implemented prior to 2007. Therefore, EPA cannot at this time model the impact of a potential set of Tier 2 standards on emissions from affected States in 2007. If such standards are promulgated and implemented prior to 2007, EPA proposes to adjust States' highway vehicle budget components and overall NO_X budgets accordingly to reflect implementation of these standards. The EPA requests comment on this approach for Tier 2 emission standards.

The EPA proposes to assume full implementation of other highway vehicle emission control programs as required by the CAA or contained in existing SIPs and maintenance plans in calculating each State's highway vehicle budget component for the purpose of establishing a statewide NO_X emission budget. This proposal would encompass I/M programs, Federal Phase II RFG, Clean Fuel Fleet programs, and other programs intended to reduce NO_X emissions from highway vehicles. The EPA further proposes to assume continued participation in the RFG program by the mandatory RFG areas and by those areas which have opted into the program. The EPA requests comment on the appropriateness of these proposals. In particular, EPA requests comment on whether the extent of the RFG coverage area chosen in calculating the highway vehicle budget component is appropriate, and on whether the normally-required NO_X reductions from I/M programs in those areas whose section 182 waivers currently exempt them from the I/M NO_X performance standard should be assumed when calculating State highway vehicle budget components and overall NO_X budgets.

States have the discretion to adopt additional mobile source control measures as part of their transport SIP revision in order to meet their NO_X budget or to meet other air quality obligations. The EPA agrees with OTAG that States should consider such control measures as RFG, I/M programs, and transportation control measures beyond those already included in State SIPs. These measures are applied and implemented locally rather than nationally, and in some cases their specific features are designed locally as well. The EPA recognizes that States and localities have more detailed information on which to base any decision to expand these programs beyond their current extent than does EPA. State and local decisions to expand these programs can be based on the unique characteristics of local areas and the nature of the ozone challenges they face. In particular, these programs provide VOC reductions larger than the NO_X reductions they provide, and the OTAG modeling suggests that VOC reductions affect local ozone levels but have limited impact on downwind ozone levels. The EPA believes these programs may be attractive to many States and localities because they can offer large reductions in VOC, CO, and toxics emissions, in addition to reductions in NO_X emissions, at a relatively modest cost. Hence States may want to adopt these or other local measures to achieve or maintain local ozone or CO attainment or to reduce exposure to toxic air pollutants, as well as to meet their obligations for NO_X reductions to meet their statewide NO_X budget. States which choose to do so may be able to adopt less-stringent controls on other sectors while still meeting their obligations to reduce NO_X emissions as described in this rulemaking. For the reasons discussed above, EPA is not proposing to reduce the budgets to assume further controls from Federal or State motor vehicle measures. The NO_X reductions alone from those measures do not appear sufficiently cost effective in all of the areas that would be subject to reduced budgets, since for some areas there is no need for local ozone or CO reductions.

ii. Activity Level Projections and Growth Considerations. The EPA proposes to use the best available projections of State VMT levels in 2007 in calculating States' budget components for the highway vehicle sector. For the purposes of providing estimates in today's action, EPA has used the 2007 projections developed by OTAG. The OTAG projections were based on actual 1990 VMT levels for each State, based on State submittals to OTAG where available or on estimates generated by the Highway Performance Monitoring System (HPMS) otherwise. These base year VMT levels were then projected to 2007, using growth rates agreed to or in some cases supplied by the State. The EPA proposes to use the state-specific estimates of VMT growth by vehicle category through 2007, as developed in the OTAG process, in calculating States' highway vehicle budget components and overall NO_X budgets. In most cases, States accepted OTAG-proposed growth estimates equal to those used by the Agency in the October 1995 edition of its annual report, ''National Air Pollutant Emission Trends'' (16), although several States submitted (and the OTAG inventory incorporated) growth estimates that were significantly lower than the growth estimates used by the Agency in its 1995 Trends report. One State submitted growth estimates that were higher than the 1995 Trends report growth estimates.

The EPA has considered a number of options to forecast highway VMT levels in 2007. For today's proposal, EPA has chosen to use the projected VMT levels used by OTAG. As discussed above, most of those growth rate estimates were consistent with EPA's estimates in its Trends report.[14] Furthermore, the open, collaborative OTAG process allowed interested parties to review VMT and VMT growth estimates when constructing future year emission estimates. The EPA encourages each State subject to today's action to review the OTAG 1990 VMT levels and VMT growth projections again; EPA also requests each affected State to review these projections for consistency with other State projections, including projections used in SIPs for nonattainment areas. The EPA expects that all involved State and local agencies will coordinate and concur on any new VMT growth rate submissions, as should be the case when growth rates are developed for use in SIP revisions containing VMT and emissions projections. The EPA proposes to incorporate revised VMT growth projections received from States during the comment period of today's action into its final rule, if appropriately explained and documented.

The EPA further proposes to use actual 1995 VMT levels as the base year for the 2007 inventory projections in the final rule, rather than continuing to rely on the 1990 VMT levels. The Agency believes that the accuracy of projected 2007 VMT levels would be improved by

[14] The Trends report method projects national VMT based on a growth rate of about 2% per year and allocates VMT to States based on Census Bureau forecasts of population levels in each State.

using a more recent base year, since the impact of any deviation between projected and actual growth rates through 2007 would be reduced. For this reason, EPA proposes to use and requests States to submit VMT data for 1995. The EPA requests comment on this proposal to use actual 1995 VMT levels as the base year for projecting 2007 VMT levels and on the use of 1990 VMT levels as the base year in today's action.

iii. Seasonal/Weekday/Weekend Adjustment. The EPA proposes to project States' highway vehicle budget components during the 2007 ozone season based on the actual number of weekday and weekend days during the 2007 ozone season. The OTAG inventory projections, by contrast, were based on the actual number of weekend and weekday days during the specific ozone episodes modeled by OTAG. The VMT levels on weekdays differ from VMT levels on weekend days, all other things being equal, so it is important to use the proper proportion of weekdays and weekend days when developing highway vehicle budget components and overall State NO_X budgets. Since States must demonstrate compliance with their NO_X budgets over the entire ozone season in 2007, EPA believes that the actual number of weekdays and weekend days during the 2007 ozone season should be used to calculate highway vehicle budget components and overall State NO_X budgets. The EPA requests comment on this proposal.

The EPA also proposes to base its calculation of State highway vehicle budget components and overall NO_X budgets on the average temperatures for the affected months. The OTAG projections are based on the actual daily temperature ranges experienced during the episodes modeled by OTAG. These temperature ranges may not be representative of the typical temperatures experienced during the whole ozone season as defined in today's action, since ozone episodes tend to occur during periods of above-average temperature. The estimated highway vehicle budget components presented in Table III–8 are based on the OTAG temperature ranges and hence are based on temperatures that may be higher than the average temperatures experienced during the 5 ozone season months. In its final rulemaking, EPA will revise its highway vehicle budget components to reflect the average temperatures for the affected months. The impact of these temperature differences on highway vehicle budget components is expected to be modest, because even large differences in summer temperatures have only a modest effect on estimated NO_X emissions from highway vehicles. For example, as temperature goes from 75 to 95 degrees Fahrenheit, NO_X emissions increase by approximately 4 percent. The actual difference between summer average and ozone-episode temperature ranges is considerably smaller than 20 degrees Fahrenheit, so the size of the temperature adjustment described above would be correspondingly smaller. The EPA requests comment on the appropriateness of this adjustment and on its proposed use of ozone season average temperatures instead of ozone-episode temperatures in developing States' highway vehicle budget components and overall NO_X budget.

iv. Comparison to OTAG Recommendations. The set of presumptive controls modeled by EPA to develop the highway vehicle budget components and overall NO_X budgets is consistent with the OTAG recommendations. The OTAG supported expeditious implementation of Federal measures, including those listed above. The OTAG also recommended the continued use of RFG in the mandated and current opt-in areas, as reflected in EPA's proposed method for calculating highway vehicle budget components. The OTAG supported State flexibility to opt into the RFG program and encouraged areas which face local nonattainment, maintenance, or downwind transport challenges to opt into the RFG program. The EPA proposes to provide States with such flexibility in devising strategies to meet the NO_X budgets outlined in section III.C. The EPA believes that Federal Phase II RFG can provide cost-effective reductions in ozone precursors, since it will reduce emissions of both VOC and NO_X. Phase II RFG can provide VOC and NO_X reductions at a cost of $2600–3500 per ton, depending on the amount of fuel affected by any expansion of the program offer. Hence EPA encourages States to consider adopting Federal Phase II RFG in areas eligible to opt into the program as part of their revised SIP.

The OTAG further recommended that ''The USEPA should adopt and implement by rule an appropriate sulfur standard to further reduce emissions and assist the vehicle technology/fuel system [to] achieve maximum long term performance.'' The EPA is engaged in an extensive evaluation of gasoline-based emission controls as part of its work to evaluate the need for and benefits and costs of Tier 2 vehicle emission standards. This evaluation includes an examination of the costs and benefits of gasoline sulfur control. At this time, however, EPA has not yet defined, quantified, or evaluated the impact of sulfur control. Furthermore, EPA has not at this time decided whether to require sulfur reductions. Therefore, EPA believes it is not appropriate to assume such reductions when calculating highway vehicle budget components or overall NO_X budgets. If the Agency does establish gasoline sulfur standards, EPA proposes to adjust State highway vehicle budget components and overall State NO_X budgets to reflect the emissions impact of such standards on NO_X emissions from highway vehicles in 2007. The EPA requests comment on this proposal.

The OTAG also recommended that EPA should evaluate the potential for reformulation of diesel fuel for reducing NO_X emissions from highway and nonroad diesel engines. The EPA is engaged in an examination of the need for and potential benefits of diesel fuel reformulation as part of its assessment of the feasibility of its proposed 2004 heavy-duty highway vehicle standards. At the present time, however, EPA does not have sufficient information to adequately quantify the potential of diesel fuel reformulation to reduce NO_X emissions or to determine the costs of various reformulation strategies. Hence EPA has not incorporated any emission reductions from diesel fuel reformulation in its calculation of highway vehicle budget components or overall NO_X budgets. The EPA will continue to evaluate the potential of diesel fuel reformulation to reduce NO_X emissions and enable the proper functioning of engine-based emission controls through the collaborative process developed as a result of the 1995 Statement of Principles. If EPA does promulgate requirements to reformulate diesel fuel, EPA proposes to revise at that time States' highway vehicle budget components and overall NO_X budgets to reflect the projected impact of the required diesel fuel reformulation on NO_X emission from highway vehicles.

The OTAG called on the States to adopt inspection and maintenance programs where required by the CAA. This recommendation is reflected in EPA's proposed method of calculating the highway vehicle emissions, as discussed above. The OTAG also called on the States to consider expanding I/M programs to urbanized areas of greater than 500,000 population in the ''fine grid'' portion of the OTAG region. The EPA believes that properly designed and operated I/M programs are a practicable and cost-effective means of reducing ozone precursors. These programs provide VOC reductions as large or larger than the NO_X reductions

they provide, while the OTAG modeling suggests that VOC reductions affect local ozone levels but have limited impact on downwind ozone levels. Therefore, while EPA recognizes that many of the States subject to today's proposal have already implemented or plan to implement I/M programs, and while EPA encourages the States to consider extending I/M programs in other areas to reduce ozone precursors as part of their attainment and maintenance strategy, EPA proposes not to assume expansion of currently-required I/M programs in calculating States' highway vehicle budget components or overall NO_X budgets. The EPA requests comment on this proposal. Notwithstanding this proposal, because I/M programs cause reductions in NO_X emissions implicated in ozone transport, EPA encourages the States to consider implementing effective I/M programs in other areas as part of their transport SIP.

c. Summary and Proposed Highway Vehicle Budget Components. The highway vehicle budget components presented in Table III–8 were developed by evaluating the emissions that would result in 2007 when existing CAA requirements are met and additional Federal measures are implemented. These estimates are based on the 1990 VMT levels and growth rates supplied to OTAG by the States.

TABLE III–8. BUDGET COMPONENTS FOR HIGHWAY VEHICLES

[Tons of NO_X per Ozone Season]

State	2007 CAA base	Proposed budget component	Percent reduction
Alabama	61,205	56,601	8
Connecticut	23,446	17,392	26
Delaware	8,867	8,449	5
District of Columbia	3,081	2,267	26
Georgia	88,363	77,660	12
Illinois	91,656	77,690	15
Indiana	72,294	66,684	8
Kentucky	49,789	46,258	7
Maryland	39,941	28,620	28
Massachusetts	35,308	23,116	35
Michigan	91,449	81,453	11
Missouri	61,778	55,056	11
New Jersey	55,783	39,376	29
New York	114,234	94,068	18
North Carolina	80,955	73,056	10
Ohio	104,422	92,549	11
Pennsylvania	81,805	73,176	11
Rhode Island	7,566	5,701	25
South Carolina	53,566	49,503	8
Tennessee	72,907	67,662	7
Virginia	88,792	79,848	10
West Virginia	23,267	21,641	7
Wisconsin	46,390	41,651	10
Total	1,356,864	1,179,477	13

d. Conformity. The CAA section 176 (c) requires federally supported activities to conform to the purpose of the SIP. Specifically, the Federal government cannot support an activity that causes or worsens air quality violations or delays attainment. Conformity applies to nonattainment and maintenance areas.

The CAA establishes several more specific requirements regarding how conformity of Federal highway and transit activities must be determined. For example, the emissions expected from the implementation of transportation plans and programs must be consistent with estimates of emissions from highway vehicles and necessary emissions reductions contained in the SIP. The EPA has promulgated regulations (40 CFR parts 51 and 93) to implement the general and transportation-related conformity requirements.

The EPA proposes that neither the highway vehicle budget components nor the overall NO_X budgets proposed in this rulemaking change the existing conformity process or existing SIPs' motor vehicle emissions budgets under the conformity rule. The EPA does not believe that Federal agencies or Metropolitan Planning Organizations (MPOs) operating in States subject to today's proposal must demonstrate conformity to the proposed budgets or the highway vehicle budget component levels used to calculate the budgets. Whereas the conformity provisions in section 176(c) of the CAA apply to nonattainment and maintenance areas, the States' emission budgets apply statewide. Without greater geographic disaggregation in the SIP, Federal agencies and MPOs will not be able to determine consistency with the emission estimates in the transport SIP revision being requested in today's proposal. Furthermore, EPA does not believe that consistency with the statewide emissions estimates in transport SIPs can be used to determine whether or not a transportation or other Federal activity will cause or worsen local air quality violations. The statewide budget does not represent the level of emissions necessary for attainment or a reasonable further progress milestone. In contrast, attainment demonstrations, 15 percent SIPs, post-1996 rate-of-progress, and maintenance plans—SIPs to which EPA requires conformity—do contain motor vehicle and other emissions estimates on which the attainment, maintenance, or progress demonstration depends.

6. Proposed Assumptions for Nonroad Sources

a. Affected Entities. The nonroad sector encompasses those mobile sources that normally do not operate on roads and highways. This sector includes recreational and commercial marine engines; small engines such as those used to power snowmobiles, chainsaws, or lawn and garden equipment; larger nonroad engines such as those used to power agricultural equipment, construction equipment, industrial/commercial equipment (forklifts, pumps, compressors, generator sets), and mining equipment; aircraft, and locomotives. Emissions from these sources, including the effects of the fuel used to power these sources, would be included in the estimate of emissions from the nonroad sector. These estimates would also incorporate the effect of emission control programs which are intended to reduce emissions from these sources.

b. Methodology Used to Determine the Proposed Nonroad Budget Component.

i. Budget Component Determination Method and Alternatives Considered. The EPA proposes that the States' nonroad budget component be derived by estimating the State-by-State NO_X emissions from nonroad engines in 2007. These estimates would be developed by modeling the emissions expected in 2007 from all nonroad engines. The estimates would be based on: (1) a projection for each State's number of engines of each type and application in 2007; (2) a projection of the level of activity for each type and application of nonroad engine in 2007; and (3) the estimated emission rate for each engine type and application in 2007, assuming implementation of those measures incorporated in existing SIPs, measures already implemented federally, and those additional measures expected to be implemented federally. The additional Federal measures include:

- Federal Small Engine Standards, Phase II.
- Federal Marine Engine Standards (for diesels > 50 horsepower).
- Federal Locomotive Standards.
- 1997 Proposed Nonroad Diesel Engine Standards.

All of these measures either have been proposed or are expected to be proposed in the near future and are sufficiently well-defined to model their emission impacts in 2007. These measures are expected to be implemented nationwide and hence would be in effect in those States required to submit a SIP under this proposal. Since these measures would be in effect as of 2007, EPA believes it is appropriate to reflect the impact of these measures in 2007 in calculating States' nonroad budget components and proposes to do so.

States have the discretion to adopt additional nonroad control measures as part of their transport SIP revision in order to meet their NO_X budget or to meet other air quality obligations. The EPA agrees with OTAG that States should consider such control measures as RFG, scrappage programs, and activity level control measures beyond those already included in State SIPs. These measures are applied and implemented locally rather than nationally, and in some cases their specific features are designed locally as well. The EPA recognizes that States and localities have more detailed information on which to base any decision to expand these programs beyond their current extent than does EPA. State and local decisions to expand these programs can be based on the unique characteristics of local areas and the nature of the ozone challenges they face. In particular, some of these programs tend to provide VOC reductions that are larger than the NO_X reductions they provide, along with significant CO, toxics, and particulate matter reductions. The OTAG modeling suggests that VOC reductions affect local ozone levels but have limited impact on downwind ozone levels. Hence States may want to adopt these measures to help achieve or maintain local attainment, as well as to help meet their obligation to mitigate transport. States which choose to do so may be able to adopt less-stringent controls on other sectors while still complying with their overall budget.

ii. Activity Level Projections and Growth Considerations. The EPA proposes to use the best available projections of State nonroad activity levels in 2007 in calculating States' budget components for the nonroad sector. For the purposes of providing estimates in today's action, EPA has used the 2007 projections developed by OTAG. The OTAG projections were based primarily on estimates of actual 1990 nonroad activity levels found in the October 1995 edition of EPA's annual report, ''National Air Pollutant Emission Trends.'' Several States submitted estimates of their 1990 nonroad activity levels that differed from these estimates. The OTAG growth rates were based on growth projections issued by the Bureau of Economic Affairs and hence were consistent with those used by the Agency in its October 1995 ''Trends'' report. At the present time, EPA considers the growth estimates to be reasonable; however, the Agency requests comment on its proposal to use the OTAG growth projections of nonroad activity levels in calculating the nonroad budget components and overall NO_X budgets for those States subject to today's proposal. The basis of the OTAG growth projections is explained in greater detail in OTAG's Emission Inventory Development Report, Volume I, pages 11–13.

The EPA encourages each State subject to today's proposal to review the OTAG nonroad growth projections again; EPA also requests each affected State to review these projections for consistency with other State projections, including projections used in SIPs for nonattainment areas. The EPA expects that all involved State and local agencies will coordinate and concur on any new nonroad growth rate submissions, as should be the case when growth rates are developed for use in SIP revisions containing nonroad activity level and emissions projections. The EPA proposes to incorporate revised nonroad growth projections received from States during the comment period of today's proposal into its final rule, if appropriately explained and documented. The EPA requests comment on these proposals.

The EPA further proposes to use estimated historical 1995 nonroad activity levels as the base year for the 2007 inventory projections in the final rule, rather than continuing to rely on the 1990 nonroad activity levels. The Agency believes that the accuracy of projected 2007 nonroad activity levels would be improved by using a more recent base year, since the impact of any deviation between projected and actual growth rates through 2007 would be reduced. For this reason, EPA proposes to use its 1997 ''Trends'' estimate of 1995 nonroad activity levels in its final rulemaking and requests comment on this proposal. The EPA also requests comment on its proposal to use actual 1995 nonroad activity levels as the base year for projecting 2007 nonroad activity levels and on the use of 1990 nonroad activity levels as the base year in today's action.

iii. Seasonal/Weekday/Weekend Adjustment. The EPA proposes to project States' nonroad budget components during the 2007 ozone season based on the actual number of weekday and weekend days during the 2007 ozone season. The OTAG inventory projections, by contrast, were based on the actual number of weekend and weekday days during the specific ozone episodes modeled by OTAG. Nonroad activity levels on weekdays differ from levels on weekend days, all

other things being equal, so it is important to use the proper proportion of weekdays and weekend days when developing nonroad budget component levels and overall State NO_X budgets. Since States must demonstrate compliance with their NO_X budgets over the entire ozone season in 2007, EPA believes that the actual number of weekdays and weekend days during the 2007 ozone season should be used to calculate budget components and overall State NO_X budgets. The EPA requests comment on this proposal.

The EPA also proposes to base its calculation of the State nonroad budget components and overall NO_X budgets on the average temperatures for the affected months. The OTAG projections are based on the actual daily temperature ranges experienced during the episodes modeled by OTAG. These temperature ranges may not be representative of the typical temperatures experienced during the whole ozone season as defined in today's proposal, since ozone episodes tend to occur during periods of above-average temperature. The estimated nonroad emissions presented in Table III–9 are based on the OTAG temperature ranges and hence are based on temperatures that may be higher than the average temperatures experienced during the five ozone season months. In its final rulemaking, EPA will revise its nonroad budget components and overall NO_X budgets to reflect the average temperatures for the affected months. The impact of these temperature differences on nonroad budget components and overall NO_X budgets is expected to be modest, because even large differences in summer temperatures have only a modest effect on estimated nonroad NO_X emissions. The EPA requests comment on the appropriateness of this adjustment and on its proposed use of ozone season average temperatures instead of ozone-episode temperatures in developing States' nonroad budget components and overall NO_X budget.

iv. Comparison to OTAG Recommendations. The set of presumptive controls modeled by EPA to develop the nonroad sector budget components for each State is consistent with the OTAG recommendations. The OTAG supported expeditious implementation of Federal measures, including those listed above. The OTAG also recommended the continued use of RFG in the mandated and current opt-in areas, as reflected in EPA's proposed method for calculating the nonroad budget components. As discussed in section III.B.5, OTAG supported State flexibility to opt into the RFG program and encouraged areas which face local nonattainment, maintenance, or downwind transport challenges to opt into the RFG program. Although current EPA guidance indicates that Phase II RFG will not reduce NO_X emissions from nonroad engines, Phase II RFG will offer significant VOC emission reduction benefits from nonroad engines. As discussed in section III.B.5, EPA encourages States to consider adopting Federal Phase II RFG in areas eligible to opt into the program as part of their revised SIP.

Current EPA guidance also indicates that changes in fuel sulfur levels, including any changes that may result from EPA's Tier 2 study, would not affect NO_X emissions from gasoline-powered nonroad equipment since such equipment is not equipped with catalytic converters. Hence EPA proposes not to change States' nonroad budget components if EPA should promulgate sulfur standards as a result of the Tier 2 study or any other EPA analysis, unless nonroad engines equipped with catalytic converters begin to be introduced into the U.S. marketplace. The EPA requests comment on this proposal.

As discussed in section III.B.5, OTAG recommended that EPA should evaluate the potential for reformulation of diesel fuel for reducing NO_X emissions from both highway and nonroad diesel engines. The EPA is engaged in an examination of the need for and potential benefits of diesel fuel reformulation as part of its assessment of the feasibility of its proposed 2004 heavy-duty highway vehicle emission standards but has not as of this writing completed its examination. Furthermore, EPA does not have sufficient information at the present time to quantify adequately the potential of diesel fuel reformulation to reduce NO_X emissions from nonroad diesel engines or to determine the costs of various reformulation strategies. For these reasons, EPA has not incorporated any emission reductions from diesel fuel reformulation in its calculation of States' nonroad budget components. If EPA does promulgate requirements to reformulate diesel fuel, EPA will evaluate whether additional research to determine the impact of diesel fuel reformulation on NO_X emissions from nonroad engines is needed. The EPA proposes to defer any consideration of revisions to States' nonroad sector budget components and overall NO_X budgets to reflect the impact of diesel fuel reformulation on NO_X emission from nonroad engines until such time as diesel fuel reformulation standards, and the effect of those standards on nonroad engine NO_X emissions, have been adequately defined. The EPA requests comment on this proposal.

c. *Summary and Proposed Nonroad Budget Components.* The nonroad mobile sources sector budget components presented in Table III–9 were developed by evaluating the emissions that would result in 2007 when existing CAA requirements are met and additional Federal measures are implemented. These estimates are based on the 1990 activity levels and growth rates supplied to OTAG by the States.

TABLE III–9.—BUDGET COMPONENTS FOR NONROAD SOURCES

[Tons of NO_X per Ozone Season]

State	2007 CAA base	Proposed budget component	Percent reduction
Alabama	21,742	18,727	14
Connecticut	11,679	9,581	18
Delaware	4,663	4,262	9
District of Columbia	3,609	3,582	1
Georgia	27,151	22,714	16
Illinois	66,122	56,429	15
Indiana	30,489	27,112	11
Kentucky	25,327	22,530	11
Maryland	21,717	18,062	17
Massachusetts	22,865	19,305	16
Michigan	29,005	24,245	16

TABLE III–9.—BUDGET COMPONENTS FOR NONROAD SOURCES—Continued

[Tons of NO_X per Ozone Season]

State	2007 CAA base	Proposed budget component	Percent reduction
Missouri	22,582	19,102	15
New Jersey	25,150	21,723	14
New York	35,934	30,018	16
North Carolina	22,867	18,898	17
Ohio	46,214	42,032	9
Pennsylvania	33,707	29,176	13
Rhode Island	2,511	2,074	17
South Carolina	15,446	12,831	17
Tennessee	54,710	47,065	14
Virginia	29,160	25,357	13
West Virginia	10,966	10,048	8
Wisconsin	19,208	15,145	21
Total	582,824	500,018	14

C. State-by-State Emissions Budgets

The EPA is proposing a statewide emission budget for the year 2007 for each State covered by today's action. The proposed statewide budgets were calculated by summing the budget components which were calculated as described above. Budget components were calculated for the following five sectors: electric utility, nonutility point, area, nonroad engines, and highway vehicles.

The proposed overall budgets to be achieved by 2007 include reductions from all Federal programs that would continue to result in emission reductions from the compliance date for the State-adopted rules (between September 2002 and September 2004 that EPA establishes in its final rulemaking) to 2007. In 2007, EPA plans to begin a reassessment of transport. At that time, EPA will determine how any new data and tools (such as new air quality models) should be incorporated. The portion of the budget over which States have control (i.e., the non-Federal portion) would have to be implemented between September 2002 and September 2004. These concepts are fully discussed in section V, SIP Revisions and Approvability Criteria, of this rulemaking.

The proposed State-by-State budgets are shown in Table III–10 below. This table compares the proposed budgets to the 2007 CAA emissions which were the starting point for the calculation.

TABLE III–10.—PROPOSED SEASONAL NO_X EMISSIONS BUDGET FOR STATES MAKING A SIGNIFICANT CONTRIBUTION TO DOWNWIND OZONE NONATTAINMENT

[Tons of NO_X per Ozone Season]

State	2007 CAA emissions	Proposed 2007 budget	Percent reduction
Alabama	237,062	152,634	36
Connecticut	50,159	39,445	21
Delaware	30,671	21,342	28
District of Columbia	8,128	7,054	9
Georgia	254,373	162,905	35
Illinois	343,742	213,077	38
Indiana	357,647	203,734	100
Kentucky	261,422	155,667	40
Maryland	111,841	70,994	36
Massachusetts	107,437	73,263	32
Michigan	287,827	194,542	32
Missouri	195,547	111,890	43
New Jersey	139,537	104,270	25
New York	225,281	181,254	19
North Carolina	228,395	149,803	34
Ohio	406,785	233,584	43
Pennsylvania	322,034	218,671	32
Rhode Island	11,599	9,429	19
South Carolina	155,586	105,941	31
Tennessee	276,653	178,173	35
Virginia	212,265	162,879	21
West Virginia	164,362	91,273	44
Wisconsin	148,171	95,181	35
Total	334,266,508,374	2,937,005	35

D. Recalculation of Budgets

The EPA is proposing statewide emissions budgets calculated as described above. The EPA specifically invites public comment on the overall approach as well as the individual elements that were used in these calculations (e.g., emission factors, source-specific data, and, growth assumptions). The EPA is proposing that the same elements and assumptions used in the EPA budget calculations be used by the States as they develop revisions to their SIPs in response to today's proposal. However, EPA recognizes that changes to these individual elements may be warranted. If changes to any of these elements are appropriate, based on comments received, EPA proposes recalculating the budgets with the revised data, as described below. The intention of this procedure is to take into account new information that would replace less accurate data previously relied upon. That is, EPA intends to continue to use the best information available as well as to assure that the States carry out their plans to reduce emissions so that, in the end, the transport of ozone and ozone precursors is decreased.

For example, for nonutility point sources, OTAG recommended that RACT should be considered for individual medium sized nonutility point sources. The EPA proposed budget calculations generally follow the OTAG recommendations. Because the definition of RACT may vary from source-to-source, it is not possible to precisely forecast emissions reductions due to RACT on a source-specific basis. States, however, may have source-specific information useful in determining RACT for sources in their States and may, therefore, provide more precise information. With respect to the large nonutility point sources, missing data in the OTAG emissions inventories precludes EPA from precisely following the recommended definitions of large sources. Thus, States may provide more precise information for EPA to use in the budget calculations. In such cases, EPA is proposing to recalculate the budgets to take into account the better data. New data should be submitted by the end of the public comment period so that recalculation would occur prior to final rulemaking on this proposal; if any additional data become available after EPA's final rulemaking action, such data could be considered prior to State submittal of revised SIPs. The EPA is soliciting comment on this approach.

Similarly, with respect to growth assumptions, States should use the same growth rates EPA used to calculate the proposed budgets, unless better information indicates that the growth assumptions should be revised. New data should be submitted by the end of the public comment period so that recalculation would occur prior to final rulemaking on this proposal; if any additional data become available after EPA's final rulemaking action, such data could be considered prior to State submittal of revised SIPs. Changes in growth that are the result of clearly identified control strategies which can be shown to provide real, permanent, and quantifiable changes in growth, such as programs to reduce VMT, may also be creditable toward meeting the 2007 budget. The EPA is soliciting comment on this approach.

From time to time, EPA updates its models and inventory estimates to reflect new information. As models change, EPA recognizes that projected emission levels such as those used to develop the overall State NO_X budgets and sector-specific budget components proposed in today's action may change. Furthermore, EPA recognizes that a set of control strategies which an earlier model projects to result in a given level of emissions may be estimated to result in a greater or lesser level of emissions, when evaluated using a newer model, both in terms of absolute emission levels and the level of emissions relative to some other set of control strategies. Similar to the discussion above on source-specific data and growth assumptions, States should use the same models and inventories EPA used to calculate the proposed budgets, unless better information indicates that they should be revised. Changes that are the result of changes in EPA models and/or inventories may lead to an upward or downward recalculation of the budget prior to 2007. New data should be submitted by the end of the public comment period so that recalculation would occur prior to final rulemaking on this proposal; if any additional data become available after EPA's final rulemaking action, such data could be considered prior to State submittal of revised SIPs. The EPA requests comment on whether the State NO_X budgets and budget components for specific sectors should be revised when EPA emission and inventory models change and on whether States' SIP revisions in response to today's action should be revised. The EPA expects to address this issue through the process described in section V, SIP Revisions and Approvability Criteria, to define the reporting and implementation requirements for today's action.

Finally, it should be noted that it is possible that EPA may introduce additional Federal measures after State emission budgets are defined but before 2007. As discussed in this rulemaking, EPA is proposing to base State NO_X budgets on a calculation of the NO_X emissions that would result in each affected State in 2007 assuming the implementation of a set of reasonable control measures. Any additional Federal measures beyond those described in today's action would be implemented regardless of State action to meet its transport SIP obligations. The EPA considered two approaches in this instance: one which would, in effect, provide emissions reduction credit to the State and one that does not. In the first case, one could argue that real emissions reductions result from the new Federal measures and, therefore, the State could receive credits for these reductions and implement a smaller portion of its planned emission reductions. In the second approach, the State would be required to continue to implement the measures in its revised SIP because those measures continue to be considered reasonable control measures and all reasonable measures are needed to mitigate transport. The EPA believes the latter approach is more consistent with the framework of this proposal. However, EPA requests comment on both of these approaches.

As noted, EPA is proposing to allow recalculation of NO_X budgets as new information becomes available (e.g., changes in response to the promulgation of additional Federal standards controlling NO_X, changes in EPA emission and inventory models, changes adopted in SIPs in any of the underlying elements or assumptions used to calculate the State NO_X budget, or less than full implementation of the NLEV rule). The EPA requests comments on whether State NO_X budgets and budget components for specific sectors should be revised in these cases and whether States' SIP revisions in response to today's action should be revised either at the request of EPA or upon the initiation of a State.

IV. Implementation of Revised Air Quality Standards

A. Introduction

On July 16, 1997, President Clinton issued a directive to the Administrator of EPA on implementation of the revised air quality standards for ozone and particulate matter. In the directive, the President laid out a plan for how these standards are to be implemented. A central element in the directive is the incentive it provides States to act and submit control strategy SIPs early in exchange for which many areas will

need little or no additional new local emission reductions beyond those reductions that will be achieved through the regional control strategy. This approach avoids additional burdens associated with respect to the beneficial ozone control measures already under way, while at the same time achieving public health protection earlier.

The Presidential directive was published in the **Federal Register** on July 18, 1997 (62 FR 38421). The parts of the directive's implementation plan relevant to the regional NO_X reduction strategy proposed in this rulemaking are described here.

B. Background

Following promulgation of a revised NAAQS, section 107(d)(1) the CAA provides up to 3 years for State governors to recommend and the EPA to designate areas according to their most recent air quality. In addition, under section 172(b) of the CAA, the States will have up to 3 years from a nonattainment designation to develop and submit SIPs to provide for attainment of the new standard. The EPA anticipates that it will need the maximum period allowed under the CAA to designate areas for the 8-hour standard. Thus, EPA will designate areas by July of 2000. Under the Act, States, therefore, would need to submit their nonattainment SIPs by 2003. Section 172(a) of the CAA then allows up to 10 years plus two 1-year extensions from the date of designation for areas to attain the revised NAAQS.

C. Implementation Policy

The implementation plan in the Presidential Directive has several goals. Three of these goals are especially relevant for the NO_X reduction strategy proposed in this rulemaking:

- Reward State and local governments and businesses that take early action to reduce air pollution levels through cost-effective approaches.
- Respond to the fact that pollution can travel hundreds of miles and cross many State lines.
- Minimize planning and regulatory burdens for State and local governments and businesses where air quality problems are regional in nature.

To achieve these goals, the implementation plan includes a policy for areas that attain the 1-hour standard but not the new 8-hour standard in which EPA will follow a flexible implementation approach that encourages cleaner air sooner, responds to the fact that ozone is a regional as well as local problem, and eliminates unnecessary planning and regulatory burdens for State and local governments. A primary element of the policy will be the establishment under section 172(a)(1) of the CAA of a special ''transitional'' classification for areas that participate in the NO_X regional strategy proposed in this rulemaking and/or that opt to submit early plans addressing the new 8-hour standard. Because many areas will need little or no additional new local emission reductions to reach attainment, beyond those reductions that will be achieved through the regional control strategy, and will come into attainment earlier than otherwise required, the EPA will exercise its discretion under the law to eliminate unnecessary local planning requirements for such areas. The EPA will revise its rules for new source review (NSR) and conformity so that States will be able to comply with only minor revisions to their existing programs in areas classified as transitional. During this rulemaking, EPA will also reexamine the NSR requirements applicable to existing nonattainment areas in order to deal with issues of fairness among existing and new nonattainment areas. The transitional classification will be available for any area attaining the 1-hour standard but not attaining the 8-hour standard as of the time EPA promulgates designations for the 8-hour standard.

Based on the Agency's review of the latest OTAG modeling, a regional approach, coupled with the implementation of other already existing State and Federal CAA requirements, will allow the vast majority of areas that currently meet the 1-hour standard but would not otherwise meet the new 8-hour standard to achieve healthful air quality without additional local controls. Of the 96 new counties in the 22-State plus DC region, 92 are projected to come into attainment as result of the regional NO_X reductions included in the OTAG Run 5 modeling run.[15] A new county is defined as a county that violates the 8-hour standard but not the 1-hour standard and is not located in an area for the 1-hour standard designated nonattainment as of July 1997. (In the docket to this rulemaking is a table with associated documentation in which EPA lists these 96 new counties in the 22-State plus DC region with an indication of whether the county is projected to attain the 8-hour ozone standard based on the OTAG Run 5 modeling run.)

This county information should be understood with two caveats. First, this list of counties is based on air quality data from 1993–95. The data from this period will not be the basis for nonattainment area designations for the 8-hour ozone standard. Those designations will be made in the 2000 time frame and will be based on the most recent air quality data available at that time (1997–1999). Therefore, while EPA expects that the vast majority of new counties will attain as a result of the NO_X regional control strategy, the number of new counties may be more or less than the number indicated above. The EPA is also currently updating this list based on more current air quality data which will be included in the docket to the final rule.

Second, the estimate of which counties will attain the 8-hour standard is based on the specific assumptions made by the OTAG in Run 5. Because the proposed budgets are similar but not identical to those contained in Run 5, the estimate may change when this rule is final and implemented. In addition, some of the assumptions used to calculate the proposed budgets may change in response to comments EPA may receive on various portions of this rulemaking. Therefore, the estimate of which areas will attain the standards through the final regional NO_X strategy may be higher or lower than the number indicated above. In addition, areas in the region covered by the proposed NO_X reduction strategy in this rulemaking that would exceed the new standard after the adoption of the regional strategy, including areas that do not meet the current 1-hour standard, will benefit as well because the regional NO_X program will reduce the extent of additional local measures needed to achieve the 8-hour standard. In many cases these regional reductions may be adequate to meet CAA progress requirements for a number of years, allowing areas to defer additional local controls. In the 22-State plus DC region, of the 124 counties that violate the 8-hour standard which are located in an area designated nonattainment for the 1-hour standard as of July 1997, 95 are projected to come into attainment of the 8-hour standard as a result of OTAG Run 5 regional NO_X reductions.[16] The caveats noted above for new counties also apply to the information presented here. (In the docket to this rulemaking is a table with associated documentation in which EPA lists these 124 counties in the 22-State plus DC region, including an indication of whether the area is projected to attain the 8-hour ozone standard as a result of regional NO_X

[15] Appendix E contains a description of the controls applied in run 5.

[16] Appendix E contains a description of the controls applied in Run 5.

reductions included in the OTAG Run 5 modeling run.)

To determine eligibility for the transitional area classification, ozone areas will follow the approaches described below based on their status.

1. Areas Eligible for the Transitional Classification

a. Areas attaining the 1-hour standard, but not attaining the 8-hour standard, that would attain the 8-hour standard through the implementation of the regional NO_X transport strategy for the East. Based on the OTAG analyses, areas in the region covered by this proposal that can reach attainment through implementation of the regional transport strategy outlined in this rulemaking would not be required to adopt and implement additional local measures.

When EPA designates these areas under section 107(d), it will place them in the new transitional classification if they would attain the standard through implementation of the regional transport strategy and are in a State that by 2000 submits an implementation plan that includes control measures to achieve the emission reductions required by this proposed rule for States in the region covered by this proposed rule. This is 3 years earlier than an attainment SIP would otherwise be required. The EPA anticipates that it will be able to determine whether such areas will attain based on the OTAG and other regional modeling and that no additional local modeling would be required.

In addition to areas covered by this proposed rule which could receive the transitional classification, areas in the OTAG region not required to revise their SIPs in this rulemaking because they do not significantly contribute to transport may be able to receive the transitional classification as well. An area in the State could be eligible for the transitional area classification by submitting a SIP attainment demonstration in 2000 in which the State adopts NO_X emissions decreases similar to those EPA proposes to establish in this rulemaking where NO_X controls are effective for a given area to demonstrate attainment. The OTAG's modeling (in particular, OTAG strategy Run 5 described in section II.B.2, OTAG Strategy Modeling) shows that such a strategy in which a State adopted NO_X emission decreases similar to those EPA proposes to establish in this rulemaking would achieve attainment in most of these areas that would become nonattainment under the 8-hour standard.

b. Areas attaining the 1-hour standard but not attaining the 8-hour standard for which a regional transport strategy is not sufficient for attainment of the 8-hour standard. To encourage early planning and attainment for the 8-hour standard, EPA will make the transitional classification available to areas not attaining the 8-hour standard that will need additional local measures beyond the regional transport strategy, as well as to areas that are not affected by the regional transport strategy, provided they meet certain criteria. To receive the transitional classification, these areas must submit an attainment SIP prior to the designation and classification process in 2000. The SIP must demonstrate attainment of the 8-hour standard and provide for the implementation of the necessary emissions reductions on the same time schedule as the regional transport reductions. The EPA will work with affected areas to develop a streamlined attainment demonstration. By submitting these attainment plans earlier than would have otherwise been required, these areas would be eligible for the transitional classification and its benefits and would achieve cleaner air much sooner than otherwise required.

c. Areas not attaining the 1-hour standard and not attaining the 8-hour standard. The majority of areas not attaining the 1-hour standard have made substantial progress in evaluating their air quality problems and developing plans to reduce emissions of ozone-causing pollutants. These areas will be eligible for the transitional classification provided that they attain the 1-hour standard by the year 2000 and comply with the appropriate provisions of section (a) or (b) above depending upon which conditions they meet.

2. Areas Not Eligible for the Transitional Classification

Areas that do not attain the 1-hour standard by 2000 are not eligible for the transitional classification. For these areas, their work on planning and control programs to meet the 1-hour standard by their current attainment date (e.g., 2005 for Philadelphia and 2007 for Chicago) will take them a long way toward meeting the 8-hour standard. In addition, the regional NO_X reductions proposed in this rulemaking will also help these areas meet both the 1-hour and 8-hour standards.

While the additional local reductions that these areas will need to achieve the 8-hour standard must occur prior to their 8-hour attainment date (e.g., 2010), for virtually all areas the additional reductions needed to achieve the 8-hour standard can occur after the 1-hour attainment date. This approach allows them to make continued progress toward attaining the 8-hour standard throughout the entire period without requiring new additional local controls for attaining the 8-hour standard until the 1-hour standard is attained. These areas, however, will need to submit an implementation plan within 3 years of designation as nonattainment for achieving that standard. Such a plan can rely in large part on measures needed to attain the 1-hour standard. For virtually all of these areas, no additional local control measures beyond those needed to meet the requirements of Subpart 2 of part D and needed in response to the regional transport strategy would be required to be implemented prior to their applicable attainment date for the 1-hour standard. Nonattainment areas that do not attain the 1-hour standard by their attainment date would continue to make progress in accordance with the requirements of Subpart 2; the control measures needed to meet the progress requirements under Subpart 2 would generally be sufficient for meeting the control measure and progress requirements of Subpart 1 as well.

V. SIP Revisions and Approvability Criteria

A. SIP Revision Requirements and Schedule

For the 1-hour NAAQS, under section 110(k)(5) of the CAA, EPA has the authority to establish the date by which a State must respond to a SIP call. This date can be no later than 18 months after the SIP call is issued in the final rulemaking. The EPA is proposing that the date for SIP submittal be 12 months after publication of the notice of final rulemaking. This date is appropriate in light of the fact that States that are subject to today's rulemaking have already been involved in the OTAG process. In addition, submitting the transport SIP by this time will facilitate area-specific SIP planning required under Subpart 2 of CAA. Nonattainment areas required to develop attainment plans need to know what upwind reductions to expect and when the reductions will occur. The EPA believes that it is appropriate for all areas subject to this rulemaking—attainment as well as nonattainment—to meet the same schedule for making SIP submittals. Upwind attainment area controls are a critical element for reducing elevated levels of ozone and NO_X emissions flowing into the downwind nonattainment areas.

For the 8-hour NAAQS, under section 110(a)(1) of the Act, EPA believes it has the authority to establish different

schedules for different parts of the section 110(a)(2) SIP revision. Specifically, EPA proposes to require first the portion of the 110(a)(2) SIP revision that contains the controls required under section 110(a)(2)(D). The EPA proposes to require that the 110(a)(2)(D) portions of the SIPs mandated under the 8-hour ozone NAAQS be submitted within 12 months of the date of final promulgation of this rulemaking. This will assist areas that are ultimately designated nonattainment for the 8-hour standard in their SIP planning under section 172(c) of the CAA and help avoid the kind of delays due to transport that were experienced by nonattainment areas for the 1-hour standard.

Therefore, under section 110(k)(5) for the 1-hour NAAQS and section 110(a)(1) for the 8-hour NAAQS, a demonstration that each State will meet the assigned statewide emission budget (including adopted rules needed to meet the emission budget) must be submitted to EPA as a SIP revision within 12 months of the date of final promulgation of this rulemaking. The EPA solicits comment on the time frames described above and elsewhere in this rulemaking. As discussed in section V.B. of this rulemaking, EPA will evaluate the SIP based on particular control strategies selected and whether the strategies as a whole provide adequate assurance that the budget will be achieved. The SIP revision should include the following general elements related to the regional strategy: (1) baseline 2007 statewide NO_X emission inventory (which includes growth and existing control requirements)— this would generally be the emission inventory that was used to calculate the required statewide budget, (2) a list and description of control measures to meet statewide budget, (3) fully-adopted State rules for the regional transport strategy with compliance dates providing for control between September 2002 and September 2004, depending on the date EPA adopts in its final rulemaking, (4) clearly documented growth factors and control assumptions, and (5) a 2007 projected inventory that demonstrates that the State measures along with national measures will achieve the State budget in 2007. The control measures must meet the requirements for public hearing, be adopted by the appropriate board or authority, and establish by regulation or permit a schedule and date for each affected source or source category to achieve compliance. States should follow existing EPA guidance on emission inventory development and growth projections.

The EPA recognizes that States may need additional detailed guidance on how to develop effective transport-mitigation SIPs. Therefore, the EPA intends to establish a work group with States and affected Federal agencies to determine what types of additional information and guidance will be helpful. As discussed below, this work group will also address what types of tracking and reporting procedures are needed to assure States are making satisfactory progress towards meeting their required NO_X budget once the SIPs have been put in place.

B. SIP Approval Criteria

1. Budget Demonstration

In response to the final rulemaking, each State will be required to submit a SIP revision that clearly demonstrates how the State will achieve its statewide NO_X budget by 2007. The NO_X budget demonstration should show how emissions from each sector, or component, of the NO_X emissions inventory will be addressed and that the application of the regional strategy along with existing requirements will allow total NO_X emissions in the State to be at or below the level of the required NO_X budget by 2007.

In section III, Statewide Emissions Budgets, of this rulemaking, EPA described the control strategies that EPA used in the development of the statewide NO_X emissions budgets. The EPA believes these measures provide the most reasonable, cost-effective means for mitigating significant interstate transport. In addition, the control measures are generally consistent with the OTAG control strategy recommendations. However, States have the flexibility to adopt a different set of control strategies so long as they achieve the 2007 budget. There are a variety of different control programs that could provide the necessary NO_X reductions. States may wish to consider the strategies that EPA used for budget development as a starting point in developing their specific statewide NO_X strategy. Where States select different control measures for the various components of their emissions inventory, they should clearly define the particular control measures and document the methods used to estimate emissions reductions from implementation of the measures. For example, if a State elected to adopt more stringent controls for mobile sources than were used in EPA's calculation of the statewide budget and less stringent controls on utilities, the State would identify the additional regulations that would be applied to the mobile sources and the different limits that would be applied to utilities. The State would submit fully adopted rules for those sectors with documentation of the projected emissions reductions the particular control measures would achieve, along with the rules for the other sectors, and a demonstration that the overall control strategy when applied to the baseline 2007 emissions inventory would achieve the statewide 2007 emission budget. The entire NO_X emissions inventory must be accounted for in the demonstration.

As discussed in section III.D, Recalculation of Budgets, if a State has more precise growth estimates and control assumptions that it wishes to use in developing its NO_X budget demonstration, and EPA agrees they are appropriate, EPA will recalculate the statewide budget based on those revised numbers. Because any justifiable lower growth estimates from the State would be used in EPA's budget calculation, lower growth could not be considered as part of a State's NO_X control strategy to attain the budget (unless the change in growth is the result of clearly identified control strategies which can be shown to provide real, permanent, and quantifiable changes in growth).

2. Control Strategies

All the control strategies a State selects to meet its NO_X budget must provide real, permanent, quantifiable, and enforceable reductions. These attributes are consistent with those required of all SIP revisions (40 CFR part 51). Control strategies are generally composed of enforceable limits or measures applied to a source or group of sources (i.e., sector) for the purpose of reducing emissions. Control strategies may be expressed as either a tonnage limit, an emission rate, or a specific technology or measure. Considerations in addition to compliance with its NO_X budget, such as local impacts, may lead to selection of a particular strategy over others. In terms of staying within an emissions budget, the effectiveness of the different strategies vary significantly. A control strategy that employs a fixed tonnage limitation (or cap) for a source or group of sources provides the greatest certainty that a specific level of emissions will be attained and maintained. With respect to transport of pollution, an emissions cap also provides the greatest assurance to downwind States that air emissions from upwind States will be effectively managed over time. Control strategies designed and enforced as an emissions rate limitation can achieve a measurable emissions reduction, but the targeted level of emissions may or may not be

reached, depending on the actual activity level of the affected source(s). Finally, control strategies designed as a specific technology or measure have the greatest uncertainty for achieving a targeted emissions level due to uncertainty in both the activity level of the affected source(s) and uncertainty in the effectiveness of the technology or measure.

Based on the desire to establish control strategies with the greatest environmental certainty of providing for achievement and maintenance statewide NO_X emissions budget, EPA would recommend that to the maximum extent practicable, all control strategies be based on a fixed level of emissions for a source or group of sources. However, EPA recognizes that this option may be difficult for some sources because: (1) the available emissions control options may be limited, and (2) the techniques for quantifying mass emissions to ensure compliance with a tonnage budget may not be adequate. Therefore, States may select the most appropriate type of control strategy to achieve and maintain the desired emissions limitation for each source or group of sources regulated in response to this rulemaking. To compensate for the lack of certainty inherent in some types of control strategies (i.e., control strategies that do not set fixed tonnage budgets) and to address rule effectiveness concerns, States may want to consider incorporating a compliance margin in their overall budget calculation. A compliance margin could be used by increasing the level of controls in the overall budget beyond what is required by this rulemaking. Section VII discusses an interstate cap-and-trade program for large combustion sources that EPA intends to develop, in conjunction with interested States. Because this is a proven and cost-effective control strategy that provides maximum flexibility to sources, States may wish to consider this option as part of their regional NO_X strategy.

The EPA is also considering ways to extend the cap-and-trade program to other types of sources. The Agency's interest in developing such approaches is consistent with the goal in the Implementation Plan for the Revised Air Quality Standards of working ''with the States to develop control programs which employ regulatory flexibility to minimize economic impacts on businesses large and small to the greatest possible degree consistent with public health protection.'' The EPA recognizes that there are important advantages of developing a broad-based trading program to provide incentives for the development of innovative, low-cost ways of controlling emissions from these sources. Under market-based approaches like a cap-and-trade program, there will be an incentive for sources to identify and adopt pollution-minimizing fuels, energy efficiency measures, or changes in product mix that offer the lower cost reduction in emissions.

The EPA and OTAG have focused on a cap-and-trade program for large combustion sources because it assures a proven method for achieving and maintaining a fixed level of emissions. The EPA solicits comments on approaches that would allow a broader participation in emissions trading. In addressing expansion of emissions trading beyond large combustion sources, commenters should address what steps can be taken to quantify emissions from each source involved in the program to assure that the emissions cap is met and the costs to Federal, State and local governments of administering such a program.

a. Enforceable Measures Approach. Enforceable measures include control strategies expressed as either emission rate limitations or technology requirements. These control strategies do not provide the same environmental certainty that a specific emissions level will be met and maintained as compared to fixed tonnage budgets. However, these control requirements are an appropriate method for achieving emissions reductions for many source sectors that have limited options for controlling and directly measuring emissions.

For control strategies that use emission rate limitations or technology requirements the SIP must include the following elements: (1) the enforceable emission rate, technology requirement, or specific measure for each source that, when applied to year 2007 activity levels and in aggregate with other controls, would meet the statewide emissions budget; (2) the projected activity level for each source or group of sources, as appropriate; (3) other factors necessary to calculate the effect of the control requirements (e.g., speeds and temperature for mobile sources necessary to calculate emissions); (4) emissions rate and activity level measurement and emissions estimation protocols for all sources, or group of sources; (5) reporting protocols for emission rate, activity level, and emissions for all sources, or group of sources (EPA intends to address these requirements in a supplemental EPA rulemaking); (6) enforcement mechanisms, including compliance schedules for installation and operation of all control requirements and institution of all compliance processes by the date between September 2002 and September 2004 that EPA establishes in its final action on this proposal; and (7) requirements for adequate penalties on the sources for exceeding applicable emissions rates or failing to properly install or operate control technologies or carry-out compliance measures.

A State or groups of States may choose to develop, adopt and implement trading programs for sources affected by enforceable measures. Such trading programs should be consistent with EPA guidance on trading, including the Economic Incentive Program rules and guidance as well as guidance provided on Open Market Trading. Such approaches could be adopted by States to help achieve emission reductions cost effectively. The EPA does not anticipate managing the emissions data and market functions of these trading programs that do not incorporate emissions caps.

b. Fixed Tonnage Budgets. Under this approach, a group of sources would have their control strategy expressed as a fixed tonnage budget. Because the fixed tonnage budget approach is designed to maintain a specific, fixed level of emissions, this approach does not require an enforceable compliance plan that prescribes exactly how emissions reductions would be achieved. If a State elects to use a fixed tonnage budget as a control strategy, the State would have two options for implementing the program. The State may choose to join the cap-and-trade program that EPA proposes to develop and assist in implementing for sources in cooperation with interested States (this program is discussed in section VII, Model Cap-and-Trade Program, of this rulemaking), or the State may choose to develop a fixed tonnage budget regulation separate from EPA's program. The EPA cap-and-trade program will incorporate all necessary SIP criteria into the program design. If the State elects to develop a fixed tonnage budget program separate from EPA's program, the State program must include the following elements: (1) the total seasonal tonnage emissions limitation for the category of sources which shall be enforceable at the source level by the date between September 2002 and September 2004 that EPA establishes in its final rulemaking through emission tonnage limitations or emission rate limitations that automatically adjust for growth in activity levels over time; (2) requirements to measure and electronically report all emissions from each source; and (3) requirements for

adequate penalties for exceeding an emissions limitation or emission rate.

To implement a fixed tonnage budget program, a State or group of States may choose to develop, adopt and implement their own cap-and-trade program. Such trading programs should be consistent with EPA guidance on trading, including the Economic Incentive Program rules and guidance. The EPA does not anticipate managing the emissions data and market functions of these programs.

3. Control Strategy Implementation

As discussed in section I.D.2.e, Control Implementation and Budget Attainment Dates, of this rulemaking, EPA is proposing that States must implement all of their State-adopted NO_X control strategies by a date between 3 to 5 years from the SIP submittal due date. This time frame would result in an implementation deadline within the range from September 2002 and September 2004. The EPA is seeking comment on which date within this range is appropriate, in light of the feasibility of implementing controls and the need to provide air quality benefits as expeditiously as possible. Therefore, for the SIP to be approvable, State NO_X rules must all have compliance dates providing for control by the implementation deadline, which will be specified in the final rulemaking. The EPA believes this is necessary to assist ozone areas in meeting their attainment obligations under the 1-hour standard and to assure timely attainment of the 8-hour standard. The EPA recognizes that the control measures will not be in place in time to assist serious ozone areas in meeting their 1999 attainment date under the 1-hour standard. This is unavoidable because of the time needed to complete this rulemaking and for States to adopt and implement their NO_X measures. The next attainment date under the 1-hour standard is 2005 for severe-15 areas. For the 8-hour standard, the CAA provides for attainment dates of up to 5 or 10 years after designations with 2 potential 1-year extensions. In light of the projected designation date of 2000, the first attainment date under the 8-hour standard could also be 2005. For these areas, it is important that the regional NO_X control measures be in place by no later than September 2004—in time to provide emissions reductions for the 2005 ozone season. Implementing controls earlier than September 2004, or at least phasing in some controls, would improve the chance for minimizing exceedances in the 3-year period up to and including the 2005 attainment year. States required to meet a statewide NO_X budget by 2007 will continue to achieve additional emissions reductions after September 2004 from continued phase in of Federal measures. The EPA will provide guidance to the States on the appropriate amount of emission reduction credit that a State may assume from Federal measures.

4. Growth Estimates

The EPA believes it is important that consistent emissions growth estimates be used for the State's budget demonstration and for EPA's calculation of the required Statewide emissions budget. If a State wishes to substitute its own growth or control information in its budget analyses and can provide adequate justification for its alternative numbers, EPA will evaluate the State's submission and may recalculate the required statewide budget to reflect the State numbers. As mentioned in the previous section, because the revised growth estimates will be included in EPA's budget calculation, lower growth rates could not be considered part of a State's NO_X control strategy to attain that budget unless the change in growth is the result of clearly identified control strategies that can be shown to provide real, permanent, and quantifiable changes in growth. During the comment period for this proposal, States will have an opportunity to comment on EPA's growth assumptions and justifications for emissions rates and control measures. As described in section III.D, Recalculation of Budgets, EPA encourages requests for alterations to the growth estimates or control assumptions be made during the comment period for this proposal so that the budgets given in the final rulemaking will incorporate the changes. Addressing these issues prior to the final rulemaking will allow States to concentrate their efforts on control strategy development and rule adoption procedures during the proposed 12-month time frame for submitting their SIP revisions.

5. Promoting End-Use Energy Efficiency

In order to minimize compliance costs, EPA is interested in allowing States the maximum flexibility practical in meeting their NO_X budgets. The EPA believes that achievement of energy efficiency improvements in homes, buildings, and industry can be one cost-effective component of a comprehensive State strategy. These energy efficiency improvements would substantially reduce control measures required to meet NO_X objectives. To this end, EPA will be investigating, in consultation with the Department of Energy's Office of Energy Efficiency and Renewable Energy, how energy efficiency opportunities can be integrated within SIPs, while maintaining the requisite level of confidence that State budgets will be met. The EPA intends to provide guidance in this area. The EPA is requesting comment on how SIPs and associated processes can allow for the incorporation of cost-effective, end-use energy efficiency.

C. Review of Compliance

The EPA believes it is essential that progress in implementing the regional control strategy be periodically assessed after the initial SIP submittal. This will allow early detection of implementation problems, such as overestimates of control measure effectiveness and underestimates of growth. The EPA will be carefully tracking State progress and intends to propose periodic State reporting requirements in its SNPR. Because nonattainment areas will be relying on emissions reductions in other States to assist them in reaching attainment, EPA believes that each State must have an effective program for tracking progress of the regional strategy. The EPA intends to establish a work group of affected States and other impacted Federal Agencies to determine what procedures to put in place to provide adequate assurance that the necessary emissions reductions are being achieved. The EPA believes that tracking efforts should be structured to avoid unnecessary burdens on States. Therefore, EPA intends to integrate activities to track progress on implementing the regional NO_X budget with existing program requirements such as periodic emissions inventories and reporting under title IV for NO_X. The EPA is soliciting comment on what types of compliance assurance procedures may be necessary.

The EPA recognizes that success of the program depends, in part, on the availability of reliable, comprehensive inventories of emissions. Currently, EPA is developing a separate rulemaking that would require statewide periodic emissions inventories. This rule would be an extension of the existing periodic emission inventory requirement for nonattainment areas. In regard to the regional transport strategy, EPA intends to use these inventories as a tool to assess progress in implementing the regional strategy, to determine whether the States achieved their required budget by 2007, and for future transport studies.

If tracking and periodic reports indicate that a State is not implementing all of its NO_X control measures or is off-track to meet its budget by 2007, EPA

will work with the State to determine the reasons for noncompliance and what course of remedial action is needed. The EPA will expect the State to submit a plan showing what steps it will take to correct the problems. Continued noncompliance with the NO_X transport SIP may lead EPA to make a finding of failure to implement the SIP, and potentially implement sanctions, if the State does not take corrective action within a specified time period. If tracking indicates that, due to actual growth and control effectiveness, the SIP is not adequate to achieve the budget, EPA will issue a SIP call under section 110(k)(5) for States to amend their NO_X control strategy. As discussed above, EPA is proposing that all State-adopted NO_X strategies must be implemented by a date within the range of September 2002 and September 2004. Shortly after the established implementation due date, EPA will begin checking to determine whether States are meeting all of their SIP obligations.

In 2007, EPA will assess how each State's SIP actually performed in meeting the Statewide NO_X emission budget. If 2007 emissions exceed the required budget, the control strategies in the SIP will need to be strengthened. The EPA will evaluate the circumstances for the budget failure and issue a call for States to revise their SIPs, as appropriate.

D. 2007 Reassessment of Transport

Today's proposal addresses the emissions reductions necessary to mitigate significant ozone transport based on analyses using the most complete, scientifically-credible tools and data available for the assessment of interstate transport. As the state of ozone science evolves over the next 10 years, EPA expects there will be a number of updates and refinements in air quality methodologies and emissions estimation techniques. Therefore, in 2007, the end year for the current analyses, EPA intends to conduct a new study to reassess ozone transport using the latest emissions and air quality monitoring data and the next generation of air quality modeling tools.

The study will evaluate the effectiveness of the regional NO_X measures States have implemented in response to the final rulemaking action in assisting downwind areas to achieve attainment. Modeling analyses will be used to evaluate whether additional local or regional controls are needed to address residual nonattainment in the post-2007 time frame. The study will examine differences in actual growth versus projected growth in the years up to 2007 as well as expected future growth throughout the entire OTAG region.

The study will also review advances in control technologies to determine what reasonable and cost-effective measures are available for purposes of controlling local and regional ozone problems.

The EPA expects to seek input from a wide range of stakeholders such as State and local governments, industry, environmental groups, and Federal agencies for the study. The OTAG partnership established by the ECOS and EPA resulted in more technical information and more air quality modeling being conducted on regional ozone transport than ever before. Because of the success of the OTAG process, EPA envisions working closely with ECOS for the transport reassessment study.

E. Sanctions

1. Failure to Submit

If a State fails to submit the required SIP provisions, the CAA provides for EPA to issue a finding of State failure under section 179(a). (EPA is using the phrase ''failure to submit'' to cover both the situation where a State makes no submission and the situation where the State makes a submission that EPA finds is incomplete in accordance with section 110(k)(1)(B) and 40 CFR part 51, Appendix V.) Such a finding starts an 18-month sanctions clock; if the State fails to make the required submittal which EPA determines is complete within that period, one of two sanctions will apply. If 6 months after the sanction is imposed, the State still has not made a complete submittal, the second sanction will apply. The two sanctions are: withholding of certain Federal highway funds and a requirement that new or modified sources subject to a section 173 new source review program obtain reductions in existing emissions in a 2:1 ratio to offset their new emissions (section 179(b)).

The EPA promulgated regulations to implement section 179 that specify the order in which these sanctions will apply in the case of State noncompliance with requirements under part D of title I of the CAA (40 CFR 52.31). These regulations do not, however, address the imposition of sanctions in the case of State failure to comply with a SIP call under section 110(k)(5) or to make a SIP submission under section 110(a)(1). Since in today's rulemaking EPA is proposing a SIP call and a requirement for a section 110(a)(1) submission, EPA believes it is appropriate to propose the order of sanctions if States fail to comply with these requirements. The EPA believes that the general scheme promulgated for sanctions should also apply here. Under this scheme, EPA will generally apply the 2:1 offset sanction first and the highway funding sanction second. The EPA believes the rationale for this approach provided in the preamble to the sanctions rule applies equally here (59 FR 39832, August 4, 1994).

Section 179 sets certain limits on where mandatory sanctions apply. The highway funding sanction applies in designated nonattainment areas and the 2:1 offset sanction applies in areas with part D NSR programs. However, EPA has additional authority to impose sanctions under section 110(m). The EPA's authority to impose sanctions under section 110(m) is triggered by any finding that a State failed to make a required SIP submission. However, there is no mandatory clock for the imposition of these sanctions. The EPA may determine whether or not to use this authority in response to a SIP failure, and thus they are termed discretionary sanctions. With the discretionary sanctions, use of the 2:1 offset sanction is still limited to areas with part D NSR programs. However, the highway funding sanction can be applied in any area. While sanctions under section 179 apply only to the deficient area, under section 110(m) the highway sanction can be applied statewide, subject to the conditions in EPA's discretionary sanctions rule (40 CFR 52.30). Because the mandatory sanctions would not be applicable in all areas that may fail to respond to requirements proposed in today's rulemaking, EPA is requesting comment on whether the discretionary sanctions should be used in response to a failure of a State to submit the required SIP revision.

In addition to sanctions, a finding that the State failed to submit the required SIP revision triggers the requirement under section 110(c) that EPA promulgate a FIP no later than 2 years from the date of the finding if the deficiency has not been corrected. The FIPs are discussed in the section below.

A State that submits a SIP that is subsequently disapproved, due to failure to meet one or more of the required elements, will be subject to the same sanctions and FIP consequences as a State that fails to make the required submittal.

2. Failure to Implement

If a State fails to implement its SIP, EPA may also make a finding under section 179. The finding triggers the

mandatory sanctions as described above. The EPA may also choose to apply discretionary sanctions as a consequence of failure to implement. However, a FIP is not triggered.

F. Federal Implementation Plans (FIPS)

1. Legal Framework

The Administrator is required to promulgate a FIP within 2 years of: (1) finding that a State has failed to make a required submittal, or (2) finding that a submittal received does not satisfy the minimum completeness criteria established under section 110(k)(1)(A) (56 FR 42216, August 26, 1991), or (3) disapproving a SIP submittal in whole or in part. Section 110(c)(1) mandates EPA promulgation of a FIP if the Administrator has not yet approved a correction proposed by the State before the time a final FIP is required to be promulgated.

2. Timing of FIP Action

The EPA views seriously its responsibility to address the issue of regional transport of ozone and ozone precursor emissions. Decreases in NO_X emissions are needed in the States named in the rulemaking to enable the downwind States to first develop plans to achieve the clean air goals and then to carry out those plans and actually achieve clean air for their citizens. Thus, although the CAA allows EPA up to 2 years after the finding to promulgate a FIP, EPA intends to expedite the FIP promulgation to help assure that the downwind States realize the air quality benefits of regional NO_X reductions as soon as practicable. This is consistent with Congress's intent that attainment occur in these downwind nonattainment areas ''as expeditiously as practicable'' (sections 181(a), 172(a)). Therefore, EPA intends to propose FIPs at the same time as final action is taken on this proposed Ozone Transport SIP Rulemaking. Furthermore, EPA intends to make a finding and promulgate a FIP immediately after the SIP submittal due date for each upwind State that fails to submit a SIP that meets the terms of the final rulemaking of this proposal.

As described elsewhere in this rulemaking, EPA is proposing to require specific States to decrease their emissions of NO_X in order to reduce the transport of ozone and ozone precursors which affects nonattainment areas over hundreds of miles downwind. This proposal allows States 12 months to develop, adopt and submit revisions to their SIPs in response to the final rulemaking. The EPA intends to expeditiously approve SIP revisions that meet the rulemaking requirements. For States that fail to make the required submittal or fail to submit a complete SIP revision response, EPA would promulgate a FIP as described in the above section. Where the SIP is complete but EPA disapproves it, EPA would also promulgate a FIP. The EPA may choose to propose a FIP at the same time as proposing disapproval of a State's response to the final rulemaking. Thus, EPA intends to move quickly to promulgate a FIP where necessary. The EPA solicits comment on the time frames described above and elsewhere in this rulemaking .

3. Statewide Emissions Budgets

In the FIP proposal, each State would be allocated by EPA the same statewide emissions budget as described elsewhere in this document. That statewide budget is given to States that are found to significantly contribute to nonattainment in downwind States as described in section II. The statewide budget is derived from the set of reasonable, cost-effective measures applied to the various source sectors as discussed in section III.

4. FIP Control Measures

In contrast to the SIP process—where selection and implementation of control measures is the primary responsibility of the State—in the case of a FIP, it is EPA's responsibility to select the control measures for each source sector and assure compliance with those measures. Thus, while the FIP would be designed by EPA to achieve the same total statewide emissions decrease as that described in final action on today's proposal, the specific control measures assigned in the FIP could be different from what a State might choose.

In selecting the specific control measures for a FIP, EPA would take into account the administrative feasibility as well as cost effectiveness of various control options. In developing the budget calculations, EPA generally agreed with the direction of the OTAG recommendations that EPA develop Federal measures for certain sources categories—mobile sources in particular—and that the States develop stationary source measures in response to this rulemaking. It is unlikely that EPA's FIP would focus on mobile source programs such as I/M or transportation control measures because these measures are not as cost effective as others for controlling regional NO_X emissions and because it would be difficult for a limited Federal staff to implement such programs, especially without detailed knowledge of local concerns and circumstances. For stationary sources, the EPA budget calculations include large- and medium-sized stationary sources. As in the case with mobile sources, a program to reduce emissions from stationary sources that is reasonable for States to implement, may be less feasible for EPA to implement due to factors such as a large number of affected sources.

Therefore, for the stationary source sector, EPA's FIP would likely propose to focus controls more on the larger stationary sources. This approach would take account of the potential need for Federal staff to implement the program in more than one State by reducing the number of sources affected so that the program is more manageable. It follows that greater emissions decreases might be needed from the remaining set of stationary sources than is suggested by the EPA's statewide budget calculation (described in section III). That is, to make up the short-fall in the statewide budget from medium-sized stationary sources, additional decreases might be needed from the large stationary sources in a FIP program.

5. FIP Trading Program

In order to minimize the burden on sources, EPA would establish in the FIP an interstate emissions trading program. The FIP trading program would be designed to be compatible with the emissions trading program described elsewhere in this rulemaking. Development of such emissions trading programs would use the process identified in the OTAG July 10, 1997 recommendation on trading—a joint EPA/State effort with appropriate stakeholder input.

6. Section 105 Grants

The EPA provides annual funding to States under section 105 of the CAA to carry out Act-related programs. Where EPA must develop, adopt and implement a FIP, the Agency will consider withholding all or a portion of the grant funds normally appropriated to the State. Those funds would be used by EPA in the FIP work.

G. Other Consequences

If a State is implementing all of its control measures but is off course to meet its 2007 budget due to errors in growth estimates or control assumptions, EPA will consider issuing a subsequent SIP call for the State to revise its implementation strategy.

VI. States Not Covered by This Rulemaking

Based upon all the available technical information, the EPA is proposing to find that the following 15 States in the OTAG region do not make a significant

contribution to downwind nonattainment: Arkansas, Florida, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, North Dakota, Nebraska, New Hampshire, Oklahoma, South Dakota, Texas, Vermont. These 15 States are not required to meet an assigned Statewide NO_X emission budget. Based upon comments received during the comment period, as well as any additional modeling and technical analyses, these States could be found to be significant contributors to nonattainment. If this is the case, EPA will publish a SNPR.

These States may need to cooperate and coordinate SIP development activities with other States. For example, the OTAG recommendation on utility NO_X controls (see Appendix B) recognized that the State of Iowa would work with Wisconsin in developing the Southeast Wisconsin ozone SIP; that the State of Kansas would work with Missouri in the continued progress of the Kansas City ozone SIP; and that Oklahoma, Texas, Arkansas, and Louisiana would share the results of their urban and regional scale modeling with Missouri. The EPA also believes that the 11 States (i.e., Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont) plus the District of Columbia's consolidated metropolitan statistical area (including northern Virginia) that are included in the OTR should continue coordinating their activities through the OTC to provide for attainment of the ozone NAAQS in that region.

States with interstate nonattainment areas for the 1-hour standard and/or the new 8-hour standard are expected to work together to reduce emissions to mitigate local scale interstate transport problems in order to provide for attainment in the nonattainment area as a whole. For example, New Hampshire should work with Massachusetts for the Boston-Lawrence-Worcester nonattainment area. For the 8-hour standard, parts of local scale interstate nonattainment areas may be located in Louisiana and Texas as well as in Arkansas and Tennessee. These States should also coordinate their planning efforts.

In addition, areas in these States may be able to receive the transitional classification as described in section IV, Implementation of Revised Air Quality Standards. The OTAG's modeling (in particular, OTAG strategy Run 5 described in section II.B.2, OTAG Strategy Modeling) shows that a strategy in which a State-adopted NO_X emission decreases similar to those EPA proposes to establish in this rulemaking would achieve attainment in most of these areas that would become nonattainment under the 8-hour standard. If a State wishes to consider this as a viable option for meeting its early SIP requirement and receiving the transitional area classification, EPA will work with the State to achieve this. Section III, Statewide Emission Budgets, describes EPA's process for establishing the statewide NO_X emission budgets. (Note that States not covered by this rulemaking may be eligible for the transitional classification by means other than adopting NO_X emission reductions similar to those in this proposal. In addition to attaining the 1-hour standard, by at least 2000, areas in States not covered by this rulemaking that do not wish to adopt NO_X emission reductions similar to those in this proposal must submit an attainment SIP prior to the designation and classification process in 2000. The SIP must demonstrate attainment of the 8-hour standard and provide for the implementation of the necessary emissions reductions on the same time schedule as the regional transport reductions.)

The EPA strongly suggests that States with new nonattainment counties for the 8-hour standard should consider the option of this strategy since our analysis indicates that nearly all new nonattainment counties are projected to come into attainment as a result of this strategy. States will benefit by early action to aid their cities in these new counties in the attainment of the 8-hour standard and receipt of transitional status which will result in no further controls on local sources. Of the 10 new counties in the 15 States that are not covered by this rulemaking, based on OTAG modeling, all 10 are projected to come into attainment as result of the regional NO_X reductions included in the OTAG Run 5 modeling run.[17] A new county is defined as a county that violates the 8-hour standard but not the 1-hour standard and is not located in an area for the 1-hour standard designated nonattainment as of July 1997. (In the docket to this rulemaking is a table with associated documentation in which EPA lists these 10 new counties in the 15 States with an indication of whether the county is projected to attain the 8-hour ozone standard based on the OTAG Run 5 modeling run.)

This county information should be understood with two caveats. First, this list of counties is based on air quality data from 1993–95. The data from this period will not be the basis for nonattainment area designations for the 8-hour ozone standard. Those designations will be made in the 2000 time frame and will be based on the most recent air quality data available at that time (1997–1999). Therefore, while EPA expects that the vast majority of new counties will attain as a result of the NO_X regional control strategy, the number of new counties may be more or less than the number indicated above. The EPA is also currently updating this list based on more current air quality data which will be included in the docket to the final rule.

Second, the estimate of which counties will attain the 8-hour standard is based on the specific assumptions made by the OTAG in Run 5. Because the proposed budgets are similar but not identical to those contained in Run 5, the estimate may change when this rule is final and implemented. In addition, some of the assumptions used to calculate the proposed budgets may change in response to comments EPA may receive on various portions of this rulemaking. Therefore, the estimate of which areas will attain the standards through the final regional NO_X strategy may be higher or lower than the number indicated above.

In addition, areas in the region not covered by the proposed NO_X reduction strategy in this rulemaking that would exceed the new standard after the voluntary adoption of the regional strategy, including areas that do not meet the current 1-hour standard, would benefit as well because the regional NO_X program would reduce the extent of additional local measures needed to achieve the 8-hour standard. In many cases, these regional reductions may be adequate to meet CAA progress requirements for a number of years, allowing areas to defer additional local controls. In the 15 States, of the 20 counties that violate the 8-hour standard which are located in an area designated nonattainment for the 1-hour standard as of July 1997, 14 are projected to come into attainment of the 8-hour standard as a result of OTAG Run 5 regional NO_X reductions.[18] The caveats noted above for new counties also apply to the information presented here. (In the docket to this rulemaking is a table with associated documentation in which EPA lists these 20 counties in the 15 States, including an indication of whether the area is projected to attain the 8-hour ozone standard as a result of regional

[17] Appendix E contains a description of the controls applied in Run 5.

[18] Appendix E contains a description of the controls applied in Run 5.

NO_X reductions included in the OTAG Run 5 modeling run.)

States that opt in to meet the early SIP requirement this way would not be eligible to participate in the trading program with the States required in this rulemaking to revise their SIPs although they could develop intrastate trading programs. This limitation is needed to avoid the movement of emissions, via trades, from States that do not contribute to nonattainment to States that do contribute to nonattainment.

Section V, SIP Revisions and Approvability Criteria, discusses general SIP requirements for States that EPA has found significantly contribute to downwind nonattainment. The EPA intends to establish a workgroup with the affected States to determine what type of reporting and tracking mechanisms are needed to assure States are making steady progress toward meeting their 2007 budgets. One important element of tracking will be to assess actual growth versus projected growth. While EPA will not be establishing new reporting requirements for States exempted from this rulemaking, EPA intends to periodically review emissions in the exempted States to determine the impacts of any emissions increases on downwind nonattainment areas. In addition, as discussed in section V.F, 2007 Reassessment of Transport, in 2007 EPA will be conducting a reassessment of transport in the full OTAG region to evaluate the effectiveness of the regional NO_X measures and whether additional regional controls are needed.

If States not covered by this rulemaking choose to adopt budgets based on the rationale outlined above, EPA will work with those States to determine what an appropriate statewide budget should be. The EPA would encourage those States to consider statewide budgets based on adoption of NO_X emission decreases similar to those EPA proposes herein to establish for States covered by this rulemaking.

VII. Model Cap-and-Trade Program

The EPA is planning to develop and administer an interstate cap-and-trade program that could be used to implement a fixed tonnage budget. States electing to reduce emissions from the types of sources covered by this program in order to achieve and maintain the statewide emissions budget could voluntarily participate in this program. Much of the discussion to date on the development of a cap-and-trade program has focussed on establishing a cap-and-trade program for large combustion sources. As noted earlier, EPA is also considering ways to extend the cap-and-trade program to other types of sources.

The EPA is planning to develop a cap-and-trade program for large combustion sources because it provides a proven and cost-effective method for achieving and maintaining a fixed tonnage budget while providing maximum compliance flexibility to affected sources. By capping emissions, the environmental integrity of this market-based approach is assured. For example, as total electricity generation grows, average emissions over the ozone season would not exceed the cap. In addition, the reductions achieved across sectors will be those of lowest cost, since each source will identify and implement the specific control technology, pollution-minimizing fuel, energy efficiency, or production mix that offers the greatest amount of pollution reduction at the least cost. Overall, implementation of a regional cap-and-trade program would likely lower the costs of attaining reductions through more efficient allocation of emission reduction responsibilities, minimize the regulatory burden for pollution sources, and serve to stimulate technology innovation.

A number of regulatory programs are currently in use or under development that use a cap-and-trade program for large combustion sources. These regulatory systems include the EPA's Acid Rain Program for SO_2 emissions, the South Coast Air Quality Management District's Regional Clean Air Incentives Market for SO_2 and NO_X, and the OTC's NO_X Budget Program. Experience with these regulatory programs indicates that establishing a tonnage budget for large combustion sources is currently feasible and cost effective. These approaches exist because there is a range of options available for controlling and measuring emissions from these sources. For measuring emissions, continuous emissions monitors currently installed at most sources participating in these approaches provide accurate and complete emissions measurements which enable the administrators of these approaches to easily and accurately track and enforce emissions on a tonnage basis.

In developing the cap-and-trade program, EPA will build upon the work produced by OTAG's Trading/Incentives Work Group. Based upon OTAG's products and upon experience from other relevant efforts, a model rule will be developed that details the program requirements and provisions of a cap-and-trade program, including: affected sources, monitoring requirements, and market features. In establishing the specific program applicability, EPA expects to propose inclusion of those large combustion sources that are most cost-effective for controlling emissions, while also capturing the majority of NO_X emissions from the stationary source sector. The monitoring requirements are expected to be based largely on existing requirements in 40 CFR Part 75. Market features of the program will address such issues as the basic design of the trading system, the process for setting emission limitations (e.g., allocation of allowances, generation performance standard, etc.), and provisions for emissions trading and banking. The EPA will work to develop a cap-and-trade system with market features that are easily understood to facilitate maximum participation, minimum transaction costs, and maximum cost savings. The EPA will also take comment on ways to include a broader set of industrial and mobile sources within the cap-and-trade system.

The EPA plans to develop the cap-and-trade program, in coordination with States interested in participating in such a system. The EPA will hold two workshops in late 1997 to provide States and stakeholders an opportunity to comment on the trading program framework prior to proposal, as recommended by the OTAG. The product of these workshops would be a model rule that EPA would then publish for comment in the **Federal Register** prior to finalization of this proposal. States electing to participate in this program would either adopt the model rule by reference or State regulations that are consistent with the model rule. The preamble to the model rule would outline EPA and State responsibilities for implementing the program. Generally, EPA expects that it would be responsible for managing the emissions data and market functions of the program and that States would have the primary responsibility for enforcing the requirements of the program.

VIII. Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or

safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposal is a ''significant regulatory action'' because it will have an annual effect on the economy of approximately $2 billion. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at EPA's Air Docket section, which is listed in the **ADDRESSES** section of this preamble.

Based on the 2 years of analysis conducted by OTAG and other supplemental data, the Agency developed an approach that is presented in this proposal for reducing the transport of ozone emissions over long distances by lowering NO_X emissions from major sources. Currently, the movement of ozone from one region to another makes compliance with the existing NAAQS difficult for certain nonattainment areas. Further, State efforts to reach attainment of the ozone standard through local measures can be very expensive. In essence, this proposal is a regulatory action designed to improve the effectiveness and efficiency of State and EPA efforts to attain and maintain the NAAQS. The OTAG recommended that EPA focus on requiring appropriate States to reduce summer NO_X emissions in three categories: mobile sources, electric power plants, and other stationary sources. The Agency adopted this approach in developing this proposal to establish emissions budgets for 22 States and the District of Columbia. Notably, the Agency is already establishing national requirements for mobile source reductions that OTAG recommended. Therefore, EPA did not estimate their impacts in this regulatory analysis. Agency actions with respect to mobile sources have been and will be addressed in separate rulemaking activities that are described below.

Mobile Sources

A number of EPA programs designed to reduce NO_X and other emissions from highway vehicles and nonroad engines have not yet been implemented. Some of these programs have been promulgated but have implementation dates which have not yet arrived. Other programs have been proposed but have not been promulgated, and still other programs are expected to be proposed in the near future. The following table lists some of these mobile source control programs and describes their status as of the date of this rulemaking.

TABLE VIII–1.—ANTICIPATED MOBILE SOURCE CONTROL MEASURES

Measure	Current status
National Low-Emitting Vehicle Standards (NLEV)	Final; not yet implemented.
2004 Heavy-Duty Vehicle Standards	Proposed.
FTP Revisions	Final; not yet implemented.
Federal Small Engine Standards, Phase II	Proposal in 1997.
Federal Marine Engine Standards (for diesels >50 hp)	Proposal in 1997.
Federal Locomotive Standards	Proposed.
1997 Proposed Nonroad Diesel Engine Standards	Proposal in 1997.
Tier 2 Light-Duty Vehicle Standards	Under study.

All of the programs listed in the preceding table will be implemented on a nationwide basis (except NLEV which is applicable in 49 States). The EPA continues to evaluate the need for additional Federal controls on mobile source emissions and may propose additional measures as conditions warrant. In addition, EPA continues to encourage States to evaluate as part of their SIPs the appropriateness of mobile source emission control programs that can be implemented on a local or Statewide basis such as I/M programs, RFG, transportation control measures and clean-fuel fleets.

As described in section III, Statewide Emission Budgets, the emission targets for the mobile source sectors (highway vehicle emissions and nonroad emissions) were developed by estimating the emissions expected to result from the projected activity level in 2007. These targets do not assume the implementation of any additional programs beyond those already reflected in SIPs or expected to be implemented at the Federal level, including those listed in Table VIII–1. All of these programs would be implemented even in the absence of today's proposed rule. States and industry will not bear any additional mobile source control costs due to this proposal, unless a State chooses to implement additional mobile source programs under its own authority and to correspondingly limit the scope or reduce the stringency of new controls on stationary sources. The EPA presumes a State would do so only if it found a net savings to its economy in doing so. Furthermore, the cost of such state-operated programs will depend on their specific design, which EPA is unable to predict. The EPA has therefore not included the costs of current or new Federal mobile source controls in its analysis of the costs of this proposal. Information on the costs of the various proposed or promulgated Federal measures can be found in the **Federal Register** notices for the respective measures.

Electric Power Industry and Other Stationary Sources

The EPA is proposing to establish a summer season NO_X emissions budget for 22 States and the District of Columbia based on reducing emissions from the electric power industry and other stationary sources.[19] This will lead to the placement of NO_X controls on operating units in these two categories that the Agency has not covered in other specific rulemaking activities. Therefore, EPA has estimated the NO_X emissions reductions and annual incremental costs in the year 2005 resulting from this proposal.

The OTAG recognized the value of market-based approaches to lowering emissions from power plants and large industrial sources. It also encouraged EPA to consider the value of allowing

[19] This category includes industrial, commercial, and institutional boilers, reciprocating engines, gas turbines, process heaters, cement kilns, furnaces at iron, steel, and glass-making operations, and nitric acid, adipic acid and other plants with industrial processes that produce NO_X

''banking'' as a program element in any trading program that it would want to run with the States. The Agency agrees that a market-based approach with trading and banking is preferable and wants to work with all States covered by this rulemaking to establish such a program. The EPA currently believes that for such a program to be effective and administratively practicable, the program should have an emissions cap and allow trading between sources in all the States that are covered. The Agency's economic analysis is based on this view.

Analytical limitations kept EPA from estimating the costs of a single cap-and-trade program for the electric power industry and other stationary sources. The Agency can only estimate the impacts of a cap-and-trade program across all States covered in this rulemaking for the electric power industry at the current time.

For its analysis, the Agency assumed that power plants have a trading and banking program that begins in 2005 with a summer NO_X emissions cap of 489 thousand tons. This is the NO_X budget component for the electric power industry that is discussed earlier in the preamble. This type of program represents EPA's current views of how a reasonable trading program would be constructed. The Agency estimates that close to 800 electric power generating sources will come under this program. For other stationary sources, EPA assumed in its economic analysis that there would be a regulatory program that would not allow summer NO_X emissions in 2005 to exceed 466 thousand tons. This is the total NO_X budget component for other stationary sources discussed earlier in the Preamble. In this analysis, EPA set an emissions cap for each State based on its share of the NO_X budget component that EPA has developed and assumes that each State places controls on its sources in a manner that minimizes compliance costs in that State (a ''least-cost'' regulatory approach is used). The EPA estimates that the States would place controls on about 9,000 other stationary sources to comply with EPA's requirements. Given that the Agency could not estimate the costs of a single cap-and-trade program for the electric power industry and other stationary sources, the total cost estimate of this proposal is likely to be overstated to the extent that trading would occur between facilities in both groups.

For the electric power industry, EPA was able to estimate the costs and emissions changes based on two possible baseline scenarios for the future. For an Initial Base Case, EPA considered only the implementation of Phase I (RACT requirements) of the OTC MOU and other existing CAA requirements. For a Final Base Case, EPA considered implementation of Phase II and Phase III of the OTC MOU, which lowered the NO_X emissions levels in the Northeastern United States in the baseline. For the other stationary sources, the Agency was only able to consider the implementation of Phase I of the OTC MOU and estimate the NO_X emission reductions and incremental costs from the Initial Base Case. For the Final Base Case, EPA knows that the emissions reductions and incremental costs are going to be less than would occur in the Initial Base Case.

Table VIII–2 shows the NO_X emissions levels that EPA predicts will occur for each source category in the Initial Base Case and Final Base Case and after States amend their SIPs to meet the NO_X emission budget requirements in this proposal. Notably, some types of control technologies can be used on a seasonal basis and others have to be used year round. Because there are benefits from reducing NO_X throughout the year, the annual and seasonal changes in NO_X emissions are both reported.[20] The EPA's analysis of the use of cap-and-trade program for the electric power industry showed that there would be significant reductions in NO_X emissions occurring from electric generation units throughout the area covered by the proposed rule.

Table VIII–3 shows the annual incremental costs that the Agency estimates the regulated community will incur in 2005, the first full year of implementation of this rule by the States in the two Base Cases. The costs presented here reflect trading across States for electric power generation units and cost minimization within States for other stationary sources. For the Initial Base Case, the total annual incremental costs are estimated to be $2,072 million in 2005. For the Final Base Case, the total annual incremental costs are estimated to be lower than $1,992 million in 2005.

TABLE VIII–2.—NO_X EMISSIONS IN 2005 FOR ALTERNATIVE BASE CASES AND AFTER COMPLIANCE WITH THE OZONE TRANSPORT RULEMAKING

[1,000 NO_X tons]

Source category	Initial base case (phase I OTC MOU)		Final base case (phase II/III OTC MOU)		Under proposed rule implementation	
	Ozone season	Annual	Ozone season	Annual	Ozone season	Annual
Electric Power Industry	1,490	3,497	1,427	3,423	489	2,278
Other Stationary Sources	698	1,666	<698	<1,666	466	1,227
Total	2,188	5,163	<2,125	<5,089	955	3,505

Note: EPA was only able to consider partial and full implementation of the Ozone Transport Commission Memorandum of Understanding for the electric power industry. Controls on the electric power industry occur through cap-and-trade. Controls on Other stationary sources occur by States implementing an approach applying least-cost controls.

[20] The ozone season in this analysis covers May 1 through September 30.

TABLE VIII–3.— INCREMENTAL ANNUAL COSTS IN 2005 FOR COMPLIANCE WITH THE OZONE TRANSPORT RULEMAKING UNDER ALTERNATIVE BASE CASES

[Million 1990 dollars]

Source category	Initial base case (phase I OTC MOU)	Final base case (phase II/III OTC MOU)
Electric Power Industry	$1,687	$1,607
Other Stationary Sources	385	<385
Total	2,072	<1,992

Note: EPA was only able to consider partial and full implementation of the Ozone Transport Commission Memorandum of Understanding for the electric power industry. Controls on the electric power industry occur through cap-and-trade. States control Other stationary sources by implementing a least-cost approach.

During the OTAG process, there arose concern over whether the States would enter the trading program that EPA offered to form and that they would instead end up employing command-and-control approaches to comply with EPA's proposed rulemaking requirements. There were discussions of the possible application of rate-based controls on electric generation. In keeping with these discussions, EPA has also estimated the costs of this type of control for electric power generation units. The EPA estimates that the electric power industry in the 23 jurisdictions covered by this rulemaking will incur an annual incremental cost under the Final Base Case of $2,108 million, if during the ozone season, these plants are regulated by an emission limitation of .15 pounds of NO_X per million Btus of heat input. Under the Initial Base Case, the costs would be $2,189 million. A comparison of this cost with that in Table VIII–3 reveals that a cap-and-trade program for the electric power industry is much less costly than a traditional rate-based program.

IX. Air Quality Analyses

As discussed in section III, Statewide Emissions Budgets, EPA has used a comparative cost-effectiveness approach to identify a set of control measures for achieving the emissions budgets for States found to make a significant contribution to downwind nonattainment (see section II, Weight of Evidence Determination of Significant Contribution). These controls are generally consistent with OTAG's recommendations. The OTAG did perform model simulations to assess the air quality benefits of a range of regional strategies. In particular, OTAG strategy Run 5 (see Appendix E) provides large air quality benefits over broad portions of the region. This strategy includes regional NO_X controls similar to what is being proposed in this rulemaking. The EPA intends to estimate the impacts of the proposed statewide emission budgets using air quality modeling for inclusion in the SNPR.

X. Nonozone Benefits of NO_X Reductions

In addition to contributing to attainment of the ozone NAAQS, decreases of NO_X emissions will also likely help improve the environment in several important ways. On a national scale, decreases in NO_X emissions will also decrease acid deposition, nitrates in drinking water, excessive nitrogen loadings to aquatic and terrestrial ecosystems, and ambient concentrations of nitrogen dioxide, particulate matter and toxics. On a global scale, decreases in NO_X emissions will, to some degree, reduce greenhouse gases and stratospheric ozone depletion. Thus, management of NO_X emissions is important to both air quality and watershed protection on national and global scales. In its July 8, 1997 final recommendations, OTAG stated that it ''recognizes that NO_X controls for ozone reductions purposes have collateral public health and environmental benefits, including reductions in acid deposition, eutrophication, nitrification, fine particle pollution, and regional haze.'' These and other public health and environmental benefits associated with decreases in NO_X emissions are summarized below. (17)

Acid Deposition: Sulfur dioxide and NO_X are the two key air pollutants that cause acid deposition (wet and dry particles and gases) and result in the adverse effects on aquatic and terrestrial ecosystems, materials, visibility, and public health. Nitric acid deposition plays a dominant role in the acid pulses associated with the fish kills observed during the springtime melt of the snowpack in sensitive watersheds and recently has also been identified as a major contributor to chronic acidification of certain sensitive surface waters.

Drinking Water Nitrate: High levels of nitrate in drinking water is a health hazard, especially for infants. Atmospheric nitrogen deposition in sensitive watersheds can increase stream water nitrate concentrations; the added nitrate can remain in the water and be transported long distances downstream.

Eutrophication: NO_X emissions contribute directly to the widespread accelerated eutrophication of United States coastal waters and estuaries. Atmospheric nitrogen deposition onto surface waters and deposition to watershed and subsequent transport into the tidal waters has been documented to contribute from 12 to 44 percent of the total nitrogen loadings to United States coastal water bodies. Nitrogen is the nutrient limiting growth of algae in most coastal waters and estuaries. Thus, addition of nitrogen results in accelerated algae and aquatic plant growth causing adverse ecological effects and economic impacts that range from nuisance algal blooms to oxygen depletion and fish kills.

Global Warming: Nitrous oxide (N_2O) is a greenhouse gas. Anthropogenic N_2O emissions in the United States contribute about 2 percent of the greenhouse effect, relative to total United States anthropogenic emissions of greenhouse gases. In addition, emissions of NO_X lead to the formation of tropospheric ozone, which is another greenhouse gas.

Nitrogen Dioxide (NO_2): Exposure to NO_2 is associated with a variety of acute and chronic health effects. The health effects of most concern at ambient or near-ambient concentrations of NO_2 include mild changes in airway responsiveness and pulmonary function in individuals with pre-existing respiratory illnesses and increases in respiratory illnesses in children. Currently, all areas of the United States monitoring NO_2 are below EPA's threshold for health effects.

Nitrogen Saturation of Terrestrial Ecosystems: Nitrogen accumulates in watersheds with high atmospheric nitrogen deposition. Because most North American terrestrial ecosystems are nitrogen limited, nitrogen deposition often has a fertilizing effect, accelerating plant growth. Although this effect is often considered beneficial, nitrogen deposition is causing important adverse changes in some terrestrial ecosystems, including shifts in plant species composition and decreases in species diversity or undesirable nitrate leaching to surface and ground water and decreased plant growth.

Particulate Matter (PM): NO_X compounds react with other compounds in the atmosphere to form nitrate particles and acid aerosols. Because of their small size nitrate particles have a relatively long atmospheric lifetime; these small particles can also penetrate deeply into the lungs. PM has a wide range of adverse health effects.

Stratospheric Ozone Depletion: A layer of ozone located in the upper atmosphere (stratosphere) protects people, plants, and animals on the surface of the earth (troposphere) from excessive ultraviolet radiation. N_2O, which is very stable in the troposphere, slowly migrates to the stratosphere. In the stratosphere, solar radiation breaks it into nitric oxide (NO) and nitrogen (N). The NO reacts with ozone to form NO_2 and molecular oxygen. Thus, decreasing N_2O emissions would result in some decrease in the depletion of stratospheric ozone.

Toxic Products: Airborne particles derived from NO_X emissions react in the atmosphere to form various nitrogen containing compounds, some of which may be mutagenic. Examples of transformation products thought to contribute to increased mutagenicity include the nitrate radical, peroxyacetyl nitrates, nitroarenes, and nitrosamines.

Visibility and Regional Haze: NO_X emissions lead to the formation of compounds that can interfere with the transmission of light, limiting visual range and color discrimination. Most visibility and regional haze problems can be traced to airborne particles in the atmosphere that include carbon compounds, nitrate and sulfate aerosols, and soil dust. The major cause of visibility impairment in the eastern United States is sulfates, while in the West the other particle types play a greater role.

XI. Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601(a), provides that whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available a regulatory flexibility analysis (RFA). An RFA is required only for small entities that are directly regulated by the rule. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on regulated entities and not indirect impact on small entities not regulated); *Colorado State Banking Bd.* v. *Resolution Trust Corp.*, 926 F.2d 931 (10th Cir. 1991). This rulemaking simply requires States to develop, adopt, and submit SIP revisions, and does not directly regulate any entities. Accordingly, pursuant to 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Furthermore, because affected States will have discretion to choose which sources to regulate and how much emissions reductions each selected source must achieve, EPA cannot now predict the effect of this rule on small entities. In addition, if States adopt the control measures that form the basis of the proposed State budget, there will be little, if any, effect on small businesses.

XII. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule contains 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. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below.

The EPA has determined that to meet the requirements of section 110(a)(2)(D) of the Clean Air Act, States must submit SIP provisions that limit NO_X emissions to the specified amounts indicated elsewhere in this rulemaking. The EPA is granting the affected States broad discretion in developing SIP controls to attain these levels. The EPA has examined a variety of possible, regionwide NO_X emissions controls, which could form the basis for (i) State budgets of different levels than proposed, as well as (ii) State packages of control meadeveloping the budget levels. The EPA is soliciting comment on whether the budget levels proposed in today's action are the most cost-effective or least burdensome alternative that achieves the objectives of the rule and on other alternatives (e.g., applying different levels of control in different subregions), if feasible, that EPA should examine in developing final budget levels.

By today's proposal, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of the UMRA a small government agency plan.

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA and Executive Order 12875, ''Enhancing the Intergovernmental Partnership,'' EPA has already initiated consultations with the governmental entities affected by this rule. The EPA already consulted with these governmental entities extensively during the OTAG process. The EPA has received extensive comments from governmental entities through OTAG, including specific recommendations from OTAG, as described above. The EPA has evaluated those comments and recommendations, and has determined

to propose statewide budget levels based on a basket of regional NO_X controls that bear some similarity to those OTAG recommendations. The EPA's reasons for doing so are described at length in this rulemaking.

Dated: October 10, 1997.

Carol M. Browner,

Administrator.

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Appendix A—References

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3. Wisconsin Department of Natural Resources, ''An Analysis of Measured and Predicted Concentrations Aloft of Ozone and Total Reactive Oxides of Nitrogen in the Eastern U.S. During July 1995,'' DRAFT, January 25, 1997, Madison, WI.

4. Northeast States for Coordinated Air Use Management, ''The Long-Range Transport of Ozone and Its Precursors in the Eastern United States,'' March 1997, Boston, MA.

5. OTAG, ''Ozone Transport Assessment Group Modeling Protocol,'' Version 3.0, 1996.

6. OTAG, ''Ozone Transport Assessment Group Draft Final Report, Chapter 2 Regional and Urban Scale Modeling,'' 1997.

7. Sonoma Technology, Inc., ''Evaluation of the UAM–V Model Performance in OTAG Simulations, Phase I: Summary of Performance Against Surface Observations,'' January 1997, STI–996120–1605–FR, Santa Rosa, CA.

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9. OTAG, ''DRAFT Final Report Volume I: Executive Summary, Ozone Transport Assessment Group Air Quality and Analysis Workgroup.'' June, 1997.

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12. Environ, Inc., ''Review of Existing Ozone Measurement and Modeling Studies in the Eastern United States,'' February 21, 1996, Novato, CA.

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14. Morris, R.E., G.M. Wilson, S.B. Shepard, and K. Lee, ''Ozone Source Apportionment Modeling Using the July 1991 OTAG Episode for the Northeast Corridor and Lake Michigan Regions,'' March 1997, Environ, Inc., Novato, CA.

15. McNeill, D., T.W.X. Task, ''Photochemical Modeling Analysis of the Northwest ''Ozone Free'' OTAG States Using the July 1995 OTAG Modeling Episode,'' March 1997, Alpine Geophysics, Golden, CO.

16. EPA, 1995, ''National Air Pollutant Emission Trends, 1990–1994,'' EPA–454/R–95–001, October 1995.

17. U.S. Environmental Protection Agency, ''Nitrogen Oxides: Impacts on Public Health and the Environment,'' EPA–452/R–97–002, August 1997.

Appendix B—OTAG Recommendations

July 8, 1997.

Ms. Mary Nichols,

Assistant Administrator, Air & Radiation Division, U.S. Environmental Protection Agency, 401 M Street, SW., (MC–M6101), Washington, DC 20460

Dear Ms. Nichols: The Ozone Transport Assessment Group (OTAG) has completed its work in accordance with your memorandum of March 2, 1995. Attached please find the recommendations to the U.S. Environmental Protection Agency approved by OTAG. Also attached are states' and stakeholders' comments on the recommendations and identification of the votes cast on each by each state. The technical support documents resulting from OTAG's work will be forwarded as soon as they are completed.

We appreciate the technical and financial support that EPA has provided OTAG over the past two years. We believe that this unprecedented effort of dynamic interaction among state and federal government, industry and environmental stakeholders has demonstrated that diverse interests can work together constructively on important policy issues. We encourage EPA to consider OTAG's recommendations as it proceeds with implementation of the Clean Air Act.

Sincerely,

Mary A. Gade,
Chair, Policy Group.
Donald R. Schregardus,
Chair, Strategies & Controls Subgroup.
Ned O. Sullivan,
Chair, Outreach & Communications Subgroup.
Robert C. Shinn, Jr.,
Chair, Modeling & Assessment, Subgroup.
Harold Reheis,
Chair, Financial Subgroup.

Recommendation: Additional Modeling and Air Quality Analysis (Approved by the Policy Group, June 3, 1997)

Based on the conclusions of OTAG, states must have the opportunity to conduct additional local and subregional modeling and air quality analyses, as well as develop and propose appropriate levels and timing of controls. In taking these actions, priority should be given to the serious and severe nonattainment areas of Atlanta, Lake Michigan, and the Northeast, relative to transport. EPA has announced its intention to propose and take final action on a SIP call. States can work together and with EPA toward completing local SIPs including the evaluation of possible local NO_X disbenefits, and to build on the modeling and air quality analysis work of OTAG to evaluate EPA's proposed statewide tonnage budgets [1] in its proposed SIP calls. The initial statewide tonnage budgets proposed by EPA may be revised or shown to be unnecessary or insufficient through additional subregional modeling or air quality analyses. OTAG recommends EPA evaluate states' timely submittal of comments and subregional modeling regarding the proposed statewide budgets prior to EPA's finalizing the SIP calls within 12 months of their proposal.

The Policy Group recognizes that NO_X controls for ozone reduction purposes have collateral public health and environmental benefits, including reductions in acid deposition, eutrophication, nitrification, fine particle pollution and regional haze.

Recommendation: Diesel Fuel (Approved by the Policy Group, June 3, 1997)

OTAG recommends that, by 1999, EPA should evaluate the emission benefits and other effects, such as fuel economy, of cetane adjustments on current technology engines, both on highway and non-road, and, if appropriate, expeditiously adopt and implement standards. OTAG further recommends that the EPA use of existing collaborative process developed as a result of the 1995 statement of principles to identify if new diesel fuel standards are beneficial. If found beneficial and cost-effective, OTAG further recommends that EPA adopt and implement new standards no later than 2004.

Recommendation: Gasoline (Approved by the Policy Group May 13, 1997)

The OTAG states recommend the continued use of Federal Reformulated Gasoline (RFG) in the mandated and opt-in areas.

The OTAG states support state flexibility and encourage the opt-in to the Federal RFG program or other fuel strategies consistent with the Clean Air Act, including those attainment areas which contribute to downwind nonattainment situations or which choose to implement strategies to assist in preventing violations of the National Ambient Air Quality Standard (NAAQS) for ozone.

The USEPA should adopt and implement by rule an appropriate sulfur standard to further reduce emissions and assist the vehicle technology/fuel system achieve maximum long term performance.

Recommendation: Vehicle Emission Inspection and Maintenance Controls (Approved by the Policy Group, June 19, 1997)

- The OTAG states recommend that, where required by the Clean Air Act, appropriate and effective vehicle emission inspection and maintenance (I/M) programs be implemented. The OTAG states additionally recommend that states consider the adoption of enhanced I/M programs in all urbanized areas in the fine grid [2] with a population greater than 500,000.
- The OTAG states further recommend that EPA recognize and give appropriate

[1] Budget as used in this recommendation does not imply that a cap will be implemented.

[2] As described in the Utility NO_X Controls Recommendation.

credit to the state-by-state emission reduction benefits of vehicle I/M programs and their impact on transport of ozone and its precursors.

• The OTAG states recognize the potential effectiveness of a vehicle on-board diagnostic (OBD) system to alert drivers of emission control system malfunctions and to ensure proper maintenance and operation of the emission control system under real world driving conditions. Therefore, they encourage EPA to support periodic OBD system checks as part of an effective vehicle I/M program and to provide appropriate I/M program credit.

Recommendation: Major Modeling/Air Quality Conclusions (Approved by the Policy Group, June 3, 1997)

Based on OTAG modeling, the Regional and Urban Scale Modeling and Air Quality Analysis Workgroups have drawn several conclusions regarding the benefits to be derived from NO_X and VOC controls for all source sectors and regarding ozone transport. Regional NO_X reductions are effective in producing ozone benefits; the more NO_X reduced, the greater the benefit. Ozone benefits are greatest where emission reductions are made and diminish with distance. Elevated and low level NO_X reductions are both effective. VOC controls are effective in reducing ozone locally and are most advantageous to urban nonattainment areas. Air quality data documents the widespread and pervasive nature of ozone and indicates transport of ozone. Air quality analyses also indicate that ozone aloft is carried over and transported from one day to the next. Generally, the range of transport is longer in the North than in the South. Additionally, coarse grid impacts on the fine grid may be minimal. Other relevant documentation of the RUSM and AQA Workgroups' efforts are available on their Web sites.

Recommendation: National Measures (Approved by the Policy Group May 13, 1997)

The OTAG states recommend that the USEPA continue to develop and expeditiously adopt, no later than the dates indicated below, and effectively implement stringent control measures on a national basis which meet or exceed the emission reduction levels as contained in the OTAG analysis.

The measures include:

Measure	Reductions assumed in the modeling		Adoption date	Start/ implementation date
	percent [1]	Tons [2, 3]		
Arch & Industrial Maintenance (AIM) Coatings:				
—Phase I	20% VOC	507	November 97	January 98/
—Phase II	38% VOC	861	.....	2003.
Consumer/Commercial Products:				
—Phase I	20% VOC	886	November 97	March 98/
—Phase II	30% VOC	1281	.....	2003.
Autobody Refinishing:				
—Phase I	37% VOC	281	August 97	January 98/
—Phase II	53% VOC	391	.....	2003.
Reformulated Gasoline	25% VOC [4]	[5] na	.....	2000.
(RFG) Phase II	6.8% NO_X	na	.....	
Phase II Small Engine Standards	43% VOC	1343	.....	2007.
Marine Engine Standards	23% VOC	398	.....	1998.
Heavy Duty Highway 2g Standard (Equivalent to a 4g standard in 2007)	Varies by Engine Family	[5] na	.....	2004.
Heavy Duty Nonroad Diesel Standard	37% NO_X	1499	.....	2004.
Locomotive Standard with Rebuild	43% NO_X	[6] na	.....	1997.
	10% NO_X	126		

[1] Percent reductions were applied to 1990 emissions projected to 2007.
[2] Tonnage reduction differences are based on 1990 emissions projected to 2007.
[3] Reductions from multi-phase programs are cumulative.
[4] For Phase II RFG, percent reductions are based only on affected emissions.
[5] Tonnage reductions could not be calculated for RFG and the Heavy Duty Highway 2g Standard since the effects of growth and control could not be accounted for separately by the model used.
[6] The 43% reduction includes rebuilt engines; however, rebuilts were not modeled by OTAG. The modeled reduction was only 10%.

• The OTAG states encourage the USEPA to reach closure on the Tier 2 Motor Vehicle Study in recognizing the benefits of volatile organic compound and nitrogen oxide reductions and their implication for ozone production.

Recommendation: National Low Emission Vehicle (Approved by the Policy Group May 13, 1997)

The OTAG states acknowledge the ability of states to adopt the California Low Emission Vehicle Program and further acknowledge that the National Low Emission Vehicle Program is a voluntary program. OTAG supports and encourages the implementation of a National Low Emission Vehicle Program.

Recommendation: Non-Utility Point Source Controls (Approved by the Policy Group, June 19, 1997)

Definitions

For purposes of this recommendation, individual medium non-utility point sources are defined as follows:

A boiler > 100 MMBtu/hr and < 250 MMBtu/hr
A reciprocating i.c. engine > 4000 hp and < 8000 hp
A turbine > 10,000 hp and < 20,000 hp
Any other source > 1 ton/average summer day and < 2 tons/average summer day

For purposes of this recommendation, individual large non-utility point sources are defined as follows:

A boiler ≥ 250 MMBtu/hr
A reciprocating i.c. engine ≥ 8000 hp
A turbine ≥ 20,000 hp
Any other source ≥ 2 tons/average summer day

Control Levels

The OTAG Policy Group recommends that the stringency of controls for large non-utility point sources should be established in a manner equitably with utility controls. The OTAG Policy Group recommends that RACT should be considered for individual medium non-utility point sources were appropriate.

If additional modeling and air quality analyses are performed as specified in OTAG's recommendation for ''Additional Modeling and Air Quality Analysis,'' then development of final state non-utility point source strategies should consider said modeling and analyses.

Control Targets for Budget[3] *Calculation Purposes*

The OTAG Policy Group anticipates USEPA will calculate a statewide NO_x tonnage budget for each state. In calculating the statewide NO_x tonnage budgets, the OTAG Policy Group recommends a calculation based on the following non-utility point source control targets:

Reference utility control level (coal-fired power plants)	Control targets for the large non-utility point source sector (percent)	Control targets for the medium non-utility point source sector
55% (0.35 lb/MMBtu).	55	Uncontrolled.
65% (0.25 lb/MMBtu).	60	Uncontrolled.
75% (0.20 lb/MMBtu).	65	RACT.
85% (0.15 lb/MMBtu).	70	RACT.

The control targets, expressed as an emission reduction percentage, should be based on uncontrolled emission rates. The budget component for non-utility point sources is not intended to be an allocation for the non-utility point source sector or for individual units.

Flexibility and Relationship to Other Requirements

The OTAG Policy Group acknowledges that states have flexibility in implementing the non-utility point source strategy. These recommendations shall not supersede any other more restrictive state or federal requirement.

Recommendation: Ozone Action Days (Approved by the Policy Group, June 3, 1997)

The OTAG states endorse and encourage the development and implementation of ozone action programs to increase public awareness of the public health and welfare issues associated with ozone air pollution. These include but are not limited to daily summertime ozone mapping projects which provide ''real-time'' information to the viewer and other programs and information to encourage participation in programs to reduce the emissions of ozone precursors. These programs may be effective in reducing peak ozone concentrations. They complement traditional control strategies for the reduction of ozone and ozone precursors.

Recommendation: OTAG's Technical Analysis (Approved by the Policy Group, June 3, 1997)

OTAG's goal is to ''identify and recommend a strategy to reduce transported ozone and is precursors which, in combination with other measures, will enable attainment and maintenance of the national ambient ozone standard in the OTAG region.'' OTAG has performed the most comprehensive technical analysis of ozone transport ever conducted. In cooperation with the states and stakeholders and by sharing information, OTAG has developed and produced the best and most complete emissions inventory for the OTAG region. OTAG has used UAM–V, a state-of-the-art photochemical model, to analyze the potential impact of various control strategies. OTAG has also developed and applied new techniques to analyze existing air quality data to examine the ozone problem.

Recommendation: Trading Program Framework (Approved by the Policy Group, June 19, 1997)

Market-based approaches are generally recognized as having the following benefits in relation to traditional command and control regulations: (1) reduce the cost of compliance; (2) create incentives for early reductions; (3) create incentives for emission reductions beyond those required by regulations; (4) promote innovation; and (5) increase flexibility without resorting to waivers, exemptions and other forms of administrative relief.

OTAG recognizes that states have the option to select market systems that are best suited to their policy purposes and air quality planning and program needs. In anticipation of the state specific decisions, OTAG recognizes that states may choose one of two basic approaches to implement NO_x emissions market systems.

- *Track One*—States that elect to implement equivalent NO_x market systems with emissions caps could be part of a common, interstate emissions market. Designated sources would be authorized to participate in emissions trading. Other stationary sources could opt-in to the market under specific conditions. A central regulatory authority, such as EPA, could administer this multi-state NO_x market system.
- *Track Two*—States that elect to implement NO_x market systems without emissions caps would be part of one or more alternative emissions markets. These alternative markets could have several different forms starting with intra-state emissions trading which could possibly lead to multi-state trading arrangements. Participating sources in each state would be authorized to conduct emissions trading consistent with the scope of the alternative market system. If multiple, equivalent NO_x market systems are generated by states, then some central entity, in consultation with EPA, could administer the multi-state NO_x market system.

While OTAG recognizes that the procedures for a cap and trade program are known and implementable, the OTAG encourages the joint state/EPA workgroup(s) described herein to bring similar certainty to non-cap but SIP approved trading programs.

At some point, states may be interested in cross-track trading. Further development work and more time is necessary to determine whether and how this cross-track trading could be credibly done. Implementation of either track should not be delayed while an approach for cross-track trading is developed. Inter-sector trading might be provided for as well.

EPA review and approval of specific state SIP revisions would be necessary for NO_x market systems from either track that are developed in response to EPA's SIP call. States would be responsible for meeting applicable federal requirements and ensuring that the integrity of the state's emissions budget was maintained, as well as other desirable results from adoption to suitable market systems. EPA is responsible for approving state programs that meet the applicable federal requirements.

OTAG also recommends that a joint state/EPA Workgroup be formed to address, with appropriate stakeholder involvement, the following tasks:

- Appropriate provisions for implementing Tracks One and Two as described above.
- Key design features for NO_x emissions market systems that could be selected by affected states.

A series of seven design proposal papers have been developed by the Trading/Incentives Workgroup which include specific recommendations that are incorporated in the OTAG final report. These papers serve as a sound basis for carrying out the work of this joint workgroup. The following specific issues should also be addressed by the joint workgroup:

1. Subregional modeling and air quality analysis should be carefully evaluated to determine whether distance and direction should affect how trading may take place. Appropriate mechanisms, such as trading ratios or weights, could be developed if significant effects are expected.
2. Market systems should be operated and evaluated, and adjustments made as needed to reflect experience gained with trading dynamics and any attendant air quality impacts.
3. Local control requirements necessary for attainment may still be utilized for specific sources.

Recommendation: Utility NO_X Controls (Approved by the Policy Group, June 3, 1997)

The OTAG Policy Group recommends that the range of utility NO_X controls in the fine grid fall between Clean Air Act controls and the less stringent of 85% reduction from the 1990 rate (lb/mmBTU) or 0.15 lb/mmBTU in order to mitigate ozone transport and assist states in complying with the existing 120 ppb ozone standard. OTAG modeling shows that ozone transport is greater in the northern tier than in the southern tier. EPA has indicated that control levels are to be determined and implemented through statewide tonnage budgets. The statewide budget process should be as described OTAG's recommendation ''Additional Modeling and Air Quality Analysis.'' Control measures are to be determined and implemented by the states. The actions set forth in this section must be carried out in accordance with the Clean Air Act. If trading is allowed, public interest stakeholders have recommended that a minimum of 10% of each state's tonnage budget be allocated solely to qualifying, verifiable, and new end-use energy efficiency

[3] Budget as used in this recommendation does not imply that a cap will be implemented.

and renewable projects. The coarse grid states which would be exempt from OTAG-related controls (all of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa,[4] Arkansas, Louisiana, Mississippi, and Florida, as well as the coarse grid portions of Maine, New Hampshire, Vermont, New York, Michigan, Wisconsin, Missouri[5], Alabama, and Georgia) will, in cooperation with EPA, periodically review their emissions, and the impact of increases, on downwind nonattainment areas and, as appropriate, take steps necessary to reduce such impacts including appropriate control measures.

Appendix C—Tables for Section II

Weight of Evidence Determination of Significant Contribution

TABLE II–1.—OTAG 2007 STATE TOTAL NO_X Emissions (tons/day)

State	Total NO_X
Texas	4026
Ohio	2871
Illinois	2535
Florida	2503
Pennsylvania	2406
Michigan	2334
Indiana	2271
Louisiana	2143
Tennessee	2090
Georgia	1711
New York	1677
Alabama	1621
Kentucky	1598
North Carolina	1506
West Virginia	1393
Virginia	1378
New Jersey	1244
Missouri	1140
Oklahoma	1107
South Carolina	1040
Wisconsin	1035
Mississippi	1012
Kansas	993
Maryland	940
Minnesota	917
Iowa	782
Massachusetts	701
Arkansas	643
Nebraska	411
Connecticut	362
Maine	232
New Hampshire	192
Delaware	164
South Dakota	140
Vermont	78
Rhode Island	78
North Dakota	55
District of Columbia	53

TABLE II–2.—OTAG 2007 STATE NO_x Emissions Density (tons/day/1000 sq. mi.)

State	Emissions density
District of Columbia	771.91
New Jersey	166.53
Maryland	95.55
Massachusetts	89.62
Delaware	85.09
Connecticut	74.30
Rhode Island	73.76
Ohio	70.03
Indiana	63.19
West Virginia	57.73
Pennsylvania	53.58
Tennessee	50.79
Louisiana	48.14
Florida	46.22
Illinois	45.56
Michigan	40.97
Kentucky	40.27
New York	35.40
Virginia	34.71
South Carolina	34.43
Alabama	31.92
Texas	31.42
North Carolina	30.83
Georgia	29.48
Mississippi	21.42
New Hampshire	21.39
Kansas	20.85
Oklahoma	20.68
Wisconsin	19.02
Minnesota	18.32
Missouri	16.54
Iowa	13.97
Nebraska	13.43
Arkansas	12.09
Vermont	8.42
Maine	7.49
North Dakota	7.28
South Dakota	5.30

TABLE II–3.—OTAG 2007 BASELINE CONTROL MEASURES

UTILITY
- Title IV Controls (phase 1 & 2 for all boiler types)
- 250 Ton PSD and NSPS
- RACT & NSR in non-waived nonattainment areas (NAAs)

NON-UTILITY POINT/OTHER AREA
- RACT at major sources in non-waivered NAAs
- 250 Ton PSD and NSPS
- CTG & Non-CTG RACT at major sources in NAAs & in Ozone Transport Region

OTHER AREA
- Two Phases of Consumer & Commercial Products & One Phase of Architectural Coatings
- Stage 1 & 2 Petroleum Distribution Controls in NAAs
- Autobody, Degreasing & Dry Cleaning Controls in NAAs

NONROAD MOBILE
- Federal Phase II Small Engine Standards
- Federal Marine Engine Standards
- Federal HDV (>=50 hp) Standards-Ph.1
- Federal RFG II (statutory and opt-in areas)
- 9.0 RVP maximum elsewhere in OTAG

HIGHWAY MOBILE
- Tier 1 LDV and HDV Standards
- Federal RFG II (statutory and opt-in areas)
- High Enhanced I/M (serious and above areas)
- Low Enhanced I/M for rest of OTR
- Basic I/M (mandated areas)
- Clean Fuel Fleets (mandated areas)
- 9.0 RVP maximum elsewhere in OTAG
- On board vapor recovery

[4] It is understood that the State of Iowa will work with the State of Wisconsin in the development of the Southeast Wisconsin ozone SIP.

[5] It is understood that the state of Kansas will work with the state of Missouri in the continued progress of the Kansas City ozone SIP. In addition, the states of Oklahoma, Texas, Arkansas, and Louisiana will share with the state of Missouri the results of their urban and regional scale ozone modeling which includes boundary condition information and emissions in inventory data showing projected impacts of ozone control programs.

TABLE II–4a.—OTAG STRATEGY CONTROL PACKETS FOR NO_X

NO_X strategy packets	Utility system [Mostly elevated]	Other point/area [Mixed Elevated & Non-elevated]	Nonroad Mobile [Non-elevated]	Highway Mobile [Non-elevated]
Base 1 (Mandated CAA controls).	*Title IV Controls *[Phase 1 & 2 for all boiler types]* *250 Ton PSD and NSPS *RACT & NSR in non-waived NAAs	*RACT at major sources in non-waivered NAAs *250 Ton PSD and NSPS *NSR in non-waived NAAs	*Fed Phase II Small Eng. Stds *Fed Marine Engine Stds *Fed HDV (>=50 hp) Stds-Phase 1 *Fed RFG II [4]	*Tier 1 LDV and HDV Stds *Fed RFG II [4] *Enh I/M [3] *Low Enh I/M for rest of OTR *Basic I/M in mandated areas *Clean Fuel Fleets for mandated areas
Level 0	Base 1 plus: *OTC NOX MOU (Phase II) * ''9% by 99'' ROP Measures (If substitute for VOC) [3]	Base 1 plus: *''9% by 99'' ROP Measures (If substitute for VOC) [3]	Base 1 plus: *Fed Locomotive Standards (not including rebuilds) *''9% by 99'' ROP Measures (If substitute for VOC) [3]	Base 1 plus: *National LEV *HDV 2 gm std *FTP revisions *''9% by 99'' ROP Measures (If substitute for VOC) [3]
Added NO_X Controls—Level 1.	More stringent of Level 0 or: *55% reduction from 1990 rate or *rate-base of 0.35 lb/mmbtu for coal units and 0.20 lb/mmbtu for gas & oil units, whichever is less stringent [7]	Level 0 plus: Controls rated by OTAG as under $1000 per ton	Level 0 plus: *Fed Locomotive Stds (incl rebuild standards) [1] [Replaces Fed Locomotive Stds (not including rebuilds)] *HD engine 4 gm Std	Level 0 plus: *High Enh I/M for LDV (LEV-specific cutpoints) [6] [Replaces Enh I/M [3], Low Enh I/M for rest of OTR, & Basic I/M in mandated areas] *HDV I/M [6]
Added NO_X Controls—Level 2.	More stringent of Level 0 or: (a) *65% reduction from 1990 rate or *rate-base of 0.25 lb/mmbtu for coal units and 0.20 lb/mmbtu for gas & oil units, whichever is less stringent [7]	Level 1 plus: Controls rated by OTAG as $1000 to $5000 per ton	Level 1 plus: *Reformed Diesel (50 cetane) [2]	Level 1 plus: *Fed RFG II [2 5] [Replaces Fed RFG II [4]] or Low Sulfur Fuel (150 ppm) [2,5] *Reformed Diesel (50 cetane) [2] *Max I/M for LDV w/ LEV-specified cutpoints [6] [Replaces High Enh I/M for LDV (LEV-specific cutpoints).[6]]
Added NO_X Controls—Level 2.	More stringent of Level 0 or: (b)* 75% reduction from 1990 rate or *rate-base of 0.20 lb/mmbtu for all units, whichever is less stringent [7]			
Deep NO_X Controls—Level 3.	More stringent of Level 0 or: *85% reduction from 1990 rate or *rate-base of 0.15 lb/mmbtu for all units, whichever is less stringent [7]	Level 2 plus: Controls rated by OTAG as over $5000 per ton	Level 2 plus: *Reformed Diesel (55 cetane) [2 8] [Replaces Reformed Diesel (50 cetane) [2]]	Level 2 plus: *Cal RFG II [2] [Replaces Fed FG II [2,5]] *Reformed Diesel (55 cetane) [2 8] [Replaces Reformed Diesel (50 cetane) [2]].

[1] National.
[2] OTAG Wide or Specified.
[3] Serious and above areas.
[4] Statutory and opt-in areas.
[5] OTAG-Optimized fuel (e.g., low RVP, low sulfur, low olefins) was evaluated elsewhere during OTAG as an alternative.
[6] For all nonattainment areas & attainment MSAs/CMSAs ≤=100,000.
[7] Qualifications set by OTAG on the use of lb/MMBtu numbers:
(1) These numbers are for initial strategy modeling purposes only. They do not reflect any recommendation form OTAG on the desired level of reduction for these units. (2) OTAG reserves the right to do sensitivity analyses on any source in an effort to achieve a desired ozone impact. Such sources may include those that chose the lb/MMBtu option. The requirement for such analyses may exist in certain areas where the size and location of such a major source is critical to achieving the ozone goals. (3) The alternative lb/MMBtu limits shall not supersede an existing requirement that is more stringent (e.g., OTC MOU or NSPS requirements).
[8] OTAG evaluated California diesel separately.

TABLE II–4b.—OTAG STRATEGY CONTROL PACKETS FOR VOC

VOC strategy packets	Major point sources	Other point/area	Nonroad mobile	Highway mobile
Base 1 (Mandated CAA controls).	*CTG & Non-CTG RACT at major sources in NAAs & in OTC. *New Source LAER & Offsets for NAAs.	*Two Phases of Consumer & Commercial Products & one Phase of Architectural Coatings. *Stage 1 & 2 Petroleum Distribution Controls-NAAs. *Autobody, Degreasing & Dry Cleaning Controls in NAAs.	*Fed Phase II Small Eng. Stds. *Fed Marine Engine Stds ... *Fed HDV (>=50 hp) Stds-Ph. 1. *Fed RFG II[4] ..... *9.0 RVP maximum elsewhere in OTAG.	*Tier 1 LDV and HDV Stds. *Fed RFG II[4] *9.0 RVP maximum elsewhere in OTAG. *Enh I/M.[3] *Low Enh I/M for rest of OTR. *Basic I/M in mandated areas. *Clean Fuel Fleets in mandated areas. *On board vapor recovery.
Level 0	Base 1 plus: *''9% by 99'' ROP Measures (NO_X may be substituted after 1996).[3].	Base 1 plus: *''9% by 99'' ROP Measures (NO_X may be substituted after 1996).[3].	Base 1 plus: *Fed Locomotive Standards (not including rebuilds). *''9% by 99'' ROP Measures (NO_X may be substituted after 1996).[3].	Base 1 plus: *National LEV. *HDV 2 gm std. *FTP revisions. *''9% by 99'' ROP Measures (NO_X may be substituted after 1996).[3]
Added VOC Controls-Level 1.	Level 0 plus: (No additional controls).	Level 0 plus: (No additional controls).	Level 0 plus:	Level 0 plus: *High Enh I/M for LDV (LEV-specific cutpoints)[6] [Replaces Enh I/M[3], Low Enh I/M for rest of OTR, & Basic I/M in mandated areas]. *HDV I/M.[6] *Low RVP (6.7 psi) in non-RFG areas[2] [Replaces 9.0 RVP maximum elsewhere in OTAG].
Added VOC Controls-Level 2.	Level 1 plus: (a) * Apply NAA Base 1 default control assumptions across AA down to 100 TPY sources.	Level 1 plus: (a) * Apply NAA Base 1 default control assumptions across AA down to 100 TPY sources—Bulk Terminals.	Level 1 plus: *Fed RFG II[2 5] [Replaces Fed RFG II[4]].	Level 1 plus: *Maximum I/M (LEV-specific cutpoints) for LDV[6] [Replaces High Enh I/M (LEV-specific cutpoints)[3]]. *Fed RFG II[2 5] [Replaces Fed RFG II[4]].
	Level 2a plus: (b) *10% reduction in VOC emissions beyond level 2a from major point sources in major metropolitan NAAs.	Level 2a plus: (b) *Increased C/C Products limits. *Increased AIM limits ..... *Increased Autobody Refinishing limits.	.....	
Deep VOC Controls-Level 3.	Level 2 plus: (Same as 2b)	Level 2 plus: (Same as 2b)	Level 2 plus: *Cal RFG II[2] [Replaces Fed RFG II[2 5]]. *Cal Tier II small engine std	Level 2 plus: *Cal RFG II[2] [Replaces Fed RFG II[2 5]].

[1] National.
[2] OTAG Wide or Specified.
[3] Serious and above areas.
[4] Statutory and opt-in areas.
[5] OTAG-Optimized fuel (e.g., low RVP, low sulfur, low olefins) was evaluated elsewhere during OTAG as an alternative.
[6] For all nonattainment areas & attainment MSAs/CMSAs >=100,000.

TABLE II–5a.—ROUND 1 AND 2 CONTROL LEVELS BY EMISSIONS SECTOR

OTAG round 1 & round 2 control levels									
Run	Point			Nonroad		Other area		Motor vehicle[1]	
	Utility NO_X	Nonutility							
		NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Round 1:									
1	0	0	0	0	0	0	0	0	0
2	3	3	3	3	3	3	3	3	3
3	3	0	0	0	0	0	0	0	0
4b	0	3	0	3	3	3	3	3	3

TABLE II–5a.—ROUND 1 AND 2 CONTROL LEVELS BY EMISSIONS SECTOR—Continued

OTAG round 1 & round 2 control levels									
Run	Point			Nonroad		Other area		Motor vehicle[1]	
	Utility NO_X	Nonutility							
		NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Round 2:									
5	3	1	0	1	1	1	1	0	0
6	2b	1	0	1	1	1	1	0	0
7	2a	1	0	1	1	1	1	0	0
8	1	1	0	1	1	1	1	0	0
9	3	2	0	2	2	2	2	1.5	1.5
10	2b	2	0	2	2	2	2	1.5	1.5
11	2a	2	0	2	2	2	2	1.5	1.5
12	1	2	0	2	2	2	2	1.5	1.5

[1] Motor vehicle emissions level 1.5 includes enhanced I/M in all 1-hr nonattainment areas and in all attainment Metropolitan Statistical Areas and Consolidated Metropolitan Statistical Areas with population >=500,000.

TABLE II–5b.—DOMAINWIDE ROUND 1 AND 2 EMISSION TOTALS BY SECTOR

Emissions totals (tons/day)											
Run	Point			Nonroad		Other Area		Motor vehicle		Total	
	Utility NO_X	Nonutility									
		NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Round 1:											
1990	20144	8600	8340	7390	6500	3500	18300	16619	15731	56253	48871
Base1b	14500	10330	5557	7427	6027	4460	17692	14000	9400	50717	38676
1	13970	10215	5557	7315	6027	4460	17637	12400	8700	48360	37921
2	5203	4969	4217	5725	5854	4460	16912	9200	4500	29557	31483
3	5203	9626	5557	7315	6027	4460	17637	12400	8700	39004	37921
4b	13946	5562	5557	5725	5854	4460	16912	9200	4500	38893	32823
Round 2:											
1990	21019	7709	8304	7567	6541	3238	17806	16619	15731	56152	48382
Base1c	15441	8459	5719	7506	6039	4202	17076	14000	9400	49608	38234
5	5348	6828	5712	6453	6039	4202	17076	12400	8700	35231	37527
6	7383	6828	5712	6453	6039	4202	17076	12400	8700	37266	37527
7	9249	6828	5712	6453	6039	4202	17076	12400	8700	39132	37527
8	11425	6828	5712	6453	6039	4202	17076	12400	8700	41308	37527
9	5348	5247	5712	6381	5989	4202	15757	10650	5500	31828	32958
10	7383	5247	5712	6381	5989	4202	15757	10650	5500	33863	32958
11	9249	5247	5712	6381	5989	4202	15757	10650	5500	35729	32958
12	11425	5247	5712	6381	5989	4202	15757	10650	5500	37905	32958

TABLE II–6.—RESULTS OF ROUND 1 AND ROUND 2 STRATEGY MODELING

Round-1 Results:
Run 1 (Level 0)
—Little additional benefit on regional scale
—Benefits occur mostly in Northeast
Run 2 (Level 3)
—Large areas of lower ozone; decreases of 10–40 ppb
—Level 3 control will not provide for attainment throughout the eastern U.S.
Run 3 (Level 3 Elevated NO_X) and Run 4b (Level 3 Low-Level NO_X)
—Both elevated and low-level control effective in lowering ozone on regional scale
—Relative effectiveness varies by region and episode (e.g., elevated [utility] NO_X more effective in Midwest, low-level NO_X more effective in Northeast and Southeast)
All Strategies
—For all strategies, there are ozone increases in some areas on some days
—For all strategies, the 8-hour concentration changes are directionally consistent with the 1-hour concentration changes
Round-2 Results:
The Round-2 strategy emission/ozone reductions are all within the range of Run 1 (Round-1) and Run 2 (Round-1)
—More emissions reductions, more ozone reductions
—Run 9 (maximum Round-2 emissions reduction) provides a little less ozone benefit than Run 2
—Run 9 will not be sufficient to provide for attainment of the current 1-hour ozone NAAQS throughout the Eastern U.S.
—Elevated and low-level NO_X reductions are both effective in lowering ozone (relative effectiveness varies by episode)
—Elevated and low-level NO_X reductions are cumulative, but may not be synergistic (i.e., appear to act independently)
—Run 8 (minimum Round-2 emissions reduction) show ozone increases in some areas on some days; note, increases do not seem to get any worse by Run 9 (maximum Round-2 emissions reduction)
—All Round-2 strategies show ozone decrease in areas and on days with high ozone, and ozone increases in areas and on days with low ozone
—Magnitude and spatial extent of 8-hour concentration differences are similar to 1-hour concentration differences

TABLE II–7.—ROUND 3 CONTROL LEVELS BY GEOGRAPHIC ZONE [1]

Source category	Control level
Nonroad/Area Sources	Level 2.
Point Source VOC	Level 0.
Highway Vehicles	Level 1.3 (same as Level 2, except high enhanced I/M is applied to all nonattainment areas and attainment Metropolitan Statistical Areas/Consolidated Metropolitan Statistical Areas with population >= 500,000 in the ''Fine Grid'' portion of the OTAG region only)

Non-utility point source NO_X	Linked to the level of utility controls	
	Utility	Non-Utility
	Level 0 or	Level 1 for sources >250 MMBtu/hr.
	Level 1	Level 0 for sources <250 MMBtu/hr.
	Level 2a	Level 1.
	Level 2b or	Level 2 for sources >250 MMBtu/hr.
	Level 3	Level 1 for sources <250 MMBtu/hr.

[1] The control levels for nonroad sources, area sources, point source VOC, and highway vehicles were applied throughout the OTAG region in all of the Round 3 runs. Utility and non-utility NOx control levels varied geographically.

TABLE II–7.—(CONTINUED)

Round 3 utility control levels								
Run #	Chicago/Atlanta/Northeast NAAs	Zone III Northeast	Zone I Midwest	Zone V N. Georgia	Zone II Ohio Valley	Zone IV Southeast	Coarse grid	Utility NO_X emissions
A	2b	1	1	1	1	1	0	1,822,915
B	2a	2a	2a	2a	1	1	0	1,767,341
C	2b	2b	2b	2b	1	1	0	1,678,866
D	2b	2b	2b	2b	2a	1	0	1,581,554
E	2b	2b	2b	2b	2a	2a	0	1,528,004
F	2a/2b	2b	2a	2a	2a	2a	0	1,595,237
G	2b	2b	2b	2b	2b	2a	0	1,433,002
H	2b	2b	2b	2b	2b	2b	0	1,392,877
I1	3	3	3	3	3	2b	0	1,199,268
I	3	3	3	3	3	2b	1	1,019,578

Level 0—OTC MOU Phase II/Acid Rain.
Level 1—0.35 lb/MMBtu or 55% rate reduction from 1990.
Level 2a—0.25 lb/MMBtu or 65% rate reduction from 1990.
Level 2b—0.20 lb/MMBtu or 75% rate reduction from 1990.
Level 3—0.15 lb/MMBtu or 85% rate reduction from 1990.

TABLE II–8a.—COUNTIES VIOLATING THE 1-HR OZONE NAAQS BASED ON 1993–1995 AMBIENT AIR QUALITY MONITORING DATA

State	County
Alabama	Jefferson.
Alabama	Shelby.
Connecticut	Hartford.
Connecticut	New Haven.
Connecticut	Middlesex.
Connecticut	Litchfield.
Connecticut	New London.
Connecticut	Fairfield.
Connecticut	Tolland.
Delaware	New Castle.
Delaware	Kent.
District of Columbia	Washington.
Georgia	Rockdale.
Georgia	Douglas.
Georgia	De Kalb.
Georgia	Fulton.
Illinois	Cook.
Illinois	Madison.
Indiana	La Porte.
Indiana	Warrick.
Indiana	Clark.
Louisiana	Lafourche.
Louisiana	Ascension.
Louisiana	Iberville.
Louisiana	East Baton Rouge.
Maine	York.
Maine	Sagadahoc.
Maryland	Prince Georges.
Maryland	Anne Arundel.
Maryland	Harford.
Maryland	Cecil.
Maryland	Baltimore City.
Maryland	Baltimore.
Massachusetts	Worcester.
Massachusetts	Middlesex.
Massachusetts	Hampden.
Massachusetts	Hampshire.
Michigan	Allegan.
Michigan	Macomb.
Michigan	St Clair.
Michigan	Mason.
Michigan	Muskegon.
Missouri	St Louis.
Missouri	Clay.
Missouri	St Charles.
Missouri	Jefferson.
New Hampshire	Rockingham.
New Jersey	Camden.
New Jersey	Monmouth.
New Jersey	Middlesex.
New Jersey	Ocean.
New Jersey	Mercer.
New Jersey	Hudson.
New Jersey	Gloucester.
New York	Westchester.
New York	Putnam.
New York	Suffolk.
New York	Queens.
New York	Kings.
New York	Richmond.
Ohio	Warren.
Pennsylvania	Philadelphia.
Pennsylvania	Montgomery.
Pennsylvania	Bucks.
Pennsylvania	Delaware.
Pennsylvania	Allegheny.
Rhode Island	Kent.
Rhode Island	Providence.

TABLE II–8a.—COUNTIES VIOLATING THE 1-HR OZONE NAAQS BASED ON 1993–1995 AMBIENT AIR QUALITY MONITORING DATA—Continued

State	County
Tennessee	Shelby.
Texas	Jefferson.
Texas	Harris.
Texas	Gregg.
Texas	Dallas.
Texas	Galveston.
Texas	Brazoria.
Texas	Tarrant.
Texas	Collin.
Texas	Denton.
Virginia	Arlington.
Virginia	Fairfax.
Wisconsin	Manitowoc.
Wisconsin	Ozaukee.
Wisconsin	Milwaukee.
Wisconsin	Kenosha.

TABLE II–8b.—COUNTIES VIOLATING THE 8-HR OZONE NAAQS BASED ON 1993–1995 AMBIENT AIR QUALITY MONITORING DATA

Alabama	Clay.
Alabama	Shelby.
Alabama	Madison.
Alabama	Jefferson.
Arkansas	Crittenden.
Connecticut	New London.
Connecticut	Tolland.
Connecticut	New Haven.
Connecticut	Hartford.
Connecticut	Middlesex.
Connecticut	Litchfield.
Connecticut	Fairfield.
Delaware	New Castle.
Delaware	Kent.
Delaware	Sussex.
District of Columbia	Washington.
Florida	Escambia.
Georgia	Rockdale.
Georgia	Fulton.
Georgia	Gwinnett.
Georgia	De Kalb.
Georgia	Douglas.
Georgia	Richmond.
Illinois	Madison.
Illinois	Cook.
Illinois	Kane.
Illinois	Lake.
Indiana	Porter.
Indiana	Hancock.
Indiana	Marion.
Indiana	La Porte.
Indiana	Vanderburgh.
Indiana	Floyd.
Indiana	Lake.
Indiana	Hamilton.
Indiana	Allen.
Indiana	Warrick.
Indiana	Tippecanoe.
Indiana	Clark.
Indiana	Madison.
Indiana	Kosciusko.
Indiana	St Joseph.
Kentucky	Fayette.

TABLE II–8b.—COUNTIES VIOLATING THE 8-HR OZONE NAAQS BASED ON 1993–1995 AMBIENT AIR QUALITY MONITORING DATA—Continued

Kentucky	Greenup.
Kentucky	Hancock.
Kentucky	Livingston.
Kentucky	Campbell.
Kentucky	Christian.
Kentucky	Lawrence.
Kentucky	Scott.
Kentucky	Oldham.
Kentucky	Boyd.
Kentucky	Henderson.
Kentucky	Jefferson.
Kentucky	Kenton.
Kentucky	Bullitt.
Kentucky	Daviess.
Kentucky	McLean.
Kentucky	Hardin.
Louisiana	Calcasieu.
Louisiana	Livingston.
Louisiana	Ascension.
Louisiana	Iberville.
Louisiana	Lafayette.
Louisiana	East Baton Rouge.
Louisiana	Lafourche.
Maine	Knox.
Maine	Sagadahoc.
Maine	York.
Maine	Cumberland.
Maryland	Kent.
Maryland	Baltimore City.
Maryland	Charles.
Maryland	Prince Georges.
Maryland	Anne Arundel.
Maryland	Montgomery.
Maryland	Baltimore.
Maryland	Cecil.
Maryland	Harford.
Maryland	Carroll.
Massachusetts	Middlesex.
Massachusetts	Barnstable.
Massachusetts	Hampden.
Massachusetts	Hampshire.
Massachusetts	Essex.
Massachusetts	Bristol.
Massachusetts	Worcester.
Michigan	Benzie.
Michigan	Berrien.
Michigan	Kent.
Michigan	Macomb.
Michigan	Cass.
Michigan	Muskegon.
Michigan	Wayne.
Michigan	Mason.
Michigan	Lenawee.
Michigan	Allegan.
Michigan	St Clair.
Mississippi	Hancock.
Missouri	St Charles.
Missouri	St Louis.
Missouri	Clay.
Missouri	Jefferson.
New Hampshire	Rockingham.
New Hampshire	Hillsborough.
New Jersey	Camden.
New Jersey	Mercer.
New Jersey	Gloucester.
New Jersey	Hudson.
New Jersey	Ocean.
New Jersey	Atlantic.

TABLE II–8b.—COUNTIES VIOLATING THE 8-HR OZONE NAAQS BASED ON 1993–1995 AMBIENT AIR QUALITY MONITORING DATA—Continued

New Jersey	Morris.
New Jersey	Middlesex.
New Jersey	Bergen.
New Jersey	Hunterdon.
New Jersey	Monmouth.
New Jersey	Union.
New Jersey	Cumberland.
New Jersey	Essex.
New York	Dutchess.
New York	Essex.
New York	Richmond.
New York	Orange.
New York	Queens.
New York	Putnam.
New York	Niagara.
New York	Kings.
New York	Suffolk.
New York	Jefferson.
New York	Westchester.
New York	Bronx.
New York	Wayne.
North Carolina	Wake.
North Carolina	Northampton.
North Carolina	Lincoln.
North Carolina	Haywood.
North Carolina	Granville.
North Carolina	Guilford.
North Carolina	Yancey.
North Carolina	Forsyth.
North Carolina	Caswell.
North Carolina	Franklin.
North Carolina	Chatham.
North Carolina	Cumberland.
North Carolina	Durham.
North Carolina	Rowan.
North Carolina	Mecklenburg.
North Carolina	Johnston.
Ohio	Lawrence.
Ohio	Franklin.
Ohio	Logan.
Ohio	Hamilton.
Ohio	Jefferson.
Ohio	Medina.
Ohio	Portage.
Ohio	Summit.
Ohio	Mahoning.

TABLE II–8b.—COUNTIES VIOLATING THE 8-HR OZONE NAAQS BASED ON 1993–1995 AMBIENT AIR QUALITY MONITORING DATA—Continued

Ohio	Clermont.
Ohio	Cuyahoga.
Ohio	Trumbull.
Ohio	Ashtabula.
Ohio	Knox.
Ohio	Madison.
Ohio	Lake.
Ohio	Allen.
Ohio	Washington.
Ohio	Clinton.
Ohio	Licking.
Ohio	Stark.
Ohio	Lucas.
Ohio	Clark.
Ohio	Butler.
Ohio	Montgomery.
Ohio	Warren.
Oklahoma	Tulsa.
Pennsylvania	Washington.
Pennsylvania	Erie.
Pennsylvania	Philadelphia.
Pennsylvania	Bucks.
Pennsylvania	Northampton.
Pennsylvania	Lehigh.
Pennsylvania	York.
Pennsylvania	Beaver.
Pennsylvania	Allegheny.
Pennsylvania	Blair.
Pennsylvania	Lancaster.
Pennsylvania	Cambria.
Pennsylvania	Delaware.
Pennsylvania	Luzerne.
Pennsylvania	Berks.
Pennsylvania	Perry.
Pennsylvania	Mercer.
Pennsylvania	Lackawanna.
Pennsylvania	Westmoreland.
Pennsylvania	Dauphin.
Pennsylvania	Montgomery.
Rhode Island	Kent.
Rhode Island	Providence
South Carolina	Richland.
South Carolina	Anderson.
South Carolina	Chester.
South Carolina	York.
Tennessee	Blount.

TABLE II–8b.—COUNTIES VIOLATING THE 8-HR OZONE NAAQS BASED ON 1993–1995 AMBIENT AIR QUALITY MONITORING DATA—Continued

Tennessee	Hamilton.
Tennessee	Sullivan.
Tennessee	Dickson.
Tennessee	Sevier.
Tennessee	Sumner.
Tennessee	Knox.
Tennessee	Shelby.
Tennessee	Williamson.
Tennessee	Madison.
Tennessee	Anderson.
Tennessee	Jefferson.
Texas	Harris.
Texas	Smith.
Texas	Jefferson.
Texas	Brazoria.
Texas	Orange.
Texas	Tarrant.
Texas	Dallas.
Texas	Galveston.
Texas	Denton.
Texas	Gregg.
Texas	Collin.
Virginia	Caroline.
Virginia	Hanover.
Virginia	Fairfax.
Virginia	Chesterfield.
Virginia	Prince William.
Virginia	Alexandria City.
Virginia	Arlington.
Virginia	Hampton City.
Virginia	Henrico.
Virginia	Charles City.
Virginia	Suffolk City.
Virginia	Stafford.
West Virginia	Cabell.
West Virginia	Wood.
Wisconsin	Racine.
Wisconsin	Outagamie.
Wisconsin	Ozaukee.
Wisconsin	Sheboygan.
Wisconsin	Milwaukee.
Wisconsin	Kewaunee.
Wisconsin	Kenosha.
Wisconsin	Door.
Wisconsin	Manitowoc.

TABLE II–9a.—SUMMARY OF AIR QUALITY CONTRIBUTIONS TO DOWNWIND NONATTAINMENT, FOR SUBREGIONS 1–6.

	Approach 1		Approach 2		Approach 3		Approach 4	
	1 hr-violating co.		1 Hr-all grid cells		8 hr-violating co.		8 Hr-all grid cells	
	No. impacts	No. States	No. impacts	No. States	No. impacts	No. States	No. impacts	No. States
SubRegion 1:								
2–5 ppb	70	4	102	7	80	8	180	10
5–10 ppb	0	0	14	2	21	2	29	3
10–15 ppb	0	0	0	0	1	1	5	1
15–20 ppb	0	0	0	0	6	1	11	1
20–25 ppb	0	0	0	0	5	1	10	1
>25 ppb	0	0	0	0	1	1	1	1
SubRegion 2:								
2–5 ppb	193	8	362	14	239	16	432	16
5–10 ppb	38	5	93	9	37	5	101	6
10–15 ppb	0	0	23	6	10	2	15	2
15–20 ppb	0	0	6	2	2	1	6	2

TABLE II–9a.—SUMMARY OF AIR QUALITY CONTRIBUTIONS TO DOWNWIND NONATTAINMENT, FOR SUBREGIONS 1–6.—Continued

	Approach 1		Approach 2		Approach 3		Approach 4	
	1 hr-violating co.		1 Hr-all grid cells		8 hr-violating co.		8 Hr-all grid cells	
	No. impacts	No. States	No. impacts	No. States	No. impacts	No. States	No. impacts	No. States
20–25 ppb	0	0	1	1	5	1	6	2
>25 ppb	0	0	0	0	1	1	1	1
SubRegion 3:								
2–5 ppb	176	9	484	10	206	9	527	10
5–10 ppb	187	7	376	10	146	9	236	11
10–15 ppb	67	4	180	7	45	3	69	5
15–20 ppb	27	3	42	4	11	1	14	3
20–25 ppb	5	1	9	3	0	0	0	0
>25 ppb	3	1	21	3	0	0	0	0
SubRegion 4:								
2–5 ppb	10	3	41	5	2	1	3	1
5–10 ppb	12	3	32	3	37	3	84	3
10–15 ppb	30	3	82	3	28	3	91	3
15–20 ppb	7	2	51	3	22	3	46	4
20–25 ppb	4	2	11	2	11	2	19	2
>25 ppb	37	3	121	3	25	2	29	2
SubRegion 5:								
2–5 ppb	51	7	131	10	181	13	493	14
5–10 ppb	6	2	42	4	150	6	283	8
10–15 ppb	8	3	16	3	12	2	23	2
15–20 ppb	3	2	5	2	0	0	0	0
20–25 ppb	0	0	5	1	0	0	0	0
>25 ppb	0	0	0	0	0	0	0	0
SubRegion 6:								
2–5 ppb	85	6	236	13	343	13	523	13
5–10 ppb	122	8	215	10	161	10	281	10
10–15 ppb	25	4	63	6	46	3	120	5
15–20 ppb	2	1	11	3	10	1	29	2
20–25 ppb	0	0	2	2	8	2	14	2
>25 ppb	4	1	17	3	1	1	2	2

TABLE II–9b. SUMMARY OF AIR QUALITY CONTRIBUTIONS TO DOWNWIND NONATTAINMENT, FOR SUBREGIONS 7–12

	Approach 1		Approach 2		Approach 3		Approach 4	
	1 Hr-violating co.		1 Hr-all grid cells		8 Hr-violating co.		8 Hr-all grid cells	
	Number impacts	Number States	Number impacts	Number States	Number impacts	Number States	Number impacts	Number States
SubRegion 7:								
2–5 ppb	114	6	249	12	178	9	315	10
5–10 ppb	113	4	211	8	154	7	233	7
10–15 ppb	50	4	90	6	52	4	87	4
15–20 ppb	21	4	47	4	15	2	35	2
20–25 ppb	8	2	20	2	8	1	12	1
> 25 ppb	19	2	65	2	8	1	35	1
SubRegion 8:								
2–5 ppb	28	5	135	12	89	10	265	12
5–10 ppb	0	0	56	7	19	3	133	4
10–15 ppb	0	0	75	5	8	3	41	3
15–20 ppb	1	1	60	4	1	1	21	1
20–25 ppb	0	0	9	2	0	0	6	1
> 25 ppb	0	0	3	1	0	0	0	0
SubRegion 9:								
2–5 ppb	11	2	140	9	161	10	340	12
5–10 ppb	4	3	68	7	69	6	197	6
10–15 ppb	4	1	11	2	27	2	67	3
15–20 ppb	0	0	6	1	2	1	8	1
20–25 ppb	0	0	4	1	0	0	2	1
> 25 ppb	0	0	20	2	0	0	2	1
SubRegion 10:								
2–5 ppb	0	0	1	1	13	2	24	3
5–10 ppb	0	0	0	0	4	1	4	1
10–15 ppb	0	0	0	0	0	0	0	0
15–20 ppb	0	0	0	0	0	0	0	0

TABLE II–9b. SUMMARY OF AIR QUALITY CONTRIBUTIONS TO DOWNWIND NONATTAINMENT, FOR SUBREGIONS 7–12—Continued

	Approach 1		Approach 2		Approach 3		Approach 4	
	1 Hr-violating co.		1 Hr-all grid cells		8 Hr-violating co.		8 Hr-all grid cells	
	Number impacts	Number States	Number impacts	Number States	Number impacts	Number States	Number impacts	Number States
20–25 ppb	0	0	0	0	0	0	0	0
> 25 ppb	0	0	0	0	0	0	0	0
SubRegion 11:								
2–5 ppb	11	2	19	3	21	6	37	7
5–10 ppb	0	0	0	0	0	0	2	1
10–15 ppb	0	0	0	0	0	0	0	0
15–20 ppb	0	0	0	0	0	0	0	0
20–25 ppb	0	0	0	0	0	0	0	0
> 25 ppb	0	0	0	0	0	0	0	0
SubRegion 12:								
2–5 ppb	13	2	28	3	73	3	105	5
5–10 ppb	11	1	19	1	0	0	0	0
10–15 ppb	0	0	0	0	0	0	0	0
15–20 ppb	0	0	0	0	0	0	0	0
20–25 ppb	0	0	0	0	0	0	0	0
> 25 ppb	0	0	0	0	0	0	0	0

TABLE II–10.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 1: 1-HR ''VIOLATING COUNTIES''

Number of Impacts from SubRegion 1

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0		
5–10	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0		
10–15	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0		
15–20	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0		
20–25	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0		
>25	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	22	0	0	7	20	21	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 2

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		

TABLE II–10.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 1: 1-HR ''VIOLATING COUNTIES''—Continued

20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	N.A.	N.A.	N.A.	0	0		
5–10	0	0	0	0	N.A.	N.A.	N.A.	0	0		
10–15	0	0	0	0	N.A.	N.A.	N.A.	0	0		
15–20	0	0	0	0	N.A.	N.A.	N.A.	0	0		
20–25	0	0	0	0	N.A.	N.A.	N.A.	0	0		
>25	0	0	0	0	N.A.	N.A.	N.A.	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	0	5	0		
5–10	0	0	0	0	0	0	0	2	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	23	0	1	36	47	65	3	13	0	0	0
5–10	23	0	0	4	6	3	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 3

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	0	19	1		
5–10	0	0	0	0	0	0	0	19	1		
10–15	0	0	0	0	0	0	0	1	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	43	N.A.	N.A.	8	N.A.	74	3	17	0	4	7
5–10	47	N.A.	N.A.	33	N.A.	78	3	6	0	0	0
10–15	19	N.A.	N.A.	34	N.A.	13	0	0	0	0	0
15–20	4	N.A.	N.A.	21	N.A.	2	0	0	0	0	0
20–25	0	N.A.	N.A.	5	N.A.	0	0	0	0	0	0
>25	0	N.A.	N.A.	3	N.A.	0	0	0	0	0	0

Number of Impacts from SubRegion 4

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		

TABLE II–10.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 1: 1-HR ''VIOLATING COUNTIES''—Continued

10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	1	N.A.	N.A.	N.A.	N.A.	N.A.	0	1	0	8	0
5–10	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	9	0	1	2
10–15	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	4	0	11	15
15–20	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	4	0	3	0
20–25	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	3	0	1	0
>25	0	N.A.	N.A.	N.A.	N.A.	N.A.	6	30	0	1	0

Number of Impacts from SubRegion 5

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–1	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–2	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	N.A.	0	N.A.	N.A.	11	0	N.A.	0		
5–10	0	N.A.	0	N.A.	N.A.	4	0	N.A.	0		
10–15	0	N.A.	0	N.A.	N.A.	3	0	N.A.	0		
15–20	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0		
20–25	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0		
>25	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	N.A.	0	4	10	0	0	0	0	0		
5–10	N.A.	0	0	2	0	0	0	0	0		
10–15	N.A.	0	2	3	0	0	0	0	0		
15–20	N.A.	0	1	2	0	0	0	0	0		
20–25	N.A.	0	0	0	0	0	0	0	0		
>25	N.A.	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	8	0	2	10	6	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 6

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		

TABLE II–10.—NUMBER OF IMPACTS IN EACH "DOWNWIND" STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 1: 1-HR "VIOLATING COUNTIES"—Continued

2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20—25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
5–10	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
10–15	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
15–20	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
20–25	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
>25	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	N.A.	0	0	0	0	0	0	N.A.	0		
5–10	N.A.	0	0	0	0	0	0	N.A.	1		
10–15	N.A.	0	0	0	0	0	0	N.A.	0		
15–20	N.A.	0	0	0	0	0	0	N.A.	0		
20–25	N.A.	0	0	0	0	0	0	N.A.	0		
>25	N.A.	0	0	0	0	0	0	N.A.	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	6	4	4	26	41	4	0	0	0	0	0
5–10	52	6	4	32	16	9	2	0	0	0	0
10–15	17	0	2	2	4	0	0	0	0	0	0
15–20	2	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	4	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 7

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	0	0	0	0	N.A.		
5–10	0	0	0	0	0	0	0	0	N.A.		
10–15	0	0	0	0	0	0	0	0	N.A.		
15–20	0	0	0	0	0	0	0	0	N.A.		
20–25	0	0	0	0	0	0	0	0	N.A.		
>25	0	0	0	0	0	0	0	0	N.A.		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	N.A.	N.A.	N.A.		
5–10	0	0	0	0	0	0	N.A.	N.A.	N.A.		
10–15	0	0	0	0	0	0	N.A.	N.A.	N.A.		
15–20	0	0	0	0	0	0	N.A.	N.A.	N.A.		
20–25	0	0	0	0	0	0	N.A.	N.A.	N.A.		
>25	0	0	0	0	0	0	N.A.	N.A.	N.A.		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	N.A.	N.A.	3	17	30	50	2	12	0	0	0
5–10	N.A.	N.A.	2	28	52	31	0	0	0	0	0
10–15	N.A.	N.A.	13	14	15	8	0	0	0	0	0
15–20	N.A.	N.A.	11	4	4	2	0	0	0	0	0
20–25	N.A.	N.A.	2	6	0	0	0	0	0	0	0
>25	N.A.	N.A.	7	12	0	0	0	0	0	0	0

TABLE II–10.—NUMBER OF IMPACTS IN EACH "DOWNWIND" STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 1: 1-HR "VIOLATING COUNTIES"—Continued

Number of Impacts from SubRegion 8

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	2	0	2	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	3	0	17	N.A.	0	N.A.	N.A.	0	0		
5–10	0	0	0	N.A.	0	N.A.	N.A.	0	0		
10–15	0	0	0	N.A.	0	N.A.	N.A.	0	0		
15–20	0	0	1	N.A.	0	N.A.	N.A.	0	0		
20–25	0	0	0	N.A.	0	N.A.	N.A.	0	0		
>25	0	0	0	N.A.	0	N.A.	N.A.	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	4	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 9

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	N.A.	10	0	0	0	0	0	0	0		
5–10	N.A.	0	0	0	0	0	0	0	0		
10–15	N.A.	0	0	0	0	0	0	0	0		
15–20	N.A.	0	0	0	0	0	0	0	0		
20–25	N.A.	0	0	0	0	0	0	0	0		
>25	N.A.	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	1	0	0	0	0	0		
5–10	0	2	0	1	1	0	0	0	0		
10–15	0	0	0	0	4	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
5–10	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
10–15	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
15–20	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
20–25	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
>25	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0

TABLE II–10.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 1: 1-HR ''VIOLATING COUNTIES''—Continued

>25	0	0	0	0	0	0	0	0	0	0	0
Number of Impacts from SubRegion 10											
Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	N.A.	0	0	0	0	0	0	0		
5–10	0	N.A.	0	0	0	0	0	0	0		
10–15	0	N.A.	0	0	0	0	0	0	0		
15–20	0	N.A.	0	0	0	0	0	0	0		
20–25	0	N.A.	0	0	0	0	0	0	0		
>25	0	N.A.	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
5–10	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
10–15	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
15–20	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
20–25	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
>25	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0
Number of Impacts from SubRegion 11											
Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
5–10	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
10–15	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
15–20	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
20–25	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
>25	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	0	4	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	7	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0

TABLE II–10.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 1: 1-HR ''VIOLATING COUNTIES''—Continued

15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 12

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	oi0MN		
2–5	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
5–10	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
10–15	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
15–20	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
20–25	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
>25	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	N.A.	N.A.	N.A.	5	0	8	0	0	0		
5–10	N.A.	N.A.	N.A.	0	0	11	0	0	0		
10–15	N.A.	N.A.	N.A.	0	0	0	0	0	0		
15–20	N.A.	N.A.	N.A.	0	0	0	0	0	0		
20–25	N.A.	N.A.	N.A.	0	0	0	0	0	0		
>25	N.A.	N.A.	N.A.	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	0	0	0		
5–1	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

[1] N.A. (Not Applicable) indicates that all or major portions of these States are part of the subregion and thus, are not considered as being ''downwind''.

TABLE II–11.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1 2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 2: 1-HR ''ALL GRID CELLS''

Number of Impacts from SubRegion 1

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	2	4
5–10	0	0	0	0	0	0	22	4	2
10–15	0	0	0	0	0	0	1	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	N.A.	0	N.A.	N.A.	N.A.	1	2	0	1
5–10	N.A.	0	N.A.	N.A.	N.A.	6	8	0	0
10–15	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0
15–20	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0
20–25	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0
>25	N.A.	0	N.A.	N.A.	N.A.	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0

TABLE II–11.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1 2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 2: 1-HR ''ALL GRID CELLS''—Continued

>25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	24	0	0	16	35	23	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	0	0	0	0	0	2	4
5–10	0	0	0	0	0	0	22	4	2
10–15	0	0	0	0	0	0	1	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 2

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	N.A.	N.A.	N.A.	3	13
5–10	0	0	0	0	N.A.	N.A.	N.A.	0	14
10–15	0	0	0	0	N.A.	N.A.	N.A.	4	15
15–20	0	0	0	0	N.A.	N.A.	N.A.	1	5
20–25	0	0	0	0	N.A.	N.A.	N.A.	0	0
>25	0	0	0	0	N.A.	N.A.	N.A.	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	1	0	0	0	0	0	1	11	0
5–10	9	0	0	0	0	0	4	2	0
10–15	1	0	0	0	0	0	1	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	49	0	5	73	69	68	13	41	0
5–10	34	0	5	12	10	3	0	0	0
10–15	1	0	1	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	1	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	5	10	0	0	0	0	0	0	2
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	10
20–25	0	0	0	0	0	0	0	0	1
>25	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 3

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0

TABLE II–11.—NUMBER OF IMPACTS IN EACH "DOWNWIND" STATE,[1 2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 2: 1-HR "ALL GRID CELLS"—Continued

15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	2
10–15	0	0	0	0	0	0	0	0	8
15–20	0	0	0	0	0	0	0	0	5
20–25	0	0	0	0	0	0	0	0	1
>25	0	0	0	0	0	0	0	0	11
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	0	0	0	0	8	144	1
5–10	0	0	0	0	0	0	0	45	1
10–15	0	0	0	0	0	0	0	1	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	72	N.A.	N.A.	28	N.A.	77	16	103	0
5–10	82	N.A.	N.A.	70	N.A.	84	19	47	0
10–15	37	N.A.	N.A.	115	N.A.	14	1	4	0
15–20	4	N.A.	N.A.	30	N.A.	3	0	0	0
20–25	2	N.A.	N.A.	6	N.A.	0	0	0	0
>25	7	N.A.	N.A.	3	N.A.	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	12	23	0	0	0	0	0	0	1
5–10	7	19	0	0	0	0	0	0	3
10–15	0	0	0	0	0	0	0	0	1
15–20	0	0	0	0	0	0	0	0	2
20–25	0	0	0	0	0	0	0	0	1
>25	0	0	0	0	0	0	0	0	1

Number of Impacts from SubRegion 4

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	0	0	0	0	0	9	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	2	N.A.	N.A.	N.A.	N.A.	N.A.	0	14	0
5–10	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	24	0
10–15	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	33	0

TABLE II–11.—NUMBER OF IMPACTS IN EACH "DOWNWIND" STATE,[1 2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 2: 1-HR "ALL GRID CELLS"—Continued

15–20	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	32	0
20–25	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	10	0
>25	0	N.A.	N.A.	N.A.	N.A.	N.A.	38	82	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	10	6	0	0	0	0	0	0	0
5–10	2	6	0	0	0	0	0	0	0
10–15	19	30	0	0	0	0	0	0	0
15–20	9	10	0	0	0	0	0	0	0
20–25	1	0	0	0	0	0	0	0	0
>25	1	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 5

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	2	0	0	0	0	0	0	0	0
5–10	9	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	N.A.	0	N.A.	N.A.	18	3	N.A.	5
5–10	0	N.A.	0	N.A.	N.A.	16	5	N.A.	0
10–15	0	N.A.	0	N.A.	N.A.	6	0	N.A.	0
15–20	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0
20–25	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0
> 25	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	N.A.	0	12	19	0	0	0	0	0
5–10	N.A.	0	0	12	0	0	0	0	0
10–15	N.A.	0	5	5	0	0	0	0	0
15–20	N.A.	0	3	2	0	0	0	0	0
20–25	N.A.	0	5	0	0	0	0	0	0
> 25	N.A.	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	16	0	2	45	9	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	70	0	0	7	4	1
5–10	0	0	.....	151	0	0	16	2	1
10–15	0	0	.....	60	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
> 25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 6

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	N.A.	1	N.A.	N.A.	N.A.

TABLE II–11.—NUMBER OF IMPACTS IN EACH "DOWNWIND" STATE,[1 2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 2: 1-HR "ALL GRID CELLS"—Continued

5–10	0	0	0	0	N.A.	1	N.A.	N.A.	N.A.
10–15	0	0	0	0	N.A.	6	N.A.	N.A.	N.A.
15–20	0	0	0	0	N.A.	1	N.A.	N.A.	N.A.
20–25	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.
> 25	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	N.A.	0	1	1	0	1	1	N.A.	0
5–10	N.A.	0	0	0	0	0	1	N.A.	1
10–15	N.A.	0	0	0	0	0	3	N.A.	0
15–20	N.A.	0	0	0	0	0	1	N.A.	0
20–25	N.A.	0	0	0	0	0	0	N.A.	0
> 25	N.A.	0	0	0	0	0	7	N.A.	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	9	4	15	85	76	4	14	24	0
5–10	93	9	13	61	21	12	3	0	0
10–15	37	0	10	3	4	0	0	0	0
15–20	9	0	0	0	0	0	0	0	0
20–25	1	0	1	0	0	0	0	0	0
> 25	1	0	9	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	0	0	0	23	2	13
5–10	0	0	.....	0	0	0	0	2	0
10–15	0	0	.....	6	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
> 25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 7

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	0	0	5	3	N.A.
5–10	0	0	0	0	0	0	0	0	N.A.
10–15	0	0	0	0	0	0	0	0	N.A.
15–20	0	0	0	0	0	0	0	0	N.A.
20–25	0	0	0	0	0	0	0	0	N.A.
> 25	0	0	0	0	0	0	0	0	N.A.
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	5	0	0	0	0	04	N.A.	N.A.	N.A.
5–10	1	0	0	0	0	01	N.A.	N.A.	N.A.
10–15	0	0	0	0	0	0	N.A.	N.A.	N.A.
15–20	0	0	0	0	0	0	N.A.	N.A.	N.A.
20–25	0	0	0	0	0	0	N.A.	N.A.	N.A.
> 25	0	0	0	0	0	0	N.A.	N.A.	N.A.
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	N.A.	N.A.	16	39	77	54	8	32	0
5–10	N.A.	N.A.	27	56	75	34	4	13	0
10–15	N.A.	N.A.	20	32	19	9	5	5	0
15–20	N.A.	N.A.	17	18	10	2	0	0	0
20–25	N.A.	N.A.	6	14	0	0	0	0	0
> 25	N.A.	N.A.	13	52	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	3	3	0	0	0	0	0	0	

TABLE II–11.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1 2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 2: 1-HR ''ALL GRID CELLS''—Continued

5–10	0	0	0	0	0	0	0	0	
10–15	0	0	0	0	0	0	0	0	
15–20	0	0	0	0	0	0	0	0	
20–25	0	0	0	0	0	0	0	0	
> 25	0	0	0	0	0	0	0	0	

Number of Impacts from SubRegion 8

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	2	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	2	0	3	4	0	3	19	5
5–10	0	0	0	0	1	0	0	1	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	28	0	40	N.A.	0	N.A.	N.A.	13	0
5–10	6	0	23	N.A.	0	N.A.	N.A.	18	0
10–15	1	0	5	N.A.	0	N.A.	N.A.	45	0
15–20	1	0	8	N.A.	0	N.A.	N.A.	47	0
20–25	0	0	2	N.A.	0	N.A.	N.A.	7	0
> 25	0	0	3	N.A.	0	N.A.	N.A.	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	3	0	13	0	0	0	0	0	0
5–10	6	1	0	0	0	0	0	0	0
10–15	23	1	0	0	0	0	0	0	0
15–20	4	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	19	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 9

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	N.A.	27	0	0	0	0	0	0	0
5–10	N.A.	0	0	0	0	0	0	0	0
10–15	N.A.	0	0	0	0	0	0	0	0
15–20	N.A.	0	0	0	0	0	0	0	0
20–25	N.A.	0	0	0	0	0	0	0	0
> 25	N.A.	1	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	2	5	0	5	22	5
5–10	0	2	0	2	4	1	3	24	0
10–15	0	0	0	0	5	0	0	6	0
15–20	0	0	0	0	0	0	0	6	0
20–25	0	0	0	0	0	0	0	4	0
> 25	0	0	0	0	0	0	0	19	0

TABLE II–11.—NUMBER OF IMPACTS IN EACH "DOWNWIND" STATE,[1 2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 2: 1-HR "ALL GRID CELLS"—Continued

	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	44	0
5–10	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	32	0
10–15	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0
15–20	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0
20–25	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0
> 25	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	28	2	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	5	0	0	12	2	1
5–10	0	0	.....	17	0	0	11	0	0
10–15	0	0	.....	2	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
> 25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 10

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	N.A.	0	0	0	0	0	0	0
5–10	0	N.A.	0	0	0	0	0	0	0
10–15	0	N.A.	0	0	0	0	0	0	0
15–20	0	N.A.	0	0	0	0	0	0	0
20–25	0	N.A.	0	0	0	0	0	0	0
> 25	0	N.A.	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	N.A.	N.A.	N.A.	N.A.	1	0	0	0
5–10	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
10–15	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
15–20	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
20–25	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
> 25	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	0	0	0	0	0	0
5–10	0	0	.....	0	0	0	0	0	0
10–15	0	0	.....	0	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
> 25	0	0	.....	0	0	0	0	0	0

TABLE II–11.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1 2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 2: 1-HR ''ALL GRID CELLS''—Continued

Number of Impacts from SubRegion 11

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
5–10	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
10–15	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
15–20	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
20–25	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
> 25	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	1	0	11	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	7	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	38	0	0	0	0	0
5–10	0	0	.....	0	0	0	0	0	0
10–15	0	0	.....	0	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
> 25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 12

Impact (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
5–10	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
10–15	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
15–20	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
20–25	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
> 25	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	N.A.	N.A.	N.A.	8	2	18	0	0	0
5–10	N.A.	N.A.	N.A.	0	0	19	0	0	0
10–15	N.A.	N.A.	N.A.	0	0	0	0	0	0
15–20	N.A.	N.A.	N.A.	0	0	0	0	0	0
20–25	N.A.	N.A.	N.A.	0	0	0	0	0	0
> 25	N.A.	N.A.	N.A.	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0

TABLE II–11.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1 2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 2: 1-HR ''ALL GRID CELLS''—Continued

> 25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
> 25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	207	0	0	0	0	0
5–10	0	0	.....	56	0	0	0	0	0
10–15	0	0	.....	0	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	

1. N.A. (Not Applicable) indicates that all or major portions of these States are part of the subregion and thus, are not considered as being ''downwind''.
2. Codes for the Great Lakes are: LM-Lake Michigan; LS-Lake Superior; LH-Lake Huron; LE-Lake Erie; LC-Lake St. Clair; LO-Lake Ontario.

TABLE II–12.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 3: 8-HR ''VIOLATING COUNTIES''

Number of Impacts from SubRegion 1

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	N.A.	0	N.A.	N.A.	N.A.	9	25	3	5		
5–10	N.A.	0	N.A.	N.A.	N.A.	16	5	0	0		
10–15	N.A.	0	N.A.	N.A.	N.A.	1	0	0	0		
15–20	N.A.	0	N.A.	N.A.	N.A.	6	0	0	0		
20–25	N.A.	0	N.A.	N.A.	N.A.	5	0	0	0		
>25	N.A.	0	N.A.	N.A.	N.A.	1	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	1	0	14	1	22	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 2

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		

TABLE II–12.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 3: 8-HR ''VIOLATING COUNTIES''—Continued

>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	N.A.	N.A.	N.A.	13	7		
5–10	0	0	0	0	N.A.	N.A.	N.A.	2	3		
10–15	0	0	0	0	N.A.	N.A.	N.A.	0	0		
15–20	0	0	0	0	N.A.	N.A.	N.A.	0	0		
20–25	0	0	0	0	N.A.	N.A.	N.A.	0	0		
>25	0	0	0	0	N.A.	N.A.	N.A.	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	1	0	0	0	0	0	10	9	1		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	36	9	42	45	25	19	1	5	0	8	8
5–10	2	0	26	0	4	0	0	0	0	0	0
10–15	0	0	6	0	4	0	0	0	0	0	0
15–20	0	0	2	0	0	0	0	0	0	0	0
20–25	0	0	5	0	0	0	0	0	0	0	0
>25	0	0	1	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 3

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	0	0	7	0	0		
5–10	0	0	0	0	0	0	0	6	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	00	26	0		
5–10	0	0	0	0	0	0	0	7	1		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	28	N.A.	N.A.	22	N.A.	31	8	44	0	12	28
5–10	32	N.A.	N.A.	35	N.A.	38	1	25	0	1	0
10–15	7	N.A.	N.A.	35	N.A.	3	0	0	0	0	0
15–20	0	N.A.	N.A.	11	N.A.	0	0	0	0	0	0
20–25	0	N.A.	N.A.	0	N.A.	0	0	0	0	0	0
>25	0	N.A.	N.A.	0	N.A.	0	0	0	0	0	0

Number of Impacts from SubRegion 4

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		

TABLE II–12.—NUMBER OF IMPACTS IN EACH "DOWNWIND" STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 3: 8-HR "VIOLATING COUNTIES"—Continued

15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	0	0	2	0
5–10	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	11	0	6	20
10–15	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	16	0	6	6
15–20	0	N.A.	N.A.	N.A.	N.A.	N.A.	1	17	0	0	4
20–25	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	11	0	0	0
>25	0	N.A.	N.A.	N.A.	N.A.	N.A.	8	17	0	0	0

Number of Impacts from SubRegion 5

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	2	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	N.A.	0	N.A.	N.A.	21	57	N.A.	9		
5–10	0	N.A.	0	N.A.	N.A.	64	68	N.A.	3		
10–15	0	N.A.	0	N.A.	N.A.	2	10	N.A.	0		
15–20	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0		
20–25	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0		
>25	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	N.A.	0	2	3	0	0	1	6	0		
5–10	N.A.	0	4	1	0	0	0	0	0		
10–15	N.A.	0	0	0	0	0	0	0	0		
15–20	N.A.	0	0	0	0	0	0	0	0		
20–25	N.A.	0	0	0	0	0	0	0	0		
>25	N.A.	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	2	2	71	1	4	0	0	0	0	0	0
5–10	0	0	10	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 6

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		

TABLE II–12.—NUMBER OF IMPACTS IN EACH "DOWNWIND" STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 3: 8-HR "VIOLATING COUNTIES"—Continued

5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	7	N.A.	23	N.A.	N.A.	N.A.		
5–10	0	0	0	4	N.A.	20	N.A.	N.A.	N.A.		
10–15	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
15–20	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
20–25	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
>25	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	N.A.	0	0	1	0	9	44	N.A.	0		
5–10	N.A.	0	0	0	0	4	29	N.A.	0		
10–15	N.A.	0	0	0	0	0	4	N.A.	0		
15–20	N.A.	0	0	0	0	0	0	N.A.	0		
20–25	N.A.	0	0	0	0	0	1	N.A.	0		
>25	N.A.	0	0	0	0	0	1	N.A.	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	42	19	72	44	15	44	1	22	0	0	0
5–10	14	14	53	18	3	2	0	0	0	0	0
10–15	0	2	40	0	0	0	0	0	0	0	0
15–20	0	0	10	0	0	0	0	0	0	0	0
20–25	0	0	7	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 7

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	0	0	6	0	N.A.		
5–10	0	0	0	0	0	0	1	0	N.A.		
10–15	0	0	0	0	0	0	0	0	N.A.		
15–20	0	0	0	0	0	0	0	0	N.A.		
20–25	0	0	0	0	0	0	0	0	N.A.		
>25	0	0	0	0	0	0	0	0	N.A.		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	1	N.A.	N.A.	N.A.		
5–10	0	0	0	0	0	0	N.A.	N.A.	N.A.		
10–15	0	0	0	0	0	0	N.A.	N.A.	N.A.		
15–20	0	0	0	0	0	0	N.A.	N.A.	N.A.		
20–25	0	0	0	0	0	0	N.A.	N.A.	N.A.		
>25	0	0	0	0	0	0	N.A.	N.A.	N.A.		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	N.A.	N.A.	57	14	39	36	4	18	0	0	3
5–10	N.A.	N.A.	66	45	16	16	3	7	0	0	0
10–15	N.A.	N.A.	30	17	4	1	0	0	0	0	0
15–20	N.A.	N.A.	4	11	0	0	0	0	0	0	0
20–25	N.A.	N.A.	0	8	0	0	0	0	0	0	0
>25	N.A.	N.A.	0	8	0	0	0	0	0	0	0

TABLE II–12.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 3: 8-HR ''VIOLATING COUNTIES''—Continued

Number of Impacts from SubRegion 8

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	1	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	10	0	1	7	1		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	28	0	12	N.A.	0	N.A.	N.A.	10	0		
5–10	1	0	6	N.A.	0	N.A.	N.A.	12	0		
10–15	1	0	1	N.A.	0	N.A.	N.A.	6	0		
15–20	0	0	0	N.A.	0	N.A.	N.A.	1	0		
20–25	0	0	0	N.A.	0	N.A.	N.A.	0	0		
>25	0	0	0	N.A.	0	N.A.	N.A.	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	13	6	10	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 9

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	N.A.	2	5	1	0	0	0	0	0		
5–10	N.A.	0	0	0	0	0	0	0	0		
10–15	N.A.	0	0	0	0	0	0	0	0		
15–20	N.A.	0	0	0	0	0	0	0	0		
20–25	N.A.	0	0	0	0	0	0	0	0		
>25	N.A.	0	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	10	18	52	31	23	5		
5–10	0	2	0	9	11	0	2	40	0		
10–15	0	0	0	0	3	0	0	24	0		
15–20	0	0	0	0	0	0	0	2	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	14	0		
5–10	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	5	0		
10–15	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
15–20	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
20–25	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
>25	N.A.	N.A.	N.A.	N.A.	0	N.A.	N.A.	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0

TABLE II–12.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 3: 8-HR ''VIOLATING COUNTIES''—Continued

>25	0	0	0	0	0	0	0	0	0	0	0
Number of Impacts from SubRegion 10											
Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	N.A.	14	0	0	0	0	0	0		
5–10	0	N.A.	4	0	0	0	0	0	0		
10–15	0	N.A.	0	0	0	0	0	0	0		
15–20	0	N.A.	0	0	0	0	0	0	0		
20–25	0	N.A.	0	0	0	0	0	0	0		
>25	0	N.A.	0	0	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	N.A.	N.A.	N.A.	N.A.	1	0	0	0		
5–10	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
10–15	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
15–20	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
20–25	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
>25	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0
Number of Impacts from SubRegion 11											
Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
5–10	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
10–15	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
15–20	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
20–25	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
>25	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	0	1	0	9	2	2	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	2	0	5	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0

TABLE II–12.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE,[1] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 3: 8-HR ''VIOLATING COUNTIES''—Continued

15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 12

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN		
2–5	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
5–10	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
10–15	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
15–20	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
20–25	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
>25	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.		
	IA	MO	WI	IL	IN	MI	OH	KY	WV		
2–5	N.A.	N.A.	N.A.	14	7	52	0	0	0		
5–10	N.A.	N.A.	N.A.	0	0	0	0	0	0		
10–15	N.A.	N.A.	N.A.	0	0	0	0	0	0		
15–20	N.A.	N.A.	N.A.	0	0	0	0	0	0		
20–25	N.A.	N.A.	N.A.	0	0	0	0	0	0		
>25	N.A.	N.A.	N.A.	0	0	0	0	0	0		
	TN	MS	AL	GA	FL	SC	NC	VA	DC		
2–5	0	0	0	0	0	0	0	0	0		
5–10	0	0	0	0	0	0	0	0	0		
10–15	0	0	0	0	0	0	0	0	0		
15–20	0	0	0	0	0	0	0	0	0		
20–25	0	0	0	0	0	0	0	0	0		
>25	0	0	0	0	0	0	0	0	0		
	MD	DE	PA	NJ	NY	CT	RI	MA	VT	NH	ME
2–5	0	0	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0	0	0

[1] N.A. (Not Applicable) indicates that all or major portions of these States are part of the subregion and thus, are not considered as being ''downwind''.

TABLE II–13.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE [1,2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 4: 8–HR ''ALL GRID CELLS''

Number of Impacts from SubRegion 1

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	N.A.	0	N.A.	N.A.	N.A.	10	64	5	39
5–10	N.A.	0	N.A.	N.A.	N.A.	20	8	0	0
10–15	N.A.	0	N.A.	N.A.	N.A.	5	0	0	0
15–20	N.A.	0	N.A.	N.A.	N.A.	11	0	0	0
20–25	N.A.	0	N.A.	N.A.	N.A.	10	0	0	0
>25	N.A.	0	N.A.	N.A.	N.A.	1	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	0	0	0	0	0	1	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0

TABLE II–13.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE [1,2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 4: 8–HR ''ALL GRID CELLS''—Continued

15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	1	0	20	3	36	0	1	0	0
5–10	0	0	0	01	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–2	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	0	0	24	65	0	64
5–10	0	0	.....	0	0	13	25	3	4
10–15	0	0	.....	0	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	1	0	0	0	0	0
>25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 2

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	N.A.	N.A.	N.A.	18	69
5–10	0	0	0	0	N.A.	N.A.	N.A.	2	39
10–15	0	0	0	0	N.A.	N.A.	N.A.	0	0
15–20	0	0	0	0	N.A.	N.A.	N.A.	0	0
20–25	0	0	0	0	N.A.	N.A.	N.A.	0	0
>25	0	0	0	0	N.A.	N.A.	N.A.	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	2	0	0	0	0	0	11	20	1
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	56	11	89	70	34	20	1	9	0
5–10	2	0	46	2	10	0	0	0	0
10–15	0	0	7	0	8	0	0	0	0
15–20	0	0	3	0	3	0	0	0	0
20–25	0	0	5	0	1	0	0	0	0
>25	0	0	1	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	9	12	.....	1	0	0	0	0	20
5–10	0	0	.....	0	0	0	0	0	32
10–15	0	0	.....	0	0	0	1	0	17
15–20	0	0	.....	0	0	0	10	0	1
20–25	0	0	.....	0	0	0	13	0	0
>25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 3

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0

TABLE II–13.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE [1,2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 4: 8–HR ''ALL GRID CELLS''—Continued

5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	0	0	10	0	25
5–10	0	0	0	0	0	0	6	0	19
10–15	0	0	0	0	0	0	0	0	7
15–20	0	0	0	0	0	0	0	0	1
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	0	0	0	0	0	76	0
5–10	0	0	0	0	0	0	0	32	1
10–15	0	0	0	0	0	0	0	4	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	82	N.A.	N.A.	83	N.A.	34	16	96	0
5–10	44	N.A.	N.A.	51	N.A.	40	1	30	0
10–15	13	N.A.	N.A.	41	N.A.	4	0	0	0
15–20	1	N.A.	N.A.	12	N.A.	0	0	0	0
20–25	0	N.A.	N.A.	0	N.A.	0	0	0	0
>25	0	N.A.	N.A.	0	N.A.	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	21	84	.....	0	0	0	0	0	4
5–10	4	8	.....	0	0	0	0	0	6
10–15	0	0	.....	0	0	0	0	0	15
15–20	0	0	.....	0	0	0	0	0	35
20–25	0	0	.....	0	0	0	0	0	8
>25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 4

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
25	0	0	0	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–2	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	0	0

TABLE II–13.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE [1,2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 4: 8–HR ''ALL GRID CELLS''—Continued

5–10	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	42	0
10–15	0	N.A.	N.A.	N.A.	N.A.	N.A.	0	38	0
15–20	0	N.A.	N.A.	N.A.	N.A.	N.A.	1	22	0
20–25	0	N.A.	N.A.	N.A.	N.A.	N.A.	4	15	0
>25	0	N.A.	N.A.	N.A.	N.A.	N.A.	12	17	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	3	0	.....	0	0	0	0	0	0
5–10	10	32	.....	0	0	0	0	0	0
10–15	11	42	.....	0	0	0	0	0	0
15–20	2	21	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
>25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 5

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	3	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	N.A.	0	N.A.	N.A.	26	122	N.A.	101
5–10	0	N.A.	0	N.A.	N.A.	89	132	N.A.	22
10–15	0	N.A.	0	N.A.	N.A.	7	16	N.A.	0
15–20	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0
20–25	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0
>25	0	N.A.	0	N.A.	N.A.	0	0	N.A.	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	N.A.	1	8	9	0	0	2	19	0
5–10	N.A.	0	8	2	0	0	0	0	0
10–15	N.A.	0	0	0	0	0	0	0	0
15–20	N.A.	0	0	0	0	0	0	0	0
20–25	N.A.	0	0	0	0	0	0	0	0
>25	N.A.	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	20	3	163	4	12	0	0	0	0
5–10	5	0	24	0	1	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	75	0	32	63	0	54
5–10	0	0	.....	86	0	9	31	3	0
10–15	0	0	.....	17	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
>25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 6

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0

TABLE II–13.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE [1,2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 4: 8–HR ''ALL GRID CELLS''—Continued

	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	7	N.A.	31	N.A.	N.A.	N.A.
5–10	0	0	0	4	N.A.	31	N.A.	N.A.	N.A.
10–15	0	0	0	0	N.A.	1	N.A.	N.A.	N.A.
15–20	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.
20–25	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.
>25	0	0	0	0	N.A.	0	N.A.	N.A.	N.A.
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	N.A.	0	0	1	0	20	70	N.A.	0
5–10	N.A.	0	0	0	0	9	47	N.A.	0
10–15	N.A.	0	0	0	0	0	8	N.A.	0
15–20	N.A.	0	0	0	0	0	0	N.A.	0
20–25	N.A.	0	0	0	0	0	1	N.A.	0
>25	N.A.	0	0	0	0	0	1	N.A.	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	95	39	92	77	21	47	1	22	0
5–10	46	15	104	20	3	2	0	0	0
10–15	15	2	94	0	0	0	0	0	0
15–20	6	0	23	0	0	0	0	0	0
20–25	0	0	13	0	0	0	0	0	0
>25	0	0	1	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	52	0	27	51	0	40
5–10	0	0	.....	84	0	12	12	0	1
10–15	0	0	.....	0	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
>25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 7

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	0	0	0	0	0	0
5–1	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	0	0	9	0	N.A.
5–10	0	0	0	0	0	0	1	0	N.A.
10–15	0	0	0	0	0	0	0	0	N.A.
15–20	0	0	0	0	0	0	0	0	N.A.
20–25	0	0	0	0	0	0	0	0	N.A.
>25	0	0	0	0	0	0	0	0	N.A.
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	0	0	0	2	N.A.	N.A.	N.A.
5–10	0	0	0	0	0	0	N.A.	N.A.	N.A.
10–15	0	0	0	0	0	0	N.A.	N.A.	N.A.
15–20	0	0	0	0	0	0	N.A.	N.A.	N.A.
20–25	0	0	0	0	0	0	N.A.	N.A.	N.A.
>25	0	0	0	0	0	0	N.A.	N.A.	N.A.
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	N.A.	N.A.	117	18	44	37	7	39	0
5–10	N.A.	N.A.	120	59	20	17	4	12	0
10–15	N.A.	N.A.	35	32	18	2	0	0	0
15–20	N.A.	N.A.	4	31	0	0	0	0	0
20–25	N.A.	N.A.	0	12	0	0	0	0	0
>25	N.A.	N.A.	0	35	0	0	0	0	0

TABLE II–13.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE[1,2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 4: 8–HR ''ALL GRID CELLS''—Continued

	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	5	37	.....	0	0	0	0	0	0
5–10	0	0	.....	0	0	0	0	0	0
10–15	0	0	.....	0	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
>25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 8

Impacts (ppb)	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	1	0	0	0	0	0	0	0	0
5–1	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	15	0	1	24	1
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	53	0	46	N.A.	0	N.A.	N.A.	27	0
5–10	9	0	27	N.A.	0	N.A.	N.A.	79	0
10–15	1	0	2	N.A.	0	N.A.	N.A.	38	0
15–20	0	0	0	N.A.	0	N.A.	N.A.	21	0
20–25	0	0	0	N.A.	0	N.A.	N.A.	6	0
>25	0	0	0	N.A.	0	N.A.	N.A.	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	31	8	32	26	0	0	0	0	0
5–10	18	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	0	0	0	0	0	0
5–10	0	0	.....	0	0	0	0	0	0
10–15	0	0	.....	0	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
>25	0	0	.....	0	0	0	0	0	0

Number of Impacts from SubRegion 9

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	N.A.	0	3	5	0	0	0	0	0
5–10	N.A.	0	0	0	0	0	0	0	0
10–15	N.A.	0	0	0	0	0	0	0	0
15–20	N.A.	0	0	0	0	0	0	0	0
20–25	N.A.	0	0	0	0	0	0	0	0
>25	N.A.	0	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	10	22	70	67	73	26
5–10	0	2	0	21	38	0	2	116	0
10–15	0	0	0	1	9	0	0	57	0
15–20	0	0	0	0	0	0	0	8	0
20–25	0	0	0	0	0	0	0	2	0

TABLE II–13.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE [1,2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 4: 8–HR ''ALL GRID CELLS''—Continued

>25	0	0	0	0	0	0	0	2	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	47	0
5–10	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	18	0
10–15	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	0	0
15–20	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	0	0
20–25	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	0	0
>25	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	6	0	9	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	1	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	0	59	0	0	6	3	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	1	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0

Number of Impacts from SubRegion 10

Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	N.A.	3	14	0	0	0	0	0
5–10	0	N.A.	14	4	0	0	0	0	0
10–15	0	N.A.	4	0	0	0	0	0	0
15–20	0	N.A.	0	0	0	0	0	0	0
20–25	0	N.A.	0	0	0	0	0	0	0
>25	0	N.A.	0	0	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	1	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	4	N.A.	N.A.	N.A.	N.A.	6	0	0	0
5–10	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
10–15	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
15–20	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
20–25	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
>25	0	N.A.	N.A.	N.A.	N.A.	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	1	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	1	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0

TABLE II–13.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE [1,2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 4: 8–HR ''ALL GRID CELLS''—Continued

>25	0	0	0	0	0	0	0	0	0
Number of Impacts from SubRegion 11									
Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
5–10	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
10–15	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
15–20	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
20–25	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
>25	N.A.	N.A.	N.A.	N.A.	0	0	0	0	0
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	0	1	0	15	2	2	0	6	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	6	0	5	0	0	0	0	0	0
5–10	0	2	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
≤ 25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	0	0	0	0	0	0
5–10	0	0	.....	0	0	0	0	0	0
10–15	0	0	.....	0	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
>25	0	0	.....	0	0	0	0	0	0
Number of Impacts from SubRegion 12									
Impacts (ppb):	AR	LA	TX	OK	KS	NE	SD	ND	MN
2–5	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
5–10	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
10–15	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
15–20	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
20–25	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
>25	0	0	0	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
	IA	MO	WI	IL	IN	MI	OH	KY	WV
2–5	N.A.	N.A.	N.A.	17	7	74	0	6	0
5–10	N.A.	N.A.	N.A.	0	0	0	0	0	0
10–15	N.A.	N.A.	N.A.	0	0	0	0	0	0
15–20	N.A.	N.A.	N.A.	0	0	0	0	0	0
20–25	N.A.	N.A.	N.A.	0	0	0	0	0	0
>25	N.A.	N.A.	N.A.	0	0	0	0	0	0
	TN	MS	AL	GA	FL	SC	NC	VA	DC
2–5	0	0	0	0	0	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0

TABLE II–13.—NUMBER OF IMPACTS IN EACH ''DOWNWIND'' STATE [1,2] BY IMPACT CONCENTRATION RANGE FOR EACH SUBREGION—APPROACH 4: 8–HR ''ALL GRID CELLS''—Continued

15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	MD	DE	PA	NJ	NY	CT	RI	MA	VT
2–5	0	0	0	0	1	0	0	0	0
5–10	0	0	0	0	0	0	0	0	0
10–15	0	0	0	0	0	0	0	0	0
15–20	0	0	0	0	0	0	0	0	0
20–25	0	0	0	0	0	0	0	0	0
>25	0	0	0	0	0	0	0	0	0
	NH	ME	blank	LM	LS	LH	LE	LC	LO
2–5	0	0	.....	125	0	0	6	0	0
5–10	0	0	.....	0	0	0	0	0	0
10–15	0	0	.....	0	0	0	0	0	0
15–20	0	0	.....	0	0	0	0	0	0
20–25	0	0	.....	0	0	0	0	0	0
>25	0	0	.....	0	0	0	0	0	0

[1] N.A. (Not Applicable) indicates that all or major portions of these States are part of the subregion and thus, are not considered as being ''downwind''.

[2] Codes for the Great Lakes are: LM—Lake Michigan; LS—Lake Superior; LH—Lake Huron; LE—Lake Erie; LC—Lake St Clair; LO—Lake Ontario.

TABLE II–14a.—PERCENT OF 2007 STATE TOTAL NO_X EMISSIONS BY SUBREGION

	Percent of State Emissions in Each Subregion												
	SUBR–1	SUBR–2	SUBR–3	SUBR–4	SUBR–5	SUBR–6	SUBR–7	SUBR–8	SUBR–9	SUBR–10	SUBR–11	SUBR–12	OTHER
TX	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00	.....	.....
OH	.....	33.30	.....	.....	.....	66.70	.....	.....	.....	.....	.....	.....	.....
PA	.....	0.30	79.05	20.61	.....	0.04	.....	.....	.....	.....	.....	.....	.....
IL	49.45	.....	.....	.....	50.53	.....	.....	.....	.....	.....	.....	0.02	.....
FL	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00	.....	.....	.....
LA	.....	.....	.....	.....	.....	.....	.....	.....	.....	40.99	59.01	.....	.....
MI	8.68	83.32	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	8.00
IN	28.70	7.03	.....	.....	41.68	22.59	.....	.....	.....	.....	.....	.....	.....
TN	.....	.....	.....	.....	16.71	10.09	.....	0.63	72.58	.....	.....	.....	.....
GA	.....	.....	.....	.....	.....	.....	.....	6.47	74.19	19.34	.....	.....	.....
NY	.....	.....	31.09	49.56	.....	.....	.....	.....	.....	.....	.....	.....	19.35
KY	.....	.....	.....	.....	39.00	61.00	.....	.....	.....	.....	.....	.....	.....
AL	.....	.....	.....	.....	.....	.....	.....	.....	73.40	26.60	.....	.....	.....
NC	.....	.....	.....	.....	.....	0.74	13.14	78.04	8.08	.....	.....	.....	.....
VA	.....	.....	.....	.....	.....	7.72	92.20	.....	.....	.....	.....	.....	0.08
WV	.....	.....	3.70	.....	.....	74.64	21.66	.....	.....	.....	.....	.....	.....
NJ	.....	.....	0.81	98.98	.....	.....	0.21	.....	.....	.....	.....	.....	.....
MO	.....	.....	.....	.....	43.60	.....	.....	.....	0.61	.....	.....	55.78	.....
OK	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	86.99	13.01	.....
KS	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00	.....
SC	.....	.....	.....	.....	.....	.....	.....	93.12	6.44	0.43	.....	.....	.....
MS	.....	.....	.....	.....	.....	.....	.....	.....	49.69	45.56	4.75	.....	.....
WI	87.53	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	6.02	6.45
MD	.....	.....	3.11	0.48	.....	.....	96.12	.....	.....	.....	.....	.....	0.29
MN	0.30	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	99.70	.....
IA	22.97	.....	.....	.....	2.73	.....	.....	.....	.....	.....	.....	74.30	.....
MA	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00
AR	.....	.....	.....	.....	0.40	.....	.....	.....	10.54	.....	85.36	3.71	.....
NE	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00	.....
CT	.....	.....	.....	96.60	.....	.....	.....	.....	.....	.....	.....	.....	3.40
ME	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00
NH	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00
DE	.....	.....	33.57	23.69	.....	.....	42.74	.....	.....	.....	.....	.....	.....
SD	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00	.....
RI	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00
VT	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00
ND	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	100.00	.....
DC	.....	.....	.....	.....	.....	.....	100.00	.....	.....	.....	.....	.....	.....

TABLE II–14b.—PERCENT 2007 BASELINE NO_X Emissions by Subregion, by State

Subregion/State	Percent of subregion total NO_X
1:	
Illinois	39.50
Indiana	19.49
Iowa	5.63
Michigan	6.39
Minnesota	0.07
Wisconsin	28.90
Percent of Domain Total	6.21
2:	
Indiana	4.69
Michigan	60.19
Ohio	27.60
Pennsylvania	0.23
Canada	7.29
Percent of Domain Total	6.34
3:	
Delaware	2.27
Maryland	0.92
New Jersey	0.34
New York	18.62
Pennsylvania	66.51
West Virginia	1.69
Canada	9.63
Percent of Domain Total	5.91
4:	
Connecticut	12.15
Delaware	1.55
Maryland	0.14
New Jersey	40.56
New York	28.79
Pennsylvania	16.81
Percent of Domain Total	6.09
5:	
Arkansas	0.08
Illinois	34.35
Indiana	24.09
Iowa	0.57
Kentucky	17.42
Missouri	14.04
Tennessee	9.45
Percent of Domain Total	7.30
6:	
Illinois	0.00
Indiana	10.45
Kentucky	21.80
North Carolina	0.25
Ohio	38.39
Pennsylvania	0.02
Tennessee	4.57

TABLE II–14b.—PERCENT 2007 BASELINE NO_X Emissions by Subregion, by State—Continued

Subregion/State	Percent of subregion total NO_X
Virginia	2.39
West Virginia	22.12
Percent of Domain Total	9.12
7:	
Delaware	3.06
District of Col	2.01
Maryland	30.20
New Jersey	0.09
North Carolina	7.34
Pennsylvania	0.00
Virginia	46.78
West Virginia	10.50
Percent of Domain Total	5.57
8:	
Georgia	5.05
North Carolina	51.88
Pennsylvania	0.00
South Carolina	42.52
Tennessee	0.55
Percent of Domain Total	4.69
9:	
Alabama	24.11
Arkansas	1.55
Georgia	28.23
Louisiana	0.00
Mississippi	10.71
Missouri	0.15
North Carolina	2.62
South Carolina	1.44
Tennessee	31.20
Percent of Domain Total	9.61
10:	
Alabama	8.90
Florida	50.02
Georgia	7.50
Louisiana	19.91
Mississippi	10.00
South Carolina	0.10
Off Shore	3.57
Percent of Domain Total	9.43
11:	
Arkansas	7.96
Louisiana	17.88
Mississippi	0.65
Oklahoma	13.09
Texas	57.47
Off Shore	2.95
Percent of Domain Total	15.11
12:	
Arkansas	0.67

TABLE II–14b.—PERCENT 2007 BASELINE NO_X Emissions by Subregion, by State—Continued

Subregion/State	Percent of subregion total NO_X
Illinois	0.02
Iowa	14.52
Kansas	27.99
Minnesota	19.95
Missouri	16.82
Nebraska	9.96
North Dakota	1.47
Oklahoma	3.79
South Dakota	3.22
Wisconsin	1.58
Percent of Domain Total	17.80

Table II–15.—Estimate of Local Control Cost Avoided by OTAG Strategy [1, 2]

23–Jurisdictions VOC Emission Reductions Avoided: 513,000 (tpy)

Low-end Local VOC Removal Cost per ton: $2,400 (Average cost of local VOC measures selected in RIA)

High-end Local VOC Removal Cost per ton: $10,000 (Integrated Implementation Plan limit)

23–Jurisdictions NO_X Emission Reductions Avoided: 767,000 (tpy)

Low-end Local NO_X Removal Cost per ton: $2,200 (Average cost of local VOC measures selected in RIA)

High-end Local NO_X Removal Cost per ton: $10,000 (Integrated Implementation Plan limit)

23—Jurisdiction Local VOC Removal Cost Avoided (million 1990$): Low-end $1,231; High-end $5,131

23—Jurisdiction Local NO_X Removal Cost Avoided (million 1990$): Low-end $1,687; High-end $7,671

23—Jurisdiction Total Removal Cost Avoided (million 1990$): Low-end $2,918; High-end $12,802

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[1] The emission reductions avoided are assessed assuming a slightly different regional NO_X strategy than the strategy analyzed in this notice. However, the results here are nonetheless illustrative of the potential savings associated with a similar regional NO_X strategy.

[2] To inflate cost estimates, use CPI inflator: 1990 to 1995=1.17; 1990 to 1996=1.20

Appendix D—Figures for Section II.

Weight of Evidence Determination of Significant Contribution

Figure II–1. OTAG Modeling Domain.

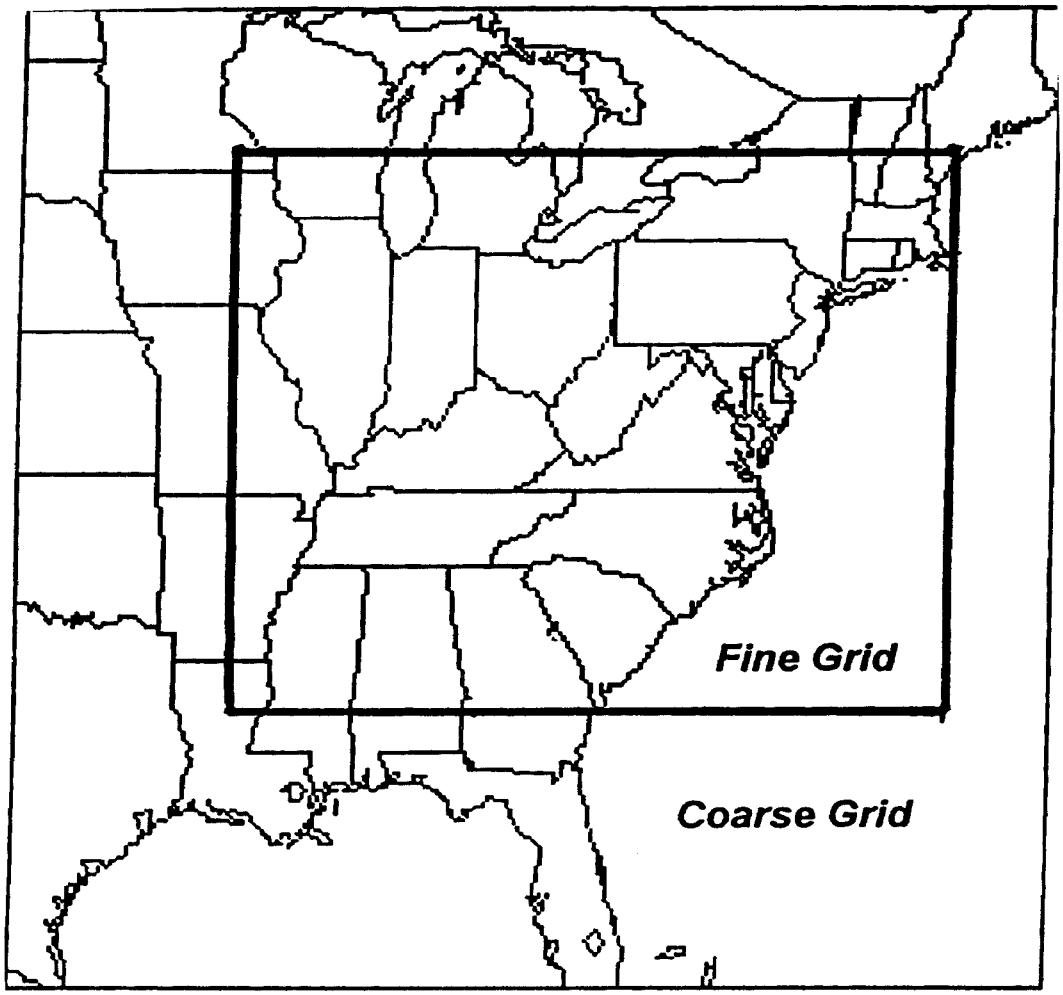


Figure II–2.—Location of Subregions.

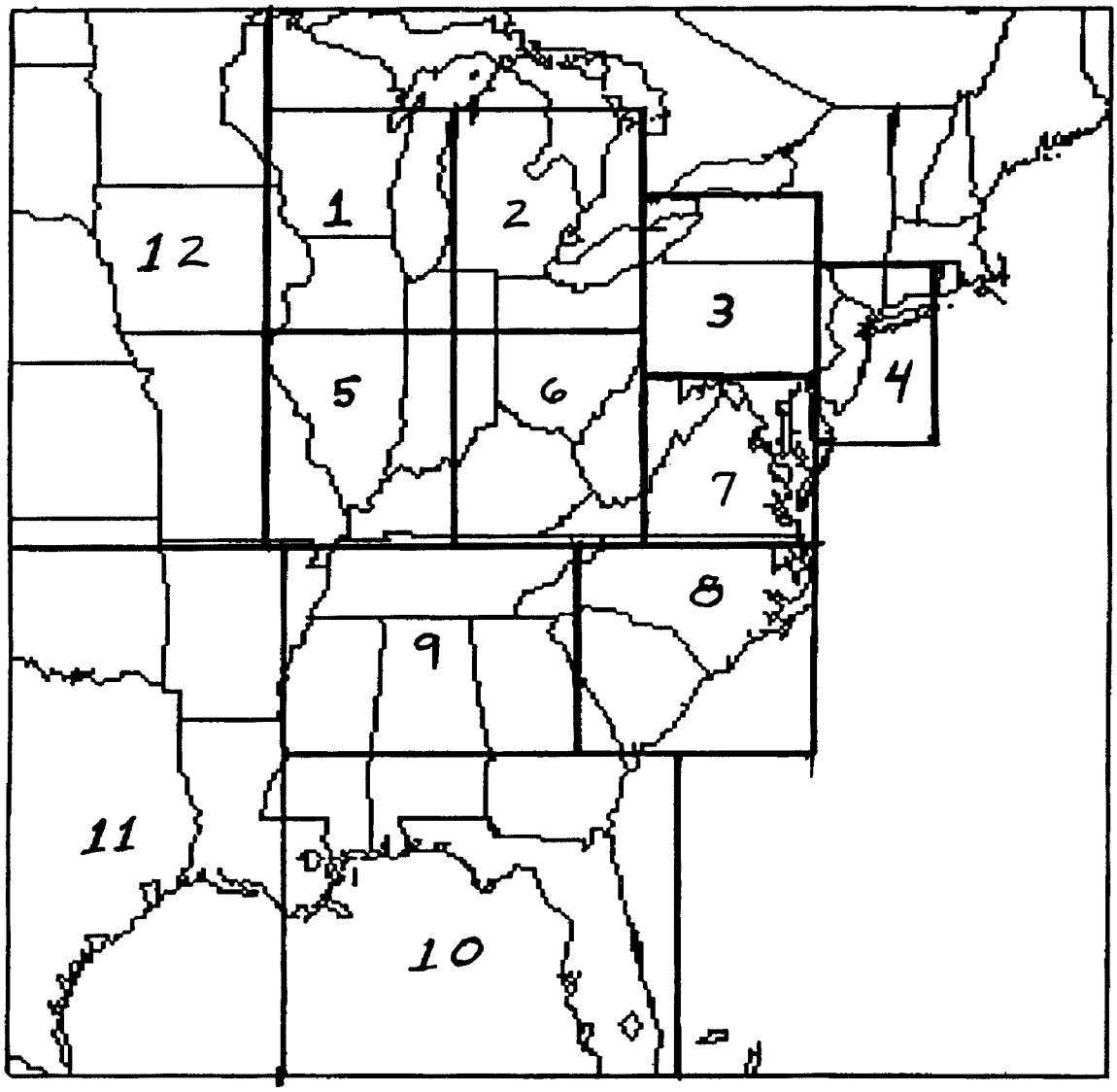


Figure II–3.—OTAG Round 3 Geographic Zones (shaded areas are 3 ''major'' nonattainment areas).

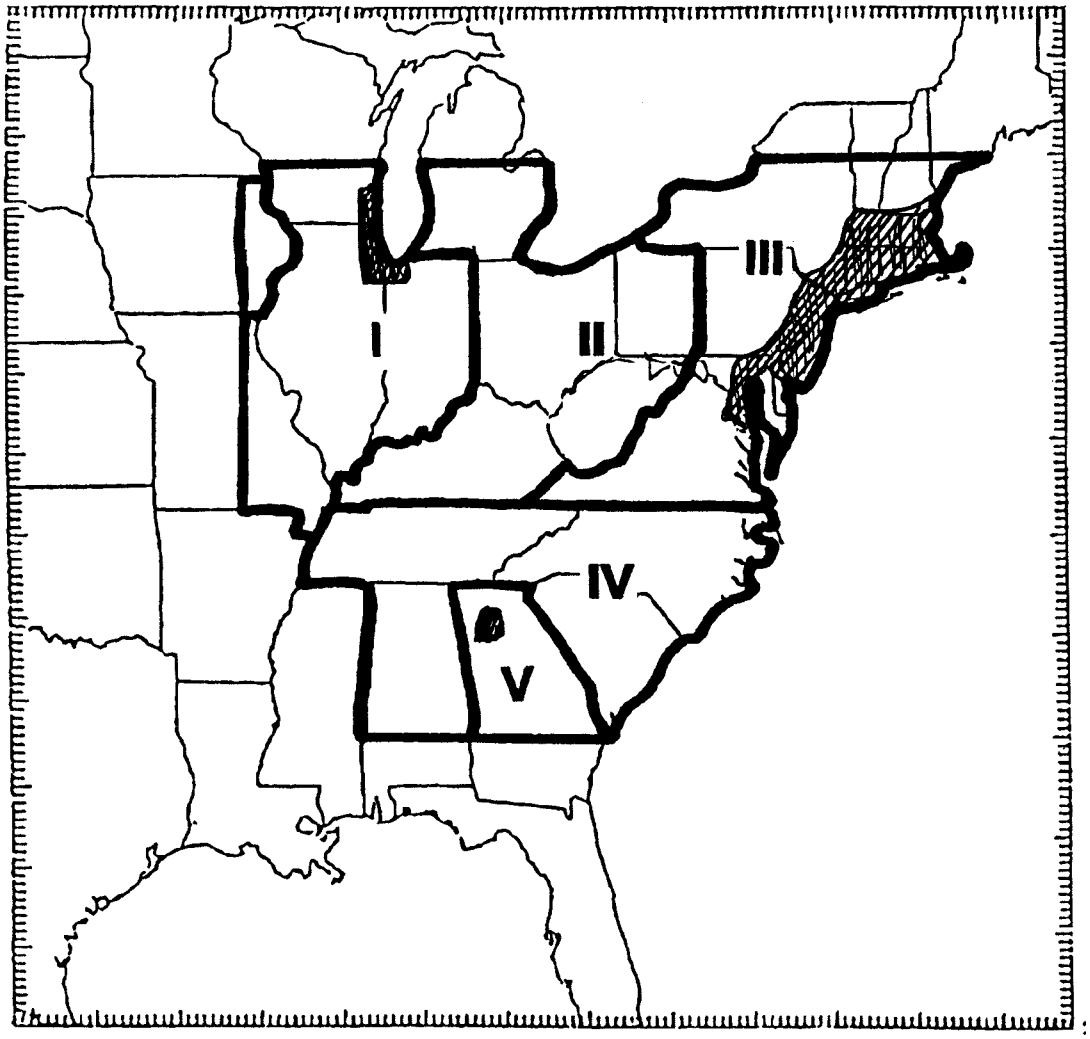
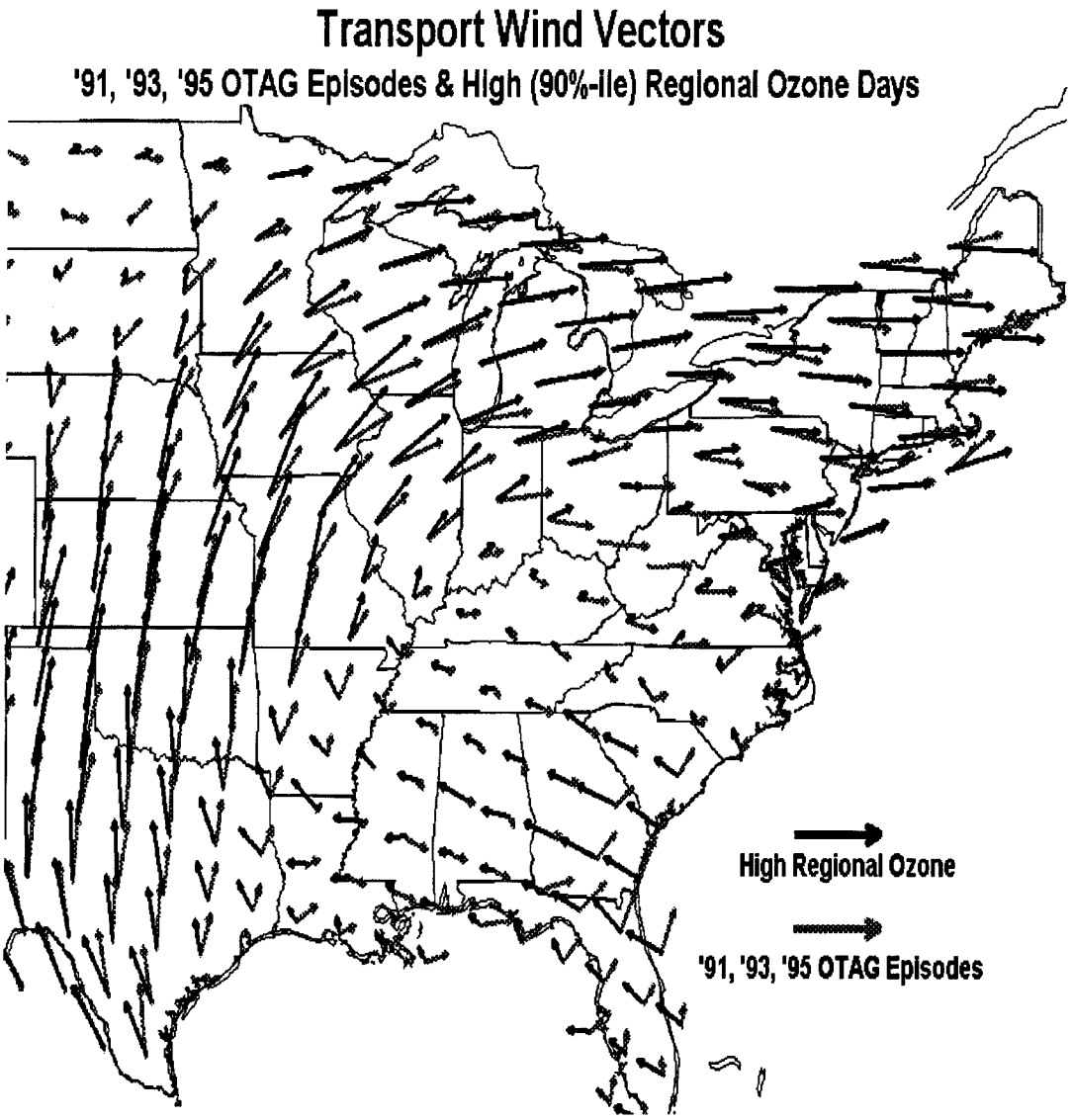


Figure II–4.—Transport Wind Vectors During Regionally High Ozone Days.



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Appendix E—Control Strategies Contained in Model Run 5 of the Ozone Transport Assessment Group

Utility

Mandated CAA controls

- Acid Rain Controls (Phase 1 & 2 for all boiler types)
- RACT & NSR in nonattainment areas (NAAs) without waivers

Additional controls

- OTC NO_X MOU (Phase II)
- 85 percent reduction from 1990 rate or rate-base of 0.15 lb/mmbtu for all units, whichever is less stringent

Non-Utility Point Sources

Mandated CAA controls

- RACT at major sources in NAAs without waivers
- 250 Ton PSD and NSPS (not modeled)
- NSR in NAAs without waivers (not modeled)
- CTG & Non-CTG RACT at major sources in NAAs & throughout OTC
- New Source LAER & Offsets for NAAs (not modeled)
- ''9 percent by 99'' ROP Measures (VOC or NO_X) for serious and above areas

Additional controls

- NO_X Controls based on cost per ton of reduction (< $1,000 per ton)—primarily LNB technology

Nonroad Mobile

Mandated CAA controls

- Federal Phase II Small Engine Standards
- Federal Marine Engine Standards
- Federal HDV (>=50 hp) Standards—Phase 1
- Federal RFG II (statutory and opt-in areas)
- 9.0 RVP maximum elsewhere in OTAG
- ''9 percent by 99'' ROP Measures(VOC or NO_X) for serious and above areas

Additional controls

- Federal Locomotive Standards (including rebuilds)
- HD Engine 4gm Standard

Highway Mobile

Mandated CAA controls

- Tier 1 light-duty and heavy-duty Standards
- Federal reformulated gas (RFG II) (statutory and opt-in areas)
- High Enhanced I/M (serious and above areas)
- Low Enhanced I/M for rest of OTR
- Basic I/M (mandated areas)
- Clean Fuel Fleets (mandated areas)
- 9.0 RVP maximum elsewhere in OTAG
- On board vapor recovery

Additional controls

- National LEV
- Heavy Duty Vehicle 2 gm Standard
- Federal Test Procedure (FTP) revisions
- ''9 percent by 99'' ROP Measures (if substitute for VOC) in serious and above areas

Other Area Source Controls

Mandated CAA controls

- Two Phases of Consumer & Commercial Products & One Phase of Architectural Coatings
- Stage 1 & 2 Petroleum Distribution Controls—NAAs
- Autobody, Degreasing & Dry Cleaning Controls in NAAs
- ''9 percent by 99'' ROP Measures (VOC or NO_X) (serious and above areas)

[FR Doc. 97–28932 Filed 11–6–97; 8:45 am]

BILLING CODE 6560–50–P–M

Friday
November 7, 1997

Part III

Pension Benefit Guaranty Corporation

29 CFR Parts 4001, 4006, 4022, 4041, 4050

Termination of Single-Employer Plans; Final Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4006, 4022, 4041, 4050

RIN 1212–AA82

Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its termination regulation to extend deadlines, to otherwise simplify the standard termination process, and to ensure that participants receive information on state guaranty association coverage of annuities.

EFFECTIVE DATE: January 1, 1998. This rule is applicable to terminations for which the first notice of intent to terminate is issued on or after January 1, 1998. Certain provisions of the rule that provide increased flexibility during the termination process apply to pending terminations, as explained under Applicability of Final Rule in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024 (800–877–8339 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Background

A single-employer plan covered by the PBGC's insurance program may be voluntarily terminated only in a standard or distress termination. The rules governing voluntary terminations are in section 4041 of the Employee Retirement Income Security Act of 1974 and part 4041 of the PBGC's regulations.

On March 14, 1997, the PBGC published a proposed rule (62 FR 12508) revising and simplifying the standard termination process and making a limited number of conforming changes to the distress termination and premium regulations, as well as conforming and simplifying changes to the missing participants regulation. The proposal was developed after conducting focus groups with plan practitioners and took into account participant concerns and the PBGC's experience.

The proposed regulation extended certain standard termination deadlines—most significantly the deadlines for filing the standard termination notice (Form 500) and for distributing benefits after receiving a determination letter from the Internal Revenue Service (IRS)—and gave the PBGC discretion to extend these and other deadlines.

The final regulation generally follows the proposed regulation. The commenters commended the PBGC for extending deadlines, but raised some technical and other issues. The PBGC has carefully considered all comments. The following includes a discussion of the major comments and the significant changes from the proposed regulation.

Notice of Intent To Terminate

One commenter suggested that the notice of intent to terminate include a copy of the summary plan description. Plan administrators are required to provide participants and beneficiaries with the summary plan description periodically and upon request pursuant to section 104(b) of ERISA. The final regulation requires plan administrators to include in the notice of intent to terminate a statement as to how a participant or beneficiary can get the summary plan description under section 104(b).

Another commenter suggested that the PBGC specify different information requirements for the notice in the case of affected parties discovered long after the termination process is complete. The PBGC has not adopted the suggestion because tailoring the information requirements depending on the passage of time would be unnecessarily complicated.

The PBGC received a number of inquiries, including a comment on the proposed rule, about the relationship between the notice of intent to terminate and section 204(h) of ERISA, and about the proposed requirement that the notice of intent to terminate address whether accruals have been or will be frozen.

The final regulation, like the proposed regulation, requires that the notice of intent to terminate make clear when, and under what circumstances, accruals cease. The notice of intent to terminate, in and of itself, does not constitute a section 204(h) notice. If the termination is successfully completed, the plan will be deemed to satisfy section 204(h) not later than the termination date, and therefore there will be no post-termination date accruals (see Treas. Reg. § 1.411(d)–6T, Q&A 14(a)). The deeming rule does not apply if the plan does not successfully complete the termination process. In addition, the deeming rule will not cause accruals to stop before the termination date. In order for accruals to cease before the termination date, the plan administrator must provide a notice that satisfies section 204(h). The notice may be provided separately or with or as part of the notice of intent to terminate.

The final regulation provides that the notice of intent to terminate (and the notice of plan benefits) must be issued to each person who becomes a beneficiary of a deceased participant or an alternate payee after the proposed termination date and on or before the distribution date. (The notice will be saved from being untimely, provided the ''after-discovered affected parties'' requirements are satisfied.)

Notice of Plan Benefits

While the proposed regulation did not make substantive changes to the existing requirements for the content of the notice of plan benefits, there were several comments and questions about this notice. The notice of plan benefits is designed to facilitate the ability of participants and beneficiaries to determine whether their benefit calculations are correct before all plan assets are distributed.

One commenter asked what actions are required when necessary personal data is unavailable. The final regulation requires the plan administrator to provide the best available data, to inform the affected party of any personal data needed to calculate a benefit that is not available, and to give the affected party an opportunity to supply it and to correct any information he or she believes to be incorrect.

Another commenter suggested eliminating the personal data requirement for persons who have already received a prior benefit notice (*e.g.*, a terminated vested participant) and asked whether personal data should be provided in the form of ''root data'' or ''derived data.'' To facilitate the ability of participants and beneficiaries to review benefit calculations at the time of termination, the final regulation retains the requirement that personal data be provided in all cases except where a participant or beneficiary has been in pay status for more than one year. The final regulation continues to give plan administrators the flexibility to provide personal data in the form they consider to be most useful.

The same commenter also suggested that the PBGC drop the existing requirement to provide information about alternative benefit forms (because it is available in the summary plan description) and actuarial adjustment factors (because it is not provided by ongoing plans and is difficult for affected parties to understand). The final regulation retains this requirement, thereby keeping in a single document

key information that helps affected parties (or their advisors) check the accuracy of benefit calculations.

To further ensure that the notice of plan benefits provides affected parties with adequate information to check their benefit calculations, the final regulation requires that, for benefits that will or may be paid in lump sum form, the plan administrator must specify the mortality table used to convert the benefit, describe the interest rate to be used to convert to the lump sum benefit (*e.g.*, the 30-year Treasury rate for the third month before the month in which the lump sum is distributed), and (if known) provide the applicable interest rate. This information will enable affected parties to ensure that plan administrators are using permissible interest and mortality assumptions in calculating lump sums.

State Guaranty Information

The proposed regulation, in response to a General Accounting Office recommendation, required plan administrators to include with the notice of identity of insurer a general explanation of state guaranty coverage and state-by-state information (addresses, telephone numbers, and coverage limits for each state). The proposed forms and instructions package included all of the required information so that plan administrators could copy it and provide it to affected parties.

Several commenters thought the information on state guaranty coverage was burdensome and not useful. They argued that the majority of participants elect lump sums, and that participants who choose annuities do not need the information unless and until the annuity provider experiences financial difficulty. On the other hand, a participant organization did not believe the notice went far enough in clearly informing participants of the consequences of insurance company failure (in particular that, in certain limited circumstances, they may not receive state guaranty protection).

Basic information about state guaranty coverage is useful at the time of plan termination. Participants who understand the potential consequences of the plan administrator's selection of an insurer can make better informed decisions as to the form of their benefit and whether to bring any concerns about a particular insurer to the attention of the plan administrator.

The final regulation retains the state guaranty information requirement with some modifications. Plan administrators must still provide a general explanation of state guaranty coverage. (A model notice is included in the forms and instructions package.) The notice must inform affected parties that a guaranty association is responsible for all, part, or none of the annuity if the insurance company cannot pay. While the detailed state-by-state information is not required, the notice must include a statement generally describing applicable dollar coverage limits, and must also inform affected parties how they can obtain the addresses and telephone numbers of state guaranty association offices from the PBGC. The PBGC intends to maintain a current list of these addresses and telephone numbers on its home page and to respond to inquiries for this information so that affected parties may obtain current information whenever it is most useful to them.

Closeout of Plan

Several commenters addressed the statement in the proposed rule that the PBGC intends to audit insurer selections for compliance with Title I fiduciary standards and to take appropriate corrective action, with one specifically questioning the PBGC's statutory authority for this statement. One commenter suggested that the PBGC periodically publish a list of ''safe-harbor'' insurers that plan administrators could select and thereby avoid audit. Another commenter suggested that the PBGC audit proposed insurer selections before the selection is made and include in the notice of identity of insurer both insurance company ratings and a certification of compliance with fiduciary standards in selecting an insurer.

By requiring compliance with Title I fiduciary standards to have a valid termination and by monitoring that compliance, the PBGC is furthering one of Title IV's fundamental purposes—''to provide for the timely and uninterrupted payment of pension benefits'' (section 4002(a)(1) of ERISA). The Department of Labor's Interpretive Bulletin 95–1 (60 FR 12329, March 6, 1995), codified at 29 CFR § 2509.95–1, provides guidance with respect to the application of Title I of ERISA to the selection of annuity providers when purchasing annuities for the purpose of distributing benefits under a pension plan. As explained in Interpretive Bulletin 95–1, the selection process depends in part on the relevant facts and circumstances at the time an annuity is purchased. The PBGC will coordinate with the Department of Labor in this area.

The PBGC does not believe it appropriate to publish a list of ''safe harbor'' insurers, to audit proposed insurer selections, or to require as part of the notice of identity of insurer either ratings or a special certification for this one aspect of the termination process.

PBGC Audits

The PBGC currently reviews benefit calculations after distribution for a statistically significant number of plans terminating in standard terminations, as required by section 4003(a) of ERISA. A participant organization suggested that the PBGC review benefit calculations before distribution. Prior to passage of the Single-Employer Pension Plan Amendments Act of 1986 (SEPPAA), the PBGC did conduct pre-distribution reviews of benefit calculations. Congress's intent in passing SEPPAA was to reduce the PBGC's role in standard terminations, thereby enabling the PBGC to devote more of its resources to underfunded terminations (where both premium payers and participants can face significant exposure). See 52 FR 33318, 33318–19, September 2, 1987. Although the PBGC has not adopted the commenter's suggestion, the PBGC has revised the forms and instructions packages to address common errors found in post-distribution audits by including detailed guidance on calculating lump sum distributions. The PBGC will continue to conduct post-distribution audits and require appropriate corrective action.

Filing and Issuance Rules

The proposed regulation eased filing deadlines by changing the date of filing a notice with the PBGC from the date of receipt to the date of the U.S. Postal Service postmark or (if the notice is received by the PBGC within two regular business days) the date of deposit with a commercial delivery service. The final regulation provides further flexibility in situations where the postmark was made by a private postage meter or is illegible.

For filings by commercial delivery service, the final regulation supplements the two-day receipt rule with IRS rules under section 7502(f) of the Internal Revenue Code. Under the IRS rules, a document is generally considered filed on the date it is provided to a ''designated private delivery service'' for delivery using a specified type of delivery service, *e.g.*, overnight service. (See I.R.S. Notice 97–26, 1997–17 I.R.B. 6 (April 10, 1997) and I.R.S. Notice 97–50, 1997–37 I.R.B. 21 (August 29, 1997) for relevant rules and IRS's first two lists of designated private delivery services.)

The proposed regulation allowed electronic filing in certain circumstances and provided that the

date of electronic filing is the date of receipt by the PBGC. The final regulation liberalizes these rules by generally providing that the date of electronic filing is the date of electronic transmission to the PBGC.

The final regulation, like the proposed regulation, allows the plan administrator to issue a notice to an affected party by electronic means reasonably calculated to ensure actual receipt. The PBGC received comments relating to confirmation of receipt of electronically-issued notices. Confirmation of receipt is not required. However, the final rule provides that, if there is reason to believe that a notice was not delivered, the plan administrator must reissue the notice promptly in order for the transmission date to be treated as the issuance date. (A similar rule applies to documents filed electronically with the PBGC.)

The final regulation makes clear that plan administrators are not required to issue notices to persons they cannot locate after making reasonable efforts, as long as they issue the notice promptly in the event the person is located.

In response to a comment, the final regulation provides that plan administrators may provide additional information with any notice only if the information is not misleading.

Miscellaneous

Definitions

In response to a comment, the PBGC has clarified the definition of ''plan benefits.'' The final regulation also ties this definition to the rules governing post-termination amendments.

A commenter questioned the inclusion of PBGC premiums as a plan liability in the ''residual assets'' definition. The proposed regulation merely conformed this definition to the existing requirement that PBGC premiums be taken into account in determining sufficiency for a standard termination (see existing § 4041.27(b)). Distribution of plan benefits in a standard termination without taking into account the plan's premium obligation may result in nullification of the termination or imposition of personal liability on the plan administrator (see 57 FR 59206, 59214 (December 14, 1992); PBGC Op. Ltr. 94–6 (September 28, 1994)).

The PBGC has rejected as unnecessary the suggestions of another commenter to change two definitions. The commenter requested that the definition of ''participant'' exclude individuals who have received a ''deemed'' zero-dollar cashout and that the definition of ''majority owner'' provide for expanded attribution rules. The definition of ''participant'' already excludes any nonvested individual who has been cashed out under the terms of the plan and in accordance with applicable law and regulations (see section 411(a)(7) of the Code and Treas. Reg. § 1.411(a)–7) because the individual is no longer ''earning or retaining'' credited service. Similarly, the ''majority owner'' definition already incorporates Code attribution rules, which provide for attribution of ownership to spouses, ascendants, and descendants in certain circumstances. The PBGC sees no reason to provide for greater attribution in its termination regulations.

Facilitating Plan Sufficiency

In response to a comment seeking clarification of the election and consent requirements governing alternative treatment of a majority owner's benefit, the final regulation makes clear that the election and consent may be made at any time during the termination process.

The Taxpayer Relief Act of 1997 (which was enacted after the publication of the proposed rule) amends section 206(d) of ERISA to provide for the offset of a participant's benefit against the amount the participant owes to a plan as a result of settlement or other resolution of certain fiduciary breach or criminal actions. Because this offset reduces the benefits that must be taken into account in a voluntary termination, there is no need to revise the regulation to reflect this legislation.

Qualified Domestic Relations Orders

A participant organization asked the PBGC to address the relationship between the termination process and qualified domestic relations orders (QDRO's). A standard termination has no effect on the ability to obtain a QDRO or on benefits received under a QDRO. (Of course, as is the case with an ongoing plan, a distribution from the plan may affect the ability to obtain benefits under a QDRO.) Plan administrators and annuity providers must comply with the terms of a QDRO. As affected parties, alternate payees under QDRO's receive all required notices, including the notice of plan benefits. A spouse contemplating a divorce (and QDRO) retains his or her spousal consent rights.

Post-Termination Amendments

The proposed regulation provided that, with limited exceptions, a plan amendment adopted after a plan's termination date is disregarded with respect to a participant or beneficiary. The final regulation clarifies how the rule works where a share of residual assets will go to participants and beneficiaries based on an allocation formula.

Lump Sum Assumptions

The final regulation clarifies the rules for determining the valuation date for a lump sum distribution.

Participating Annuity Contracts

In response to a comment, the PBGC notes that its change in the rules governing purchase of participating annuity contracts (from existing § 4041.6(d) to proposed and final § 4041.28(c)(2)) is merely clarifying, not substantive.

Deadlines and Extensions

Commenters approved of the proposed regulation's provision giving the PBGC discretionary authority to extend standard termination deadlines. The final regulation extends this discretionary authority to distress termination and missing participants deadlines.

One commenter recommended that the PBGC eliminate intermediate deadlines. The PBGC believes that intermediate deadlines are useful in managing the termination process, in particular, in coordinating with the IRS determination letter process. The combination of extended deadlines and the ability to obtain discretionary extensions should result in the intermediate deadlines causing few, if any, difficulties.

The PBGC has not incorporated a suggestion that the final regulation include more specific criteria for discretionary extensions. The grounds for granting a discretionary extension will vary with the facts and circumstances of the particular case. The final regulation, like the proposed regulation, includes factors (*e.g.,* length of the delay) that the PBGC will consider.

Record Retention and Availability

In response to a comment, the final regulation allows records to be retained in any format that reasonably ensures the integrity of the original information, as long as the records can be converted to hardcopy if requested by the PBGC. (This provision addresses only the record retention requirements under section 4041 of ERISA and part 4041 of the PBGC's regulations; it does not address record retention requirements under Title I of ERISA or the Code.) The final regulation also clarifies that the plan administrator must make available to the PBGC upon request any records

necessary to demonstrate compliance with the termination requirements under section 4041 of ERISA and part 4041 of the PBGC's regulations, and applies this same test to the record retention requirement.

Missing Participants

The final rule gives the PBGC authority to grant discretionary extensions and makes technical changes to (1) the deadline for payment of residual assets for a participant or beneficiary who cannot be located; and (2) the rules governing post-age 70½ PBGC payments.

Other

In response to comments, the PBGC (1) has reviewed its model notice of intent to terminate and model state guaranty notice for readability and made simplifying changes, and (2) has added a standard termination time line to the forms and instructions package.

The PBGC has not adopted suggestions to change the requirements for calculating lump sum distributions (because they are prescribed by the Code and IRS regulations) or the deadline for filing the post-distribution certification (because it is prescribed by Title IV of ERISA). (As discussed in **Applicability of Final Rule** below, the PBGC has provided penalty relief for late filing of the post-distribution certification.) The PBGC also has not adopted suggestions to change certain existing requirements and interpretations.

The final rule makes other clarifying, conforming, or editorial changes from the proposed rule in the PBGC's termination, missing participants, and benefit payment regulations.

Applicability of Final Rule

This rule is applicable to terminations for which the first notice of intent to terminate is issued on or after January 1, 1998. As explained below, certain provisions of the rule apply to terminations for which the first notice of intent to terminate is issued before January 1, 1998.

Deadline Extensions

Any deadline that has not passed as of January 1, 1998 is extended to the deadline that applies under this final rule, including a deadline extended under the PBGC's discretionary authority under § 4041.30.

Filing and Issuance Rules

The filing rules in § 4041.3(b) and issuance rules in § 4041.3(c)(1) through (c)(4) apply to any information (except for the notice under § 4041.31(g) that a termination is nullified) required to be filed or issued on or after January 1, 1998.

Notice of Noncompliance

The rules in § 4041.31 that (1) address the PBGC's discretion not to issue a notice of noncompliance for failure to meet a distribution requirement (§ 4041.31(b)), and (2) deem a termination valid if the plan administrator files a post-distribution certification and the PBGC does not issue a notice of noncompliance (§ 4041.31(f)(2)) apply to any termination for which, as of January 1, 1998, the distribution deadline has not passed.

Late Filing of Post-Distribution Certification

The final regulation provides penalty relief for late filing of the post-distribution certification and certain information under the missing participants program. It also eliminates two other potential consequences for late post-distribution certification filings: (1) the loss of part or all of the plan's premium refund for its final short plan year; and (2) the loss of the interest-free grace period for late payment of a designated benefit for a missing participant. The relevant amendments '' in § 4041.29(b) (regarding assessment of penalties for late filing of the post-distribution certification), § 4050.6(b)(2) (regarding assessment of interest for late payment of a designated benefit for a missing participant and penalties for late filing of information), and § 4006.5(f)(3) (regarding the plan's premium refund for its final short plan year)—are applicable to terminations for which, as of January 1, 1998, the statutory deadline for filing the post-distribution certification has not passed.

The penalty relief described in the PBGC's March 14, 1997, policy statement (62 FR 12521) '' which does not eliminate the other potential consequences of a late post-distribution certification '' will continue for pending terminations for which the post-distribution certification is statutorily due before January 1, 1998.

Forms and Instructions Packages

The PBGC will issue new forms and instructions packages for terminations for which the first notice of intent to terminate is issued on or after January 1, 1998.

The PBGC will also issue revised forms and instructions packages for terminations for which the first notice of intent to terminate is issued before January 1, 1998. These packages explain in detail which provisions of the final rule apply to pending terminations. As discussed in Applicability of Final Rule, the only changes that apply provide increased flexibility for plan administrators; plan administrators may therefore complete pending terminations by complying with existing requirements.

After the new and revised forms and instructions packages are approved by the Office of Management and Budget (see Compliance with Rulemaking and Paperwork Reduction Act Guidelines), the PBGC intends to mail the revised packages to persons with pending terminations on file with the PBGC and to mail the new and revised packages to practitioners who have requested that they be placed on a mailing list to receive policy and technical updates from the PBGC. Persons may also obtain the packages by contacting the PBGC's Customer Service Center, 1200 K Street, NW., Washington, D.C. 20005–4026 ((202) 326–4000) or by accessing the PBGC's home page at http://www.pbgc.gov.

Compliance With Rulemaking and Paperwork Reduction Act Guidelines

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

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities. While this rule simplifies procedures and extends deadlines, the actions required to terminate a plan are essentially unchanged. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply.

This rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995, the PBGC has submitted a copy of this information collection, including the implementing forms and instructions, to the Office of Management and Budget for its review. Persons do not have to comply with the revised information collection requirements of this rule until the PBGC publishes in the **Federal Register** a notice announcing OMB's approval of this collection of information along with a currently valid OMB control number.

List of Subjects

29 CFR Part 4001

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

29 CFR Part 4006

Penalties, Pension insurance, Pensions, Reporting and Recordkeeping requirements.

29 CFR Part 4022

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

29 CFR Part 4041

Pension insurance, Pensions, Reporting and Recordkeeping requirements.

29 CFR Part 4050

Pensions, Reporting and Recordkeeping requirements.

For the reasons set forth above, the PBGC is amending parts 4001, 4006, 4022, 4041, and 4050 of 29 CFR chapter XL as follows:

PART 4001—TERMINOLOGY

1. The authority citation for Part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

§ 4001.2 [Amended]

2. In § 4001.2, paragraph (2) of the definition of *Distribution date* is amended by removing the words ''Other than for purposes of determining the interest rate to be used in calculating the value of a benefit to be paid as a lump sum to a late-discovered participant, the'' and adding in their place ''The''; and by removing the words ''PBGC, a benefit provided after the deemed distribution date to a late-discovered participant, or an irrevocable commitment purchased from an insurer after the deemed distribution date for a recently-missing participant'' and adding in their place the word ''PBGC''.

PART 4006—PREMIUM RATES

3. The authority citation for Part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

§ 4006.5 [Amended]

4. In § 4006.5, paragraph (f)(3) is amended by removing the words ''or, if later (in the case of a single-employer plan), the date 30 days prior to the date the PBGC receives the plan's post-distribution certification''.

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

5. 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.

§ 4022.61 [Amended]

6. In § 4022.61, paragraph (a) is amended by replacing ''4041.4'' with ''4041.42''.

7. Part 4041 is revised to read as follows:

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

Subpart A—General Provisions

Sec.

Subpart B—Standard Termination Process

Subpart C—Distress Termination Process

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

Subpart A—General Provisions

§ 4041.1 Purpose and scope.

This part sets forth the rules and procedures for terminating a single-employer plan in a standard or distress termination under section 4041 of ERISA, the exclusive means of voluntarily terminating a plan.

§ 4041.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: affected party, annuity, benefit liabilities, Code, contributing sponsor, controlled group, distress termination, distribution date, EIN, employer, ERISA, guaranteed benefit, insurer, irrevocable commitment, IRS, mandatory employee contributions, normal retirement age, notice of intent to terminate, PBGC, person, plan administrator, plan year, PN, single-employer plan, standard termination, termination date, and title IV benefit. In addition, for purposes of this part:

Distress termination notice means the notice filed with the PBGC pursuant to § 4041.45.

Distribution notice means the notice issued to the plan administrator by the PBGC pursuant to § 4041.47(c) upon the PBGC's determination that the plan has sufficient assets to pay at least guaranteed benefits.

Majority owner means, with respect to a contributing sponsor of a single-employer plan, an individual who owns, directly or indirectly, 50 percent or more (taking into account the constructive ownership rules of section 414(b) and (c) of the Code) of—

(1) An unincorporated trade or business;

(2) The capital interest or the profits interest in a partnership; or

(3) Either the voting stock of a corporation or the value of all of the stock of a corporation.

Notice of noncompliance means a notice issued to a plan administrator by the PBGC pursuant to § 4041.31 advising the plan administrator that the requirements for a standard termination have not been satisfied and that the plan is an ongoing plan.

Notice of plan benefits means the notice to each participant and beneficiary required by § 4041.24.

Participant means—

(1) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan, including any individual who is considered covered under the plan for purposes of meeting the minimum participation requirements but who, because of offset or similar provisions, does not have any accrued benefits;

(2) Any nonvested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan; and

(3) Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan or is entitled to begin receiving benefits under the plan in the future, excluding any such individual to whom an insurer has made an irrevocable commitment to pay all the

benefits to which the individual is entitled under the plan.

Plan benefits means benefit liabilities determined as of the termination date (taking into account the rules in § 4041.8(a)).

Proposed termination date means the date specified as such by the plan administrator in the notice of intent to terminate or, if later, in the standard or distress termination notice.

Residual assets means the plan assets remaining after all plan benefits and other liabilities (*e.g.*, PBGC premiums) of the plan have been satisfied (taking into account the rules in § 4041.8(b)).

Standard termination notice means the notice filed with the PBGC pursuant to § 4041.25.

State guaranty association means an association of insurers created by a State, the District of Columbia, or the Commonwealth of Puerto Rico to pay benefits and to continue coverage, within statutory limits, under life and health insurance policies and annuity contracts when an insurer fails.

§ 4041.3 Computation of time; filing and issuance rules.

(a) *Computation of time.* In computing any period of time under this part, the day of the event from which the period begins is not counted. The last day of the period is counted. If the last day falls on a Saturday, Sunday, or Federal holiday, the period runs until the end of the next regular business day. A proposed termination date may be any day, including a Saturday, Sunday, or Federal holiday.

(b) *Filing with the PBGC.* Any document to be filed under this part must be filed with the PBGC in the manner described in the applicable forms and instructions package. The document is deemed filed on the date described in paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section, as applicable, or such earlier date as is provided in the applicable forms and instructions package. For purposes of this paragraph (b), information received by the PBGC on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(1) *Filing by mail.* If the document is mailed with the United States Postal Service by first class mail postage prepaid to the PBGC, the document is filed on—

(i) The date of the legible United States Postal Service postmark;

(ii) If there is no legible United States Postal Service postmark, the date of the legible postmark made by a private postage meter, provided that the document is received by the PBGC not later than the date when a document sent by first class mail would ordinarily be received if it were postmarked at the same point of origin by the United States Postal Service on the last date prescribed for filing the document; or

(iii) In any other case, the date that the plan administrator can establish the document was deposited in the mail before the last collection of mail from the place of deposit.

(2) *Filing by commercial delivery service.* If the document is deposited with a commercial delivery service, the document is filed on the earlier of—

(i) The date that would be considered the postmark date under section 7502(f) of the Code; or

(ii) The date it is deposited for delivery with the commercial delivery service, provided it is received by the PBGC within two regular business days.

(3) *Electronic filings.* If the document is filed electronically, the document is filed on the date on which it is transmitted electronically to the PBGC, provided that, if there is reason to believe the document was not delivered, the plan administrator promptly refiles the document in accordance with the applicable forms and instructions package.

(4) *Other filings.* If a filing date is not established under paragraphs (b)(1) through (b)(3) of this section, the document is filed on the date on which it is received by the PBGC.

(c) *Issuance to other parties.* The following rules apply to affected parties (other than the PBGC). For purposes of this paragraph (c), a person entitled to notice under the spin-off/termination transaction rules of §§ 4041.23(c) or 4041.24(f) is treated as an affected party.

(1) *Permissible methods of issuance.* The plan administrator must issue any notice to an affected party individually—

(i) By hand delivery;

(ii) By first-class mail or commercial delivery service to the affected party's last known address; or

(iii) By electronic means reasonably calculated to ensure actual receipt by the affected party.

(2) *Date of issuance.* Any notice is deemed issued to an affected party on the date on which it is—

(i) Handed to the affected party;

(ii) Deposited in the mail;

(iii) Deposited with a commercial delivery service; or

(iv) Transmitted electronically to the affected party, provided that, if there is reason to believe the notice was not delivered, the plan administrator promptly reissues the notice in accordance with the applicable forms and instructions package.

(3) *Omission of affected parties.* The failure to issue any notice to an affected party (other than any employee organization) within the specified time period will not cause the notice to be untimely if—

(i) *After-discovered affected parties.* The plan administrator could not reasonably have been expected to know of the affected party, and issues the notice promptly after discovering the affected party;

(ii) *De minimis administrative errors.* The failure was due to administrative error involving only a *de minimis* percentage of affected parties, and the plan administrator issues the notice to each such affected party promptly after discovering the error; or

(iii) *Unlocated participants.* The plan administrator could not locate the affected party after making reasonable efforts, and issues the notice promptly in the event the affected party is located.

(4) *Deceased participants.* In the case of a deceased participant, the plan administrator need not issue a notice to the participant's estate if the estate is not entitled to a distribution.

(5) *Form of notices to affected parties.* All notices to affected parties must be readable and written in a manner calculated to be understood by the average plan participant. The plan administrator may provide additional information with a notice only if the information is not misleading.

(6) *Foreign languages.* The plan administrator of a plan that (as of the proposed termination date) covers the numbers or percentages in § 2520.104b–10(e) of this title of participants literate only in the same non-English language must, for any notice to affected parties—

(i) Include a prominent legend in that common non-English language advising them how to obtain assistance in understanding the notice; or

(ii) Provide the notice in that common non-English language to those affected parties literate only in that language.

§ 4041.4 Disaster relief.

When the President of the United States declares that, under the Disaster Relief Act (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the Executive Director of the PBGC (or his or her designee) may, by issuing one or more notices of disaster relief, extend by up to 180 days any due date under this part.

§ 4041.5 Record retention and availability.

(a) *Retention requirement.* (1) *Persons subject to requirement.* Each contributing sponsor and the plan administrator of a plan terminating in a standard termination, or in a distress

termination that closes out in accordance with § 4041.50, must maintain all records necessary to demonstrate compliance with section 4041 of ERISA and this part. A record may be maintained in any format that reasonably ensures the integrity of the original information and that allows the record to be converted to hardcopy if necessary under paragraph (b) of this section. If a contributing sponsor or the plan administrator maintains information in accordance with this paragraph (a)(1), the other(s) need not maintain that information.

(2) *Retention period.* The records described in paragraph (a)(1) of this section must be preserved for six years after the date when the post-distribution certification under this part is filed with the PBGC.

(b) *Availability of records.* The contributing sponsor or plan administrator must make all records needed to determine compliance with section 4041 of ERISA and this part available to the PBGC upon request for inspection and photocopying, and must submit such records to the PBGC within 30 days after the date of a written request by the PBGC or by a later date specified therein. Unless the PBGC agrees to a different format, records must be submitted in hardcopy.

§ 4041.6 Effect of failure to provide required information.

If a plan administrator fails to provide any information required under this part within the specified time limit, the PBGC may assess a penalty under section 4071 of ERISA of up to $1,100 a day for each day that the failure continues. The PBGC may also pursue any other equitable or legal remedies available to it under the law, including, if appropriate, the issuance of a notice of noncompliance under § 4041.31.

§ 4041.7 Challenges to plan termination under collective bargaining agreement.

(a) *Suspension upon formal challenge to termination* (1) *Notice of formal challenge.* (i) If the PBGC is advised, before its review period under § 4041.26(a) ends, or before issuance of a notice of inability to determine sufficiency or a distribution notice under § 4041.47(b) or (c), that a formal challenge to the termination has been initiated as described in paragraph (c) of this section, the PBGC will suspend the termination proceeding and so advise the plan administrator in writing.

(ii) If the PBGC is advised of a challenge described in paragraph (a)(1)(i) of this section after the time specified therein, the PBGC may suspend the termination proceeding and will so advise the plan administrator in writing.

(2) *Standard terminations.* During any period of suspension in a standard termination —

(i) The running of all time periods specified in ERISA or this part relevant to the termination will be suspended; and

(ii) The plan administrator must comply with the prohibitions in § 4041.22.

(3) *Distress terminations.* During any period of suspension in a distress termination —

(i) The issuance by the PBGC of any notice of inability to determine sufficiency or distribution notice will be stayed or, if any such notice was previously issued, its effectiveness will be stayed;

(ii) The plan administrator must comply with the prohibitions in § 4041.42; and

(iii) The plan administrator must file a distress termination notice with the PBGC pursuant to § 4041.45.

(b) *Existing collective bargaining agreement.* For purposes of this section, an existing collective bargaining agreement means a collective bargaining agreement that has not been made inoperative by a judicial ruling and, by its terms, either has not expired or is extended beyond its stated expiration date because neither of the collective bargaining parties took the required action to terminate it. When a collective bargaining agreement no longer meets these conditions, it ceases to be an ''existing collective bargaining agreement,'' whether or not any or all of its terms may continue to apply by operation of law.

(c) *Formal challenge to termination.* A formal challenge to a plan termination asserting that the termination would violate the terms and conditions of an existing collective bargaining agreement is initiated when —

(1) Any procedure specified in the collective bargaining agreement for resolving disputes under the agreement commences; or

(2) Any action before an arbitrator, administrative agency or board, or court under applicable labor-management relations law commences.

(d) *Resolution of challenge.* Immediately upon the final resolution of the challenge, the plan administrator must notify the PBGC in writing of the outcome of the challenge, provide the PBGC with a copy of any award or order, and, if the validity of the proposed termination has been upheld, advise the PBGC whether the proposed termination is to proceed. The final resolution ends the suspension period under paragraph (a) of this section.

(1) *Challenge sustained.* If the final resolution is that the proposed termination violates an existing collective bargaining agreement, the PBGC will dismiss the termination proceeding, all actions taken to effect the plan termination will be null and void, and the plan will be an ongoing plan. In this event, in a distress termination, § 4041.42(d) will apply as of the date of the dismissal by the PBGC.

(2) *Termination sustained.* If the final resolution is that the proposed termination does not violate an existing collective bargaining agreement and the plan administrator has notified the PBGC that the termination is to proceed, the PBGC will reactivate the termination proceeding by sending a written notice thereof to the plan administrator, and —

(i) The termination proceeding will continue from the point where it was suspended;

(ii) All actions taken to effect the termination before the suspension will be effective;

(iii) Any time periods that were suspended will resume running from the date of the PBGC's notice of the reactivation of the proceeding;

(iv) Any time periods that had fewer than 15 days remaining will be extended to the 15th day after the date of the PBGC's notice, or such later date as the PBGC may specify; and

(v) In a distress termination, the PBGC will proceed to issue a notice of inability to determine sufficiency or a distribution notice (or reactivate any such notice stayed under paragraph (a)(3) of this section), either with or without first requesting updated information from the plan administrator pursuant to § 4041.45(c).

(e) *Final resolution of challenge.* A formal challenge to a proposed termination is finally resolved when—

(1) The parties involved in the challenge enter into a settlement that resolves the challenge;

(2) A final award, administrative decision, or court order is issued that is not subject to review or appeal; or

(3) A final award, administrative decision, or court order is issued that is not appealed, or review or enforcement of which is not sought, within the time for filing an appeal or requesting review or enforcement.

(f) *Involuntary termination by the PBGC.* Notwithstanding any other provision of this section, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

§ 4041.8 Post-termination amendments.

(a) *Plan benefits.* A participant's or beneficiary's plan benefits are determined under the plan's provisions in effect on the plan's termination date. Notwithstanding the preceding sentence, an amendment that is adopted after the plan's termination date is taken into account with respect to a participant's or beneficiary's plan benefits to the extent the amendment—

(1) Does not decrease the value of the participant's or beneficiary's plan benefits under the plan's provisions in effect on the termination date; and

(2) Does not eliminate or restrict any form of benefit available to the participant or beneficiary on the plan's termination date.

(b) *Residual assets.* In a plan in which participants or beneficiaries will receive some or all of the plan's residual assets based on an allocation formula, the amount of the plan's residual assets and each participant's or beneficiary's share thereof is determined under the plan's provisions in effect on the plan's termination date. Notwithstanding the preceding sentence, an amendment adopted after the plan's termination date is taken into account with respect to a participant's or beneficiary's allocation of residual assets to the extent the amendment does not decrease the value of the participant's or beneficiary's allocation of residual assets under the plan's provisions in effect on the termination date.

(c) *Permitted decreases.* For purposes of this section, an amendment shall not be treated as decreasing the value of a participant's or beneficiary's plan benefits or allocation of residual assets to the extent—

(1) The decrease is necessary to meet a qualification requirement under section 401 of the Code;

(2) The participant's or beneficiary's allocation of residual assets is paid in the form of an increase in the participant's or beneficiary's plan benefits; or

(3) The decrease is offset by assets that would otherwise revert to the contributing sponsor or by additional contributions.

(d) *Distress terminations.* In the case of a distress termination, a participant's or beneficiary's benefit liabilities are determined as of the termination date in the same manner as plan benefits under this section.

Subpart B—Standard Termination Process

§ 4041.21 Requirements for a standard termination.

(a) *Notice and distribution requirements.* A standard termination is valid if the plan administrator—

(1) Issues a notice of intent to terminate to all affected parties (other than the PBGC) in accordance with § 4041.23;

(2) Issues notices of plan benefits to all affected parties entitled to plan benefits in accordance with § 4041.24;

(3) Files a standard termination notice with the PBGC in accordance with § 4041.25;

(4) Distributes the plan's assets in satisfaction of plan benefits in accordance with § 4041.28(a) and (c); and

(5) In the case of a spin-off/termination transaction (as defined in § 4041.23(c)), issues the notices required by § 4041.23(c), § 4041.24(f), and § 4041.27(a)(2) in accordance with such sections.

(b) *Plan sufficiency.* (1) *Commitment to make plan sufficient.* A contributing sponsor of a plan or any other member of the plan's controlled group may make a commitment to contribute any additional sums necessary to enable the plan to satisfy plan benefits in accordance with § 4041.28. A commitment will be valid only if—

(i) It is made to the plan;

(ii) It is in writing, signed by the contributing sponsor or controlled group member(s); and

(iii) In any case in which the person making the commitment is the subject of a bankruptcy liquidation or reorganization proceeding, as described in § 4041.41(c)(1) or (c)(2), the commitment is approved by the court before which the liquidation or reorganization proceeding is pending or a person not in bankruptcy unconditionally guarantees to meet the commitment at or before the time distribution of assets is required.

(2) *Alternative treatment of majority owner's benefit.* A majority owner may elect to forgo receipt of his or her plan benefits to the extent necessary to enable the plan to satisfy all other plan benefits in accordance with § 4041.28. Any such alternative treatment of the majority owner's plan benefits is valid only if—

(i) The majority owner's election is in writing;

(ii) In any case in which the plan would require the spouse of the majority owner to consent to distribution of the majority owner's receipt of his or her plan benefits in a form other than a qualified joint and survivor annuity, the spouse consents in writing to the election;

(iii) The majority owner makes the election and the spouse consents during the time period beginning with the date of issuance of the first notice of intent to terminate and ending with the date of the last distribution; and

(iv) Neither the majority owner's election nor the spouse's consent is inconsistent with a qualified domestic relations order (as defined in section 206(d)(3) of ERISA).

§ 4041.22 Administration of plan during pendency of termination process.

(a) *In general.* A plan administrator may distribute plan assets in connection with the termination of the plan only in accordance with the provisions of this part. From the first day the plan administrator issues a notice of intent to terminate to the last day of the PBGC's review period under § 4041.26(a), the plan administrator must continue to carry out the normal operations of the plan. During that time period, except as provided in paragraph (b) of this section, the plan administrator may not—

(1) Purchase irrevocable commitments to provide any plan benefits; or

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than an annuity.

(b) *Exception.* The plan administrator may pay benefits attributable to employer contributions either through the purchase of irrevocable commitments or in a form other than an annuity if—

(1) The participant has separated from active employment or is otherwise permitted under the Code to receive the distribution;

(2) The distribution is consistent with prior plan practice; and

(3) The distribution is not reasonably expected to jeopardize the plan's sufficiency for plan benefits.

§ 4041.23 Notice of intent to terminate.

(a) *Notice requirement.* (1) *In general.* At least 60 days and no more than 90 days before the proposed termination date, the plan administrator must issue a notice of intent to terminate to each person (other than the PBGC) that is an affected party as of the proposed termination date. In the case of a beneficiary of a deceased participant or an alternate payee, the plan administrator must issue a notice of intent to terminate promptly to any person that becomes an affected party after the proposed termination date and on or before the distribution date.

(2) *Early issuance of NOIT.* The PBGC may consider a notice of intent to terminate to be timely under paragraph (a)(1) of this section if the notice was early by a *de minimis* number of days and the PBGC finds that the early issuance was the result of administrative error.

(b) *Contents of notice.* The PBGC's standard termination forms and instructions package includes a model notice of intent to terminate. The notice of intent to terminate must include —

(1) *Identifying information.* The name and PN of the plan, the name and EIN of each contributing sponsor, and the name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(2) *Intent to terminate plan.* A statement that the plan administrator intends to terminate the plan in a standard termination as of a specified proposed termination date and will notify the affected party if the proposed termination date is changed to a later date or if the termination does not occur;

(3) *Sufficiency requirement.* A statement that, in order to terminate in a standard termination, plan assets must be sufficient to provide all plan benefits under the plan;

(4) *Cessation of accruals.* A statement (as applicable) that—

(i) Benefit accruals will cease as of the termination date, but will continue if the plan does not terminate;

(ii) A plan amendment has been adopted under which benefit accruals will cease, in accordance with section 204(h) of ERISA, as of the proposed termination date or a specified date before the proposed termination date, whether or not the plan is terminated; or

(iii) Benefit accruals ceased, in accordance with section 204(h) of ERISA, as of a specified date before the notice of intent to terminate was issued;

(5) *Annuity information.* If required under § 4041.27, the annuity information described therein;

(6) *Benefit information.* A statement that each affected party entitled to plan benefits will receive a written notification regarding his or her plan benefits;

(7) *Summary plan description.* A statement as to how an affected party entitled to receive the latest updated summary plan description under section 104(b) of ERISA can obtain it.

(8) *Continuation of monthly benefits.* For persons who are, as of the proposed termination date, in pay status, a statement (as applicable) —

(i) That their monthly (or other periodic) benefit amounts will not be affected by the plan's termination; or

(ii) Explaining how their monthly (or other periodic) benefit amounts will be affected under plan provisions); and

(9) *Extinguishment of guarantee.* A statement that after plan assets have been distributed in full satisfaction of all plan benefits under the plan with respect to a participant or a beneficiary of a deceased participant, either by the purchase of irrevocable commitments (annuity contracts) or by an alternative form of distribution provided for under the plan, the PBGC no longer guarantees that participant's or beneficiary's plan benefits.

(c) *Spin-off/termination transactions.* In the case of a transaction in which a single defined benefit plan is split into two or more plans and there is a reversion of residual assets to an employer upon the termination of one or more but fewer than all of the resulting plans (a ''spin-off/termination transaction''), the plan administrator must, within the time period specified in paragraph (a) of this section, provide a notice describing the transaction to all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are, as of the proposed termination date, covered by an ongoing plan.

§ 4041.24 Notices of plan benefits.

(a) *Notice requirement.* The plan administrator must, no later than the time the plan administrator files the standard termination notice with the PBGC, issue a notice of plan benefits to each person (other than the PBGC and any employee organization) who is an affected party as of the proposed termination date. In the case of a beneficiary of a deceased participant or an alternate payee, the plan administrator must issue a notice of plan benefits promptly to any person that becomes an affected party after the proposed termination date and on or before the distribution date.

(b) *Contents of notice.* The plan administrator must include in each notice of plan benefits—

(1) The name and PN of the plan, the name and EIN of each contributing sponsor, and the name, address, and telephone number of an individual who may be contacted to answer questions concerning plan benefits;

(2) The proposed termination date given in the notice of intent to terminate and any extended proposed termination date under § 4041.25(b);

(3) If the amount of plan benefits set forth in the notice is an estimate, a statement that the amount is an estimate and that plan benefits paid may be greater than or less than the estimate;

(4) Except in the case of an affected party in pay status for more than one year as of the proposed termination date—

(i) The personal data (if available) needed to calculate the affected party's plan benefits, along with a statement requesting that the affected party promptly correct any information he or she believes to be incorrect; and

(ii) If any of the personal data needed to calculate the affected party's plan benefits is not available, the best available data, along with a statement informing the affected party of the data not available and affording him or her the opportunity to provide it; and

(5) The information in paragraphs (c) through (e) of this section, as applicable.

(c) *Benefits of persons in pay status.* For an affected party in pay status as of the proposed termination date, the plan administrator must include in the notice of plan benefits —

(1) The amount and form of the participant's or beneficiary's plan benefits payable as of the proposed termination date;

(2) The amount and form of plan benefits, if any, payable to a beneficiary upon the participant's death and the name of the beneficiary; and

(3) The amount and date of any increase or decrease in the benefit scheduled to occur (or that has already occurred) after the proposed termination date and an explanation of the increase or decrease, including, where applicable, a reference to the pertinent plan provision.

(d) *Benefits of persons with valid elections or de minimis benefits.* For an affected party who, as of the proposed termination date, has validly elected a form and starting date with respect to plan benefits not yet in pay status, or with respect to whom the plan administrator has determined that a nonconsensual lump sum distribution will be made, the plan administrator must include in the notice of plan benefits—

(1) The amount and form of the person's plan benefits payable as of the projected benefit starting date, and what that date is;

(2) The information in paragraphs (c)(2) and (c)(3) of this section;

(3) If the plan benefits will be paid in any form other than a lump sum and the age at which, or form in which, the plan benefits will be paid differs from the normal retirement benefit—

(i) The age or form stated in the plan; and

(ii) The age or form adjustment factors; and

(4) If the plan benefits will be paid in a lump sum —

(i) An explanation of when a lump sum may be paid without the consent of the participant or the participant's spouse;

(ii) A description of the mortality table used to convert to the lump sum benefit (*e.g.*, the mortality table published by the IRS in Revenue Ruling 95–6, 1995–1 C.B. 80) and a reference to the pertinent plan provisions;

(iii) A description of the interest rate to be used to convert to the lump sum benefit (*e.g.*, the 30-year Treasury rate for the third month before the month in which the lump sum is distributed), a reference to the pertinent plan provision, and (if known) the applicable interest rate;

(iv) An explanation of how interest rates are used to calculate lump sums;

(v) A statement that the use of a higher interest rate results in a smaller lump sum amount; and

(vi) A statement that the applicable interest rate may change before the distribution date.

(e) *Benefits of all other persons not in pay status.* For any other affected party not described in paragraph (c) or (d) of this section (or described therein only with respect to a portion of the affected party's plan benefits), the plan administrator must include in the notice of plan benefits—

(1) The amount and form of the person's plan benefits payable at normal retirement age in any one form permitted under the plan;

(2) Any alternative benefit forms, including those payable to a beneficiary upon the person's death either before or after benefits commence;

(3) If the person is or may become entitled to a benefit that would be payable before normal retirement age, the amount and form of benefit that would be payable at the earliest benefit commencement date (or, if more than one such form is payable at the earliest benefit commencement date, any one of those forms) and whether the benefit commencing on such date would be subject to future reduction; and

(4) If the plan benefits may be paid in a lump sum, the information in paragraph (d)(4) of this section.

(f) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction (as defined in § 4041.23(c)), the plan administrator must, no later than the time the plan administrator files the standard termination notice for any terminating plan, provide all participants, beneficiaries of deceased participants, and alternate payees in the original plan who are (as of the proposed termination date) covered by an ongoing plan with a notice of plan benefits containing the information in paragraphs (b) through (e) of this section.

§ 4041.25 Standard termination notice.

(a) *Notice requirement.* The plan administrator must file with the PBGC a standard termination notice, consisting of the PBGC Form 500, completed in accordance with the instructions thereto, on or before the 180th day after the proposed termination date.

(b) *Change of proposed termination date.* The plan administrator may, in the standard termination notice, select a proposed termination date that is later than the date specified in the notice of intent to terminate, provided it is not later than 90 days after the earliest date on which a notice of intent to terminate was issued to any affected party.

(c) *Request for IRS determination letter.* To qualify for the distribution deadline in § 4041.28(a)(1)(ii), the plan administrator must submit to the IRS a valid request for a determination of the plan's qualification status upon termination (''determination letter'') by the time the standard termination notice is filed.

§ 4041.26 PBGC review of standard termination notice.

(a) *Review period.* (1) *In general.* The PBGC will notify the plan administrator in writing of the date on which it received a complete standard termination notice at the address provided in the PBGC's standard termination forms and instructions package. If the PBGC does not issue a notice of noncompliance under § 4041.31 during its 60-day review period following such date, the plan administrator must proceed to close out the plan in accordance with § 4041.28.

(2) *Extension of review period.* The PBGC and the plan administrator may, before the expiration of the PBGC review period in paragraph (a)(1) of this section, agree in writing to extend that period.

(b) *If standard termination notice is incomplete.* (1) *For purposes of timely filing.* If the standard termination notice is incomplete, the PBGC may, based on the nature and extent of the omission, provide the plan administrator an opportunity to complete the notice. In such a case, the standard termination notice will be deemed to have been complete as of the date when originally filed for purposes of § 4041.25(a), provided the plan administrator provides the missing information by the later of—

(i) The 180th day after the proposed termination date; or

(ii) The 30th day after the date of the PBGC notice that the filing was incomplete.

(2) *For purposes of PBGC review period.* If the standard termination notice is completed under paragraph (b)(1) of this section, the PBGC will determine whether the notice will be deemed to have been complete as of the date when originally filed for purposes of determining when the PBGC's review period begins under § 4041.26(a)(1).

(c) *Additional information.* (1) *Deadline for providing additional information.* The PBGC may in any case require the submission of additional information relevant to the termination proceeding. Any such additional information becomes part of the standard termination notice and must be submitted within 30 days after the date of a written request by the PBGC, or within a different time period specified therein. The PBGC may in its discretion shorten the time period where it determines that the interests of the PBGC or participants may be prejudiced by a delay in receipt of the information.

(2) *Effect on termination proceeding.* A request for additional information will suspend the running of the PBGC's 60-day review period. The review period will begin running again on the day the required information is received and continue for the greater of—

(i) The number of days remaining in the review period; or

(ii) Five regular business days.

§ 4041.27 Notice of annuity information.

(a) *Notice requirement.* (1) *In general.* The plan administrator must provide notices in accordance with this section to each affected party entitled to plan benefits other than an affected party whose plan benefits will be distributed in the form of a nonconsensual lump sum.

(2) *Spin-off/termination transactions.* The plan administrator must provide the information in paragraph (d) of this section to a person entitled to notice under §§ 4041.23(c) or 4041.24(f), at the same time and in the same manner as required for an affected party.

(b) *Content of notice.* The plan administrator must include, as part of the notice of intent to terminate—

(1) *Identity of insurers.* The name and address of the insurer or insurers from whom (if known), or (if not) from among whom, the plan administrator intends to purchase irrevocable commitments (annuity contracts);

(2) *Change in identity of insurers.* A statement that if the plan administrator later decides to select a different

insurer, affected parties will receive a supplemental notice no later than 45 days before the distribution date; and

(3) *State guaranty association coverage information.* A statement informing the affected party—

(i) That once the plan distributes a benefit in the form of an annuity purchased from an insurance company, the insurance company takes over the responsibility for paying that benefit;

(ii) That all states, the District of Columbia, and the Commonwealth of Puerto Rico have established ''guaranty associations'' to protect policy holders in the event of an insurance company's financial failure;

(iii) That a guaranty association is responsible for all, part, or none of the annuity if the insurance company cannot pay;

(iv) That each guaranty association has dollar limits on the extent of its guaranty coverage, along with a general description of the applicable dollar coverage limits;

(v) That in most cases the policy holder is covered by the guaranty association for the state where he or she lives at the time the insurance company fails to pay; and

(vi) How to obtain the addresses and telephone numbers of guaranty association offices from the PBGC (as described in the applicable forms and instructions package).

(c) *Where insurer(s) not known.* (1) *Extension of deadline for notice.* If the identity-of-insurer information in paragraph (b)(1) of this section is not known at the time the plan administrator is required to provide it to an affected party as part of a notice of intent to terminate, the plan administrator must instead provide it in a supplemental notice under paragraph (d) of this section.

(2) *Alternative NOIT information.* A plan administrator that qualifies for the extension in paragraph (c)(1) of this section with respect to a notice of intent to terminate must include therein (in lieu of the information in paragraph (b) of this section) a statement that—

(i) Irrevocable commitments (annuity contracts) may be purchased from an insurer to provide some or all of the benefits under the plan;

(ii) The insurer or insurers have not yet been identified; and

(iii) Affected parties will be notified at a later date (but no later than 45 days before the distribution date) of the name and address of the insurer or insurers from whom (if known), or (if not) from among whom, the plan administrator intends to purchase irrevocable commitments (annuity contracts).

(d) *Supplemental notice.* The plan administrator must provide a supplemental notice to an affected party in accordance with this paragraph (d) if the plan administrator did not previously notify the affected party of the identity of insurer(s) or, after having previously notified the affected party of the identity of insurer(s), decides to select a different insurer. A failure to provide a required supplemental notice to an affected party will be deemed to be a failure to comply with the notice of intent to terminate requirements.

(1) *Deadline for supplemental notice.* The deadline for issuing the supplemental notice is 45 days before the affected party's distribution date (or, in the case of an employee organization, 45 days before the earliest distribution date for any affected party that it represents).

(2) *Content of supplemental notice.* The supplemental notice must include—

(i) The identity-of-insurer information in paragraph (b)(1) of this section;

(ii) The information regarding change of identity of insurer(s) in paragraph (b)(2) of this section; and

(iii) Unless the state guaranty association coverage information in paragraph (b)(3) of this section was previously provided to the affected party, such information and the extinguishment-of-guarantee information in § 4041.23(b)(9).

§ 4041.28 Closeout of plan.

(a) *Distribution deadline.* (1) *In general.* Unless a notice of noncompliance is issued under § 4041.31(a), the plan administrator must complete the distribution of plan assets in satisfaction of plan benefits (through priority category 6 under section 4044 of ERISA and part 4044 of this chapter) by the later of—

(i) 180 days after the expiration of the PBGC's 60-day (or extended) review period under § 4041.26(a); or

(ii) If the plan administrator meets the requirements of § 4041.25(c), 120 days after receipt of a favorable determination from the IRS.

(2) *Revocation of notice of noncompliance.* If the PBGC revokes a notice of noncompliance issued under § 4041.31(a), the distribution deadline is extended until the 180th day after the date of the revocation.

(b) *Assets insufficient to satisfy plan benefits.* If, at the time of any distribution, the plan administrator determines that plan assets are not sufficient to satisfy all plan benefits (with assets determined net of other liabilities, including PBGC premiums), the plan administrator may not make any further distribution of assets to effect the plan's termination and must promptly notify the PBGC.

(c) *Method of distribution.* (1) *In general.* The plan administrator must, in accordance with all applicable requirements under the Code and ERISA, distribute plan assets in satisfaction of all plan benefits by purchase of an irrevocable commitment from an insurer or in another permitted form.

(2) *Lump sum calculations.* In the absence of evidence establishing that another date is the ''annuity starting date'' under the Code, the distribution date is the ''annuity starting date'' for purposes of—

(i) Calculating the present value of plan benefits that may be provided in a form other than by purchase of an irrevocable commitment from an insurer (*e.g.*, in selecting the interest rate(s) to be used to value a lump sum distribution); and

(ii) Determining whether plan benefits will be paid in such other form.

(3) *Selection of insurer.* In the case of plan benefits that will be provided by purchase of an irrevocable commitment from an insurer, the plan administrator must select the insurer in accordance with the fiduciary standards of Title I of ERISA.

(4) *Participating annuity contracts.* In the case of a plan in which any residual assets will be distributed to participants, a participating annuity contract may be purchased to satisfy the requirement that annuities be provided by the purchase of irrevocable commitments only if the portion of the price of the contract that is attributable to the participation feature—

(i) Is not taken into account in determining the amount of residual assets; and

(ii) Is not paid from residual assets allocable to participants.

(5) *Missing participants.* The plan administrator must distribute plan benefits to missing participants in accordance with part 4050.

(d) *Provision of annuity contract.* If plan benefits are provided through the purchase of irrevocable commitments—

(1) Either the plan administrator or the insurer must, within 30 days after it is available, provide each participant and beneficiary with a copy of the annuity contract or certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's plan benefits; and

(2) If such a contract or certificate is not provided to the participant or beneficiary by the date on which the post-distribution certification is

required to be filed in order to avoid the assessment of penalties under § 4041.29(b), the plan administrator must, no later than that date, provide the participant and beneficiary with a notice that includes—

(i) A statement that the obligation for providing the participant's or beneficiary's plan benefits has transferred to the insurer;

(ii) The name and address of the insurer;

(iii) The name, address, and telephone number of the person designated by the insurer to answer questions concerning the annuity; and

(iv) A statement that the participant or beneficiary will receive from the plan administrator or insurer a copy of the annuity contract or a certificate showing the insurer's name and address and clearly reflecting the insurer's obligation to provide the participant's or beneficiary's plan benefits.

§ 4041.29 Post-distribution certification.

(a) *Deadline.* Within 30 days after the last distribution date for any affected party, the plan administrator must file with the PBGC a post-distribution certification consisting of the PBGC Form 501, completed in accordance with the instructions thereto.

(b) *Assessment of penalties.* The PBGC will assess a penalty for late filing of a post-distribution certification only to the extent the certification is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a).

§ 4041.30 Requests for deadline extensions.

(a) *In general.* The PBGC may in its discretion extend a deadline for taking action under this subpart to a later date. The PBGC will grant such an extension where it finds compelling reasons why it is not administratively feasible for the plan administrator (or other persons acting on behalf of the plan administrator) to take the action until the later date and the delay is brief. The PBGC will consider—

(1) The length of the delay; and

(2) Whether ordinary business care and prudence in attempting to meet the deadline is exercised.

(b) *Time of extension request.* Any request for an extension under paragraph (a) of this section that is filed later than the 15th day before the applicable deadline must include a justification for not filing the request earlier.

(c) *IRS determination letter requests.* Any request for an extension under paragraph (a) of this section of the deadline in § 4041.25(c) for submitting a determination letter request to the IRS (in order to qualify for the distribution deadline in § 4041.28(a)(1)(ii)) will be deemed to be granted unless the PBGC notifies the plan administrator otherwise within 60 days after receipt of the request (or, if later, by the end of the PBGC's review period under § 4041.26(a)). The PBGC will notify the plan administrator in writing of the date on which it receives such request.

(d) *Statutory deadlines not extendable.* The PBGC will not—

(1) *Pre-distribution deadlines. (i) Extend the 60-day time limit under § 4041.23(a) for issuing the notice of intent to terminate; or*

(ii) Waive the requirement in § 4041.24(a) that the notice of plan benefits be issued by the time the plan administrator files the standard termination notice with the PBGC; or

(2) *Post-distribution deadlines.* Extend the deadline under § 4041.29(a) for filing the post-distribution certification. However, the PBGC will assess a penalty for late filing of a post-distribution certification only under the circumstances described in § 4041.29(b).

§ 4041.31 Notice of noncompliance.

(a) *Failure to meet pre-distribution requirements.* (1) *In general.* Except as provided in paragraphs (a)(2) and (c) of this section, the PBGC will issue a notice of noncompliance within the 60-day (or extended) time period prescribed by § 4041.26(a) whenever it determines that—

(i) The plan administrator failed to issue the notice of intent to terminate to all affected parties (other than the PBGC) in accordance with § 4041.23;

(ii) The plan administrator failed to issue notices of plan benefits to all affected parties entitled to plan benefits in accordance with § 4041.24;

(iii) The plan administrator failed to file the standard termination notice in accordance with § 4041.25;

(iv) As of the distribution date proposed in the standard termination notice, plan assets will not be sufficient to satisfy all plan benefits under the plan; or

(v) In the case of a spin-off/termination transaction (as described in § 4041.23(c)), the plan administrator failed to issue any notice required by § 4041.23(c), § 4041.24(f), or § 4041.27(a)(2) in accordance with such section.

(2) *Interests of participants.* The PBGC may decide not to issue a notice of noncompliance based on a failure to meet a requirement under paragraphs (a)(1)(i) through (a)(1)(iii) or (a)(1)(v) of this section if it determines that issuance of the notice would be inconsistent with the interests of participants and beneficiaries.

(3) *Continuing authority.* The PBGC may issue a notice of noncompliance or suspend the termination proceeding based on a failure to meet a requirement under paragraphs (a)(1)(i) through (a)(1)(v) of this section after expiration of the 60-day (or extended) time period prescribed by § 4041.26(a) (including upon audit) if the PBGC determines such action is necessary to carry out the purposes of Title IV.

(b) *Failure to meet distribution requirements.* (1) *In general.* If the PBGC determines, as part of an audit or otherwise, that the plan administrator has not satisfied any distribution requirement of § 4041.28(a) or (c), it may issue a notice of noncompliance.

(2) *Criteria.* In deciding whether to issue a notice of noncompliance under paragraph (b)(1) of this section, the PBGC may consider—

(i) The nature and extent of the failure to satisfy a requirement of § 4041.28(a) or (c);

(ii) Any corrective action taken by the plan administrator; and

(iii) The interests of participants and beneficiaries.

(3) *Late distributions.* The PBGC will not issue a notice of noncompliance for failure to distribute timely based on any facts disclosed in the post-distribution certification if 60 or more days have passed from the PBGC's receipt of the post-distribution certification. The 60-day period may be extended by agreement between the plan administrator and the PBGC.

(c) *Correction of errors.* The PBGC will not issue a notice of noncompliance based solely on the plan administrator's inclusion of erroneous information (or omission of correct information) in a notice required to be provided to any person under this part if —

(1) The PBGC determines that the plan administrator acted in good faith in connection with the error;

(2) The plan administrator corrects the error no later than —

(i) In the case of an error in the notice of plan benefits under § 4041.24, the latest date an election notice may be provided to the person; or

(ii) In any other case, as soon as practicable after the plan administrator knows or should know of the error, or by any later date specified by the PBGC; and

(3) The PBGC determines that the delay in providing the correct information will not substantially harm any person.

(d) *Reconsideration.* A plan administrator may request reconsideration of a notice of

noncompliance in accordance with the rules prescribed in part 4003, subpart C.

(e) *Consequences of notice of noncompliance.* (1) *Effect on termination.* A notice of noncompliance ends the standard termination proceeding, nullifies all actions taken to terminate the plan, and renders the plan an ongoing plan. A notice of noncompliance is effective upon the expiration of the period within which the plan administrator may request reconsideration under paragraph (d) of this section or, if reconsideration is requested, a decision by the PBGC upholding the notice. However, once a notice is issued, the running of all time periods specified in ERISA or this part relevant to the termination will be suspended, and the plan administrator may take no further action to terminate the plan (except by initiation of a new termination) unless and until the notice is revoked. A plan administrator that still desires to terminate a plan must initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2) *Effect on plan administration.* If the PBGC issues a notice of noncompliance, the prohibitions in § 4041.22(a)(1) and (a)(2) will cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of a decision on reconsideration upholding the notice of noncompliance.

(3) *Revocation of notice of noncompliance.* If a notice of noncompliance is revoked, unless the PBGC provides otherwise, any time period suspended by the issuance of the notice will resume running from the date of the revocation. In no case will the review period under § 4041.26(a) end less than 60 days from the date the PBGC received the standard termination notice.

(f) *If no notice of noncompliance is issued.* A standard termination is deemed to be valid if—

(1) The plan administrator files a standard termination notice under § 4041.25 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(a); and

(2) The plan administrator files a post-distribution certification under § 4041.29 and the PBGC does not issue a notice of noncompliance pursuant to § 4041.31(b).

(g) *Notice to affected parties.* Upon a decision by the PBGC on reconsideration affirming the issuance of a notice of noncompliance or, if earlier, upon the plan administrator's decision not to request reconsideration, the plan administrator must notify the affected parties (other than the PBGC), and any persons who were provided notice under § 4041.23(c), in writing that the plan is not going to terminate or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued.

Subpart C—Distress Termination Process

§ 4041.41 Requirements for a distress termination.

(a) *Distress requirements.* A plan may be terminated in a distress termination only if—

(1) The plan administrator issues a notice of intent to terminate to each affected party in accordance with § 4041.43 at least 60 days and (except with PBGC approval) not more than 90 days before the proposed termination date;

(2) The plan administrator files a distress termination notice with the PBGC in accordance with § 4041.45 no later than 120 days after the proposed termination date; and

(3) The PBGC determines that each contributing sponsor and each member of its controlled group satisfy one of the distress criteria set forth in paragraph (c) of this section.

(b) *Effect of failure to satisfy requirements.* (1) Except as provided in paragraph (b)(2)(i) of this section, if the plan administrator does not satisfy all of the requirements for a distress termination, any action taken to effect the plan termination is null and void, and the plan is an ongoing plan. A plan administrator who still desires to terminate the plan must initiate the termination process again, starting with the issuance of a new notice of intent to terminate.

(2)(i) The PBGC may, upon its own motion, waive any requirement with respect to notices to be filed with the PBGC under paragraph (a)(1) or (a)(2) of this section if the PBGC believes that it will be less costly or administratively burdensome to the PBGC to do so. The PBGC will not entertain requests for waivers under this paragraph.

(ii) Notwithstanding any other provision of this part, the PBGC retains the authority in any case to initiate a plan termination in accordance with the provisions of section 4042 of ERISA.

(c) *Distress criteria.* In a distress termination, each contributing sponsor and each member of its controlled group must satisfy at least one (but not necessarily the same one) of the following criteria in order for a distress termination to occur:

(1) *Liquidation.* This criterion is met if, as of the proposed termination date—

(i) A person has filed or had filed against it a petition seeking liquidation in a case under title 11, United States Code, or under a similar federal law or law of a State or political subdivision of a State, or a case described in paragraph (e)(2) of this section has been converted to such a case; and

(ii) The case has not been dismissed.

(2) *Reorganization.* This criterion is met if—

(i) As of the proposed termination date, a person has filed or had filed against it a petition seeking reorganization in a case under title 11, United States Code, or under a similar law of a state or a political subdivision of a state, or a case described in paragraph (e)(1) of this section has been converted to such a case;

(ii) As of the proposed termination date, the case has not been dismissed;

(iii) The person notifies the PBGC of any request to the bankruptcy court (or other appropriate court in a case under such similar law of a state or a political subdivision of a state) for approval of the plan termination by concurrently filing with the PBGC a copy of the motion requesting court approval, including any documents submitted in support of the request; and

(iv) The bankruptcy court or other appropriate court determines that, unless the plan is terminated, such person will be unable to pay all its debts pursuant to a plan of reorganization and will be unable to continue in business outside the reorganization process and approves the plan termination.

(3) *Inability to continue in business.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that, unless a distress termination occurs, the person will be unable to pay its debts when due and to continue in business.

(4) *Unreasonably burdensome pension costs.* This criterion is met if a person demonstrates to the satisfaction of the PBGC that the person's costs of providing pension coverage have become unreasonably burdensome solely as a result of declining covered employment under all single-employer plans for which that person is a contributing sponsor.

(d) *Non-duplicative efforts.* (1) If a person requests approval of the plan termination by a court, as described in paragraph (c)(2) of this section, the PBGC—

(i) Will normally enter an appearance to request that the court make specific findings as to whether the contributing

sponsor or controlled group member meets the distress test in paragraph (c)(3) of this section, or state that it is unable to make such findings;

(ii) Will provide the court with any information it has that may be germane to the court's ruling;

(iii) Will, if the person has requested, or later requests, a determination by the PBGC under paragraph (c)(3) of this section, defer action on the request until the court makes its determination; and

(iv) Will be bound by a final and non-appealable order of the court.

(2) If a person requests a determination by the PBGC under paragraph (c)(3) of this section, the PBGC determines that the distress criterion is not met, and the person thereafter requests approval of the plan termination by a court, as described in paragraph (c)(2) of this section, the PBGC will advise the court of its determination and make its administrative record available to the court.

(e) *Non-recognition of certain actions.* If the PBGC finds that a person undertook any action or failed to act for the principal purpose of satisfying any of the distress criteria contained in paragraph (c) of this section, rather than for a reasonable business purpose, the PBGC will disregard such act or failure to act in determining whether the person has satisfied any of those criteria.

(f) *Requests for deadline extensions.* The PBGC may extend any deadline under this subpart in accordance with the rules described in section § 4041.30, except that the PBGC will not extend—

(1) *Pre-distribution deadlines.* The 60-day time limit under § 4041.43(a) for issuing the notice of intent to terminate; or

(2) *Post-distribution deadlines.* The deadline under § 4041.50 for filing the post-distribution certification.

§ 4041.42 Administration of plan during termination process.

(a) *General rule.* Except to the extent specifically prohibited by this section, during the pendency of termination proceedings the plan administrator must continue to carry out the normal operations of the plan, such as putting participants into pay status, collecting contributions due the plan, and investing plan assets.

(b) *Prohibitions after issuing notice of intent to terminate.* The plan administrator may not make loans to plan participants beginning on the first day he or she issues a notice of intent to terminate, and from that date until a distribution is permitted pursuant to § 4041.50, the plan administrator may not—

(1) Distribute plan assets pursuant to, or (except as required by this part) take any other actions to implement, the termination of the plan;

(2) Pay benefits attributable to employer contributions, other than death benefits, in any form other than as an annuity; or

(3) Purchase irrevocable commitments to provide benefits from an insurer.

(c) *Limitation on benefit payments on or after proposed termination date.* Beginning on the proposed termination date, the plan administrator must reduce benefits to the level determined under part 4022, subpart D, of this chapter.

(d) *Failure to qualify for distress termination.* In any case where the PBGC determines, pursuant to § 4041.44(c) or § 4041.46(c)(1), that the requirements for a distress termination are not satisfied—

(1) The prohibitions in paragraph (b) of this section, other than those in paragraph (b)(1), will cease to apply—

(i) Upon expiration of the period during which reconsideration may be requested under §§ 4041.44(e) and 4041.46(e) or, if earlier, at the time the plan administrator decides not to request reconsideration; or

(ii) If reconsideration is requested, upon PBGC issuance of its decision on reconsideration.

(2) Any benefits that were not paid pursuant to paragraph (c) of this section will be due and payable as of the effective date of the PBGC's determination, together with interest from the date (or dates) on which the unpaid amounts were originally due until the date on which they are paid in full at the rate or rates prescribed under § 4022.81(d) of this chapter.

(e) *Effect of subsequent insufficiency.* If the plan administrator makes a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.49(b), or the PBGC notifies the plan administrator that it has made a finding of subsequent insufficiency for guaranteed benefits pursuant to § 4041.40(d), the prohibitions in paragraph (b) of this section will apply in accordance with § 4041.49(e).

§ 4041.43 Notice of intent to terminate.

(a) *General rules.* (1) At least 60 days and (except with PBGC approval) no more than 90 days before the proposed termination date, the plan administrator must issue a written notice of intent to terminate to each person who is an affected party as of the proposed termination date.

(2) The plan administrator must issue the notice of intent to terminate to all affected parties other than the PBGC at or before the time he or she files the notice with the PBGC.

(3) The notice to affected parties other than the PBGC must contain all of the information specified in paragraph (b) of this section.

(4) The notice to the PBGC must be filed on PBGC Form 600, Distress Termination, Notice of Intent to Terminate, completed in accordance with the instructions thereto.

(5) In the case of a beneficiary of a deceased participant or an alternate payee, the plan administrator must issue a notice of intent to terminate promptly to any person that becomes an affected party after the proposed termination date and on or before the date a trustee is appointed for the plan pursuant to section 4042(c) of ERISA (or, in the case of a plan that distributes assets pursuant to § 4041.50, the distribution date).

(b) *Contents of notice to affected parties other than the PBGC.* The plan administrator must include in the notice of intent to terminate to each affected party other than the PBGC all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The EIN of the contributing sponsor and the PN; if there is no EIN or PN, the notice must so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a distress termination on a specified proposed termination date;

(5) The cessation of accruals information in § 4041.23(b)(4);

(6) A statement as to how an affected party entitled to receive the latest updated summary plan description under section 104(b) of ERISA can obtain it;

(7) A statement of whether plan assets are sufficient to pay all guaranteed benefits or all benefit liabilities;

(8) A brief description of what benefits are guaranteed by the PBGC (*e.g.*, if only a portion of the benefits are guaranteed because of the phase-in rule, this should be explained), and a statement that participants and beneficiaries also may receive a portion of the benefits to which each is entitled under the terms of the plan in excess of guaranteed benefits; and

(9) A statement, if applicable, that benefits may be subject to reduction because of the limitations on the amounts guaranteed by the PBGC or

because plan assets are insufficient to pay for full benefits (pursuant to part 4022, subparts B and D, of this chapter) and that payments in excess of the amount guaranteed by the PBGC may be recouped by the PBGC (pursuant to part 4022, subpart E, of this chapter).

(c) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction (as described in § 4041.23(c)), the plan administrator must provide all participants and beneficiaries in the original plan who are also participants or beneficiaries in the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

§ 4041.44 PBGC review of notice of intent to terminate.

(a) *General.* When a notice of intent to terminate is filed with it, the PBGC—

(1) Will determine whether the notice was issued in compliance with § 4041.43; and

(2) Will advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notice of intent to terminate appears to be in compliance with § 4041.43, it will notify the plan administrator in writing that—

(1) The PBGC has made a tentative determination of compliance;

(2) The distress termination proceeding may continue; and

(3) After reviewing the distress termination notice filed pursuant to § 4041.45, the PBGC will make final, or reverse, this tentative determination.

(c) *Finding of noncompliance.* If the PBGC determines that the issuance of the notice of intent to terminate was not in compliance with § 4041.43 (except for requirements that the PBGC elects to waive under § 4041.41(b)(2)(i) with respect to the notice filed with the PBGC), the PBGC will notify the plan administrator in writing—

(1) That the PBGC has determined that the notice of intent to terminate was not properly issued; and

(2) That the proposed distress termination is null and void and the plan is an ongoing plan.

(d) *Information on need to institute section 4042 proceedings.* The PBGC may require the plan administrator to submit, within 20 days after the plan administrator's receipt of the PBGC's written request (or such other period as may be specified in such written request), any information that the PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042 of ERISA, whenever—

(1) A notice of intent to terminate indicates that benefits currently in pay status (or that should be in pay status) are not being paid or that this is likely to occur within the 180-day period following the issuance of the notice of intent to terminate;

(2) The PBGC issues a determination under paragraph (c) of this section; or

(3) The PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of ERISA.

(e) *Reconsideration of finding of noncompliance.* A plan administrator may request reconsideration of the PBGC's determination of noncompliance under paragraph (c) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. Any request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration, but does not stay the time period within which information must be submitted to the PBGC in response to a request under paragraph (d) of this section.

(f) *Notice to affected parties.* Upon a decision by the PBGC affirming a finding of noncompliance or upon the expiration of the period within which the plan administrator may request reconsideration of a finding of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator must notify the affected parties (and any persons who were provided notice under § 4041.43(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued.

§ 4041.45 Distress termination notice.

(a) *General rule.* The plan administrator must file with the PBGC a PBGC Form 601, Distress Termination Notice, Single-Employer Plan Termination, with Schedule EA–D, Distress Termination Enrolled Actuary Certification, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date.

(b) *Participant and benefit information.* (1) *Plan insufficient for guaranteed benefits.* Unless the enrolled actuary certifies, in the Schedule EA–D filed in accordance with paragraph (a) of this section, that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator must file with the PBGC the participant and benefit information described in PBGC Form 601 and the instructions thereto by the later of—

(i) 120 days after the proposed termination date, or

(ii) 30 days after receipt of the PBGC's determination, pursuant to § 4041.46(b), that the requirements for a distress termination have been satisfied.

(2) *Plan sufficient for guaranteed benefits or benefit liabilities.* If the enrolled actuary certifies that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator need not submit the participant and benefit information described in PBGC Form 601 and the instructions thereto unless requested to do so pursuant to paragraph (c) of this section.

(3) *Effect of failure to provide information.* The PBGC may void the distress termination if the plan administrator fails to provide complete participant and benefit information in accordance with this section.

(c) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this part or to pay benefits pursuant to section 4061 or 4022(c) of ERISA. The plan administrator must submit any information requested under this paragraph within 30 days after receiving the PBGC's written request (or such other period as may be specified in such written request).

§ 4041.46 PBGC determination of compliance with requirements for distress termination.

(a) *General.* Based on the information contained and submitted with the PBGC Form 600 and the PBGC Form 601, with Schedule EA–D, and on any information submitted by an affected party or otherwise obtained by the PBGC, the PBGC will determine whether the requirements for a distress termination set forth in § 4041.41(c) have been met and will notify the plan administrator in writing of its determination, in accordance with paragraph (b) or (c) of this section.

(b) *Qualifying termination.* If the PBGC determines that all of the requirements of § 4041.41(c) have been satisfied, it will so advise the plan administrator and will also advise the plan administrator of whether participant and benefit information must be submitted in accordance with § 4041.45(b).

(c) *Non-qualifying termination.* (1) Except as provided in paragraph (c)(2) of this section, if the PBGC determines that any of the requirements of § 4041.41 have not been met, it will notify the plan administrator of its determination, the basis therefor, and the effect thereof (as provided in § 4041.41(b)).

(2) If the only basis for the PBGC's determination described in paragraph (c)(1) of this section is that the distress termination notice is incomplete, the PBGC will advise the plan administrator of the missing item(s) of information and that the information must be filed with the PBGC no later than the 120th day after the proposed termination date or the 30th day after the date of the PBGC's notice of its determination, whichever is later.

(d) *Reconsideration of determination of non-qualification.* A plan administrator may request reconsideration of the PBGC's determination under paragraph (c)(1) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. The filing of a request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration.

(e) *Notice to affected parties.* Upon a decision by the PBGC affirming a determination of non-qualification or upon the expiration of the period within which the plan administrator may request reconsideration of a determination of non-qualification (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator must notify the affected parties (and any persons who were provided notice under § 4041.43(e)) in writing that the plan is not going to terminate or, if applicable, that the termination is invalid but that a new notice of intent to terminate is being issued.

§ 4041.47 PBGC determination of plan sufficiency/insufficiency.

(a) *General.* Upon receipt of participant and benefit information filed pursuant to § 4041.45 (b)(1) or (c), the PBGC will determine the degree to which the plan is sufficient and notify the plan administrator in writing of its determination in accordance with paragraph (b) or (c) of this section.

(b) *Insufficiency for guaranteed benefits.* If the PBGC finds that it is unable to determine that a plan is sufficient for guaranteed benefits, it will issue a ''notice of inability to determine sufficiency'' notifying the plan administrator of this finding and advising the plan administrator that—

(1) The plan administrator must continue to administer the plan under the restrictions imposed by § 4041.42; and

(2) The termination will be completed under section 4042 of ERISA.

(c) *Sufficiency for guaranteed benefits or benefit liabilities.* If the PBGC determines that a plan is sufficient for guaranteed benefits but not for benefit liabilities or is sufficient for benefit liabilities, the PBGC will issue to the plan administrator a distribution notice advising the plan administrator—

(1) To issue notices of benefit distribution in accordance with § 4041.48;

(2) To close out the plan in accordance with § 4041.50;

(3) To file a timely post-distribution certification with the PBGC in accordance with § 4041.50(b); and

(4) That either the plan administrator or the contributing sponsor must preserve and maintain plan records in accordance with § 4041.5.

(d) *Alternative treatment of majority owner's benefit.* A majority owner may elect to forgo receipt of all or part of his or her plan benefits in connection with a distress termination. Any such alternative treatment—

(1) Is valid only if the conditions in § 4041.21(b)(2) (i) through (iv) are met (except that, in the case of a plan that does not distribute assets pursuant to § 4041.50, the majority owner may make the election and the spouse may consent any time on or after the date of issuance of the first notice of intent to terminate); and—

(2) Is subject to the PBGC's approval if the election—

(i) Is made after the termination date; and

(ii) Would result in the PBGC determining that the plan is sufficient for guaranteed benefits under paragraph (c).

§ 4041.48 Sufficient plans; notice requirements.

(a) *Notices of benefit distribution.* When a distribution notice is issued by the PBGC pursuant to § 4041.47, the plan administrator must issue notices of benefit distribution in accordance with the rules regarding notices of plan benefits in § 4041.24, except that—

(1) The deadline for issuing the notices of benefit distribution is the 60th day after receipt of the distribution notice; and

(2) With respect to the information described in § 4041.24 (b) through (e), the term ''plan benefits'' is replaced with ''title IV benefits'' and the term ''proposed termination date'' is replaced with ''termination date''.

(b) *Certification to PBGC.* No later than 15 days after the date on which the plan administrator completes the issuance of the notices of benefit distribution, the plan administrator must file with the PBGC a certification that the notices were so issued in accordance with the requirements of this section.

(c) *Notice of annuity information.* (1) *In general.* Unless all title IV benefits will be distributed in the form of nonconsensual lump sums, the plan administrator must provide a notice of annuity information to each affected party other than—

(i) An affected party whose title IV benefits will be distributed in the form of a nonconsensual lump sum; and

(ii) The PBGC.

(2) *Spin-off/termination transactions.* The plan administrator must provide the information in paragraph (c)(4) of this section to a person entitled to notice under § 4041.43(c), at the same time and in the same manner as required for an affected party described in paragraph (c)(1) of this section.

(3) *Selection of different insurer.* A plan administrator that decides to select a different insurer after having previously notified the affected party of the identity of insurer(s) under this paragraph must provide another notice of annuity information.

(4) *Content of notice.* The notice must include—

(i) The identity-of-insurer information in § 4041.27(b)(1);

(ii) The information regarding change in identity of insurer(s) in § 4041.27(b)(2); and

(iii) Unless the state guaranty coverage information in § 4041.27(b)(3) was previously provided to the affected party, such information and the extinguishment-of-guaranty information in § 4041.23(b)(9) (replacing the term ''plan benefits'' with ''title IV benefits'').

(5) *Deadline for notice.* The plan administrator must issue the notice of annuity information to each affected party by the deadline in § 4041.27(d)(1).

(d) *Request for IRS determination letter.* To qualify for the distribution deadline in § 4041.28(a)(1)(ii) (as modified and made applicable by § 4041.50(c)), the plan administrator must submit to the IRS a valid request for a determination of the plan's qualification status upon termination (''determination letter'') by the day on which the plan administrator completes the issuance of the notices of benefit distribution.

§ 4041.49 Verification of plan sufficiency prior to closeout.

(a) *General rule.* Before distributing plan assets pursuant to a closeout under

§ 4041.50, the plan administrator must verify whether the plan's assets are still sufficient to provide for benefits at the level determined by the PBGC, *i.e.*, guaranteed benefits or benefit liabilities. If the plan administrator finds that the plan is no longer able to provide for benefits at the level determined by the PBGC, then paragraph (b) or (c) of this section, as appropriate, will apply.

(b) *Subsequent insufficiency for guaranteed benefits.* When a plan administrator finds that a plan is no longer sufficient for guaranteed benefits, the plan administrator must promptly notify the PBGC in writing of that fact and may take no further action to implement the plan termination, pending the PBGC's determination and notice pursuant to paragraph (b)(1) or (b)(2) of this section.

(1) *PBGC concurrence with finding.* If the PBGC concurs with the plan administrator's finding, the distribution notice will be void, and the PBGC will—

(i) Issue the plan administrator a notice of inability to determine sufficiency in accordance with § 4041.47(b); and

(ii) Require the plan administrator to submit a new valuation, certified to by an enrolled actuary, of the benefit liabilities and guaranteed benefits under the plan, valued in accordance with §§ 4044.41 through 4044.57 of this chapter as of the date of the plan administrator's notice to the PBGC.

(2) *PBGC non-concurrence with finding.* If the PBGC does not concur with the plan administrator's finding, it will so notify the plan administrator in writing, and the distribution notice will remain in effect.

(c) *Subsequent insufficiency for benefit liabilities.* When a plan administrator finds that a plan is sufficient for guaranteed benefits but is no longer sufficient for benefit liabilities, the plan administrator must immediately notify the PBGC in writing of this fact, but must continue with the distribution of assets in accordance with § 4041.50.

(d) *Finding by PBGC of subsequent insufficiency.* In any case in which the PBGC finds on its own initiative that a subsequent insufficiency for guaranteed benefits has occurred, paragraph (b)(1) of this section will apply, except that the guaranteed benefits must be revalued as of the date of the PBGC's finding.

(e) *Restrictions upon finding of subsequent insufficiency.* When the plan administrator makes the finding described in paragraph (b) of this section or receives notice that the PBGC has made the finding described in paragraph (d) of this section, the plan administrator is (except to the extent the PBGC otherwise directs) subject to the prohibitions in § 4041.42.

§ 4041.50 Closeout of plan.

If a plan administrator receives a distribution notice from the PBGC pursuant to § 4041.47 and neither the plan administrator nor the PBGC makes the finding described in § 4041.49(b) or (d), the plan administrator must distribute plan assets in accordance with § 4041.28 and file a post-distribution certification in accordance with § 4041.29, except that—

(a) The term ''plan benefits'' is replaced with ''title IV benefits'';

(b) For purposes of applying the distribution deadline in § 4041.28(a)(1)(i), the phrase ''after the expiration of the PBGC's 60-day (or extended) review period under § 4041.26(a)'' is replaced with ''the day on which the plan administrator completes the issuance of the notices of benefit distribution pursuant to § 4041.48(a)''; and

(c) For purposes of applying the distribution deadline in § 4041.28(a)(1)(ii), the phrase ''the requirements of § 4041.25(c)'' is replaced with ''the requirements of § 4041.48(d)''.

8. Part 4050 is revised to read as follows:

PART 4050—MISSING PARTICIPANTS

Sec.

Authority: 29 U.S.C. 1302(b)(3), 1350.

§ 4050.1 Purpose and scope.

This part prescribes rules for distributing benefits under a terminating single-employer plan for any individual whom the plan administrator has not located when distributing benefits under § 4041.28 of this chapter. This part applies to a plan if the plan's deemed distribution date (or the date of a payment made in accordance with § 4050.12) is in a plan year beginning on or after January 1, 1996.

§ 4050.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: annuity, Code, ERISA, insurer, irrevocable commitment, mandatory employee contributions, normal retirement age, PBGC, person, plan, plan administrator, plan year and title IV benefit.

In addition, for purposes of this part:

Deemed distribution date means—

(1) The last day of the period in which distribution may be made under part 4041 of this chapter; or

(2) If the plan administrator selects an earlier date that is no earlier than the date when all benefit distributions have been made under the plan except for distributions to missing participants whose designated benefits are paid to the PBGC, such earlier date.

Designated benefit means the amount payable to the PBGC for a missing participant pursuant to § 4050.5.

Designated benefit interest rate means the rate of interest applicable to underpayments of guaranteed benefits by the PBGC under § 4022.81(d) of this chapter.

Guaranteed benefit form means, with respect to a benefit, the form in which the PBGC would pay a guaranteed benefit to a participant or beneficiary in the PBGC's program for trusteed plans under subparts A and B of part 4022 of this chapter (treating the deemed distribution date as the termination date for this purpose).

Missing participant means a participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator has not located as of the date when the plan administrator pays the individual's designated benefit to the PBGC (or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer). In the absence of proof of death, individuals not located are presumed living.

Missing participant annuity assumptions means the interest rate assumptions and actuarial methods (using the interest rates for annuity valuations in Table I of appendix B to part 4044 of this chapter) for valuing a benefit to be paid by the PBGC as an annuity under subpart B of part 4044, applied—

(1) As if the deemed distribution date were the termination date;

(2) Using unisex mortality rates that are a fixed blend of 50 percent of the

male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95–6, 1995–1 C.B. 80 (Cumulative Bulletins are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402);

(3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter;

(4) Without making the adjustment for expenses provided for in § 4044.52(a)(5) of this chapter; and

(5) By adding $300, as an adjustment (loading) for expenses, for each missing participant whose designated benefit without such adjustment would be greater than $3,500.

Missing participant forms and instructions means PBGC Forms 501 and 602, Schedule MP thereto, and related forms, and their instructions.

Missing participant lump sum assumptions means the interest rate assumptions and actuarial methods (using the interest rates for lump sum valuations in Table II of appendix B to part 4044 of this chapter) for valuing a benefit to be paid by the PBGC as a lump sum under subpart B of part 4044 of this chapter, applied—

(1) As if the deemed distribution date were the termination date;

(2) Using mortality assumptions from Table 3 of appendix A to part 4044 of this chapter; and

(3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter.

Pay status means, with respect to a benefit under a plan, that the plan administrator has made or (except for administrative delay or a waiting period) would have made one or more benefit payments.

Post-distribution certification means the post-distribution certification required by § 4041.29 or § 4041.50 of this chapter.

Unloaded designated benefit means the designated benefit reduced by $300; except that the reduction does not apply in the case of a designated benefit determined using the missing participant annuity assumptions without adding the $300 load described in paragraph (5) of the definition of ''missing participant annuity assumptions.''

§ 4050.3 Method of distribution for missing participants.

The plan administrator of a terminating plan must distribute benefits for each missing participant by—

(a) Purchasing from an insurer an irrevocable commitment that satisfies the requirements of § 4041.28(c) or § 4041.50 of this chapter (whichever is applicable); or

(b) Paying the PBGC a designated benefit in accordance with §§ 4050.4 through 4050.6 (subject to the special rules in § 4050.12).

§ 4050.4 Diligent search.

(a) *Search required.* A diligent search must be made for each missing participant before information about the missing participant or payment is submitted to the PBGC pursuant to § 4050.6.

(b) *Diligence.* A search is a diligent search only if the search —

(1) Begins not more than 6 months before notices of intent to terminate are issued and is carried on in such a manner that if the individual is found, distribution to the individual can reasonably be expected to be made on or before the deemed distribution date;

(2) Includes inquiry of any plan beneficiaries (including alternate payees) of the missing participant whose names and addresses are known to the plan administrator; and

(3) Includes use of a commercial locator service to search for the missing participant (without charge to the missing participant or reduction of the missing participant's plan benefit).

§ 4050.5 Designated benefit.

(a) *Amount of designated benefit.* The amount of the designated benefit is the amount determined under paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section (whichever is applicable) or, if less, the maximum amount that could be provided under the plan to the missing participant in the form of a single sum in accordance with section 415 of the Code.

(1) *Mandatory lump sum.* The designated benefit of a missing participant required under a plan to receive a mandatory lump sum as of the deemed distribution date is the lump sum payment that the plan administrator would have distributed to the missing participant as of the deemed distribution date.

(2) *De minimis lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1) of this section whose benefit is not in pay status as of the deemed distribution date and whose benefit has a *de minimis* actuarial present value ($3,500 or less) as of the deemed distribution date under the missing participant lump sum assumptions is such value.

(3) *No lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1) or (a)(2) of this section who, as of the deemed distribution date, cannot elect an immediate lump sum under the plan is the actuarial present value of the missing participant's benefit as of the deemed distribution date under the missing participant annuity assumptions.

(4) *Elective lump sum.* The designated benefit of a missing participant not described in paragraph (a)(1), (a)(2), or (a)(3) of this section is the greater of the amounts determined under the methodologies of paragraph (a)(1) or (a)(3) of this section.

(b) *Assumptions.* When the plan administrator uses the missing participant annuity assumptions or the missing participant lump sum assumptions for purposes of determining the designated benefit under paragraph (a) of this section, the plan administrator must value the most valuable benefit, as determined under paragraph (b)(1) of this section, using the assumptions described in paragraph (b)(2) or (b)(3) of this section (whichever is applicable).

(1) *Most valuable benefit.* For a missing participant whose benefit is in pay status as of the deemed distribution date, the most valuable benefit is the pay status benefit. For a missing participant whose benefit is not in pay status as of the deemed distribution date, the most valuable benefit is the benefit payable at the age on or after the deemed distribution date (beginning with the participant's earliest early retirement age and ending with the participant's normal retirement age) for which the present value as of the deemed distribution date is the greatest. The present value as of the deemed distribution date with respect to any age is determined by multiplying:

(i) The monthly (or other periodic) benefit payable under the plan; by

(ii) The present value (determined as of the deemed distribution date using the missing participant annuity assumptions) of a $1 monthly (or other periodic) annuity beginning at the applicable age.

(2) *Participant.* A missing participant who is a participant, and whose benefit is not in pay status as of the deemed distribution date, is assumed to be married to a spouse the same age, and the form of benefit that must be valued is the qualified joint and survivor annuity benefit that would be payable under the plan. If the participant's benefit is in pay status as of the deemed distribution date, the form and beneficiary of the participant's benefit

are the form of benefit and beneficiary of the pay status benefit.

(3) *Beneficiary.* A missing participant who is a beneficiary, and whose benefit is not in pay status as of the deemed distribution date, is assumed not to be married, and the form of benefit that must be valued is the survivor benefit that would be payable under the plan. If the beneficiary's benefit is in pay status as of the deemed distribution date, the form and beneficiary of the beneficiary's benefit are the form of benefit and beneficiary of the pay status benefit.

(4) *Examples.* See Appendix A to this part for examples illustrating the provisions of this section.

(c) *Missed payments.* In determining the designated benefit, the plan administrator must include the value of any payments that were due before the deemed distribution date but that were not made.

(d) *Payment of designated benefits.* Payment of designated benefits must be made in accordance with § 4050.6 and will be deemed made on the deemed distribution date.

§ 4050.6 Payment and required documentation.

(a) *Time of payment and filing.* The plan administrator must pay designated benefits, and file the information and certifications (of the plan administrator and the plan's enrolled actuary) specified in the missing participant forms and instructions, by the time the post-distribution certification is due. Except as otherwise provided in the missing participant forms and instructions, the plan administrator must submit the designated benefits, information, and certifications with the post-distribution certification.

(b) *Late charges.* (1) *Interest on late payments.* Except as provided in paragraph (b)(2) of this section, if the plan administrator does not pay a designated benefit by the time specified in paragraph (a) of this section, the plan administrator must pay interest as assessed by the PBGC for the period beginning on the deemed distribution date and ending on the date when the payment is received by the PBGC. Interest will be assessed at the rate provided for late premium payments in § 4007.7 of this chapter. Interest assessed under this paragraph will be deemed paid in full if payment of the amount assessed is received by the PBGC within 30 days after the date of a PBGC bill for such amount.

(2) *Assessment of interest and penalties.* The PBGC will assess interest for late payment of a designated benefit or a penalty for late filing of information only to the extent paid or filed beyond the time provided in § 4041.29(b).

(c) *Supplemental information.* Within 30 days after the date of a written request from the PBGC, a plan administrator required to provide the information and certifications described in paragraph (a) of this section must file supplemental information, as requested, for the purpose of verifying designated benefits, determining benefits to be paid by the PBGC under this part, and substantiating diligent searches.

(d) *Filing with the PBGC.* The rules described in § 4041.3(b) of this chapter apply to filings with the PBGC under this part.

§ 4050.7 Benefits of missing participants—in general.

(a) *If annuity purchased.* If a plan administrator distributes a missing participant's benefit by purchasing an irrevocable commitment from an insurer, and the missing participant (or his or her beneficiary or estate) later contacts the PBGC, the PBGC will inform the person of the identity of the insurer, the relevant policy number, and (to the extent known) the amount or value of the benefit.

(b) *If designated benefit paid.* If the PBGC locates or is contacted by a missing participant (or his or her beneficiary or estate) for whom a plan administrator paid a designated benefit to the PBGC, the PBGC will pay benefits in accordance with §§ 4050.8 through 4050.10 (subject to the limitations and special rules in §§ 4050.11 and 4050.12).

(c) *Examples.* See Appendix B to this part for examples illustrating the provisions of §§ 4050.8 through 4050.10.

§ 4050.8 Automatic lump sum.

This section applies to a missing participant whose designated benefit was determined under § 4050.5(a)(1) (mandatory lump sum) or § 4050.5(a)(2) (*de minimis* lump sum).

(a) *General rule.* (1) *Benefit paid.* The PBGC will pay a single sum benefit equal to the designated benefit plus interest at the designated benefit interest rate from the deemed distribution date to the date on which the PBGC pays the benefit.

(2) *Payee.* Payment will be made—

(i) To the missing participant, if located;

(ii) If the missing participant died before the deemed distribution date, and if the plan so provides, to the missing participant's beneficiary or estate; or

(iii) If the missing participant dies on or after the deemed distribution date, to the missing participant's estate.

(b) *De minimis annuity alternative.* If the guaranteed benefit form for a missing participant whose designated benefit was determined under § 4050.5(a)(2) (*de minimis* lump sum) (or the guaranteed benefit form for a beneficiary of such a missing participant) would provide for the election of an annuity, the missing participant (or the beneficiary) may elect to receive an annuity. If such an election is made —

(1) The PBGC will pay the benefit in the elected guaranteed benefit form, beginning on the annuity starting date elected by the missing participant (or the beneficiary), which may not be before the later of the date of the election or the earliest date on which the missing participant (or the beneficiary) could have begun receiving benefits under the plan; and

(2) The benefit paid will be actuarially equivalent to the designated benefit, *i.e.*, each monthly (or other periodic) benefit payment will equal the designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant lump sum assumptions) of a $1 monthly (or other periodic) annuity beginning on the annuity starting date.

§ 4050.9 Annuity or elective lump sum—living missing participant.

This section applies to a missing participant whose designated benefit was determined under § 4050.5(a)(3) (no lump sum) or § 4050.5(a)(4) (elective lump sum) and who is living on the date as of which the PBGC begins paying benefits.

(a) *Missing participant whose benefit was not in pay status as of the deemed distribution date.* The PBGC will pay the benefit of a missing participant whose benefit was not in pay status as of the deemed distribution date as follows.

(1) *Time and form of benefit.* The PBGC will pay the missing participant's benefit in the guaranteed benefit form, beginning on the annuity starting date elected by the missing participant (which may not be before the later of the date of the election or the earliest date on which the missing participant could have begun receiving benefits under the plan).

(2) *Amount of benefit.* The PBGC will pay a benefit that is actuarially equivalent to the unloaded designated benefit, *i.e.*, each monthly (or other periodic) benefit payment will equal the unloaded designated benefit divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of a $1 monthly (or other periodic) annuity beginning on the annuity starting date.

(b) *Missing participant whose benefit was in pay status as of the deemed distribution date.* The PBGC will pay the benefit of a missing participant whose benefit was in pay status as of the deemed distribution date as follows.

(1) *Time and form of benefit.* The PBGC will pay the benefit in the form that was in pay status, beginning when the missing participant is located.

(2) *Amount of benefit.* The PBGC will pay the monthly (or other periodic) amount of the pay status benefit, plus a lump sum equal to the payments the missing participant would have received under the plan, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the PBGC pays the lump sum.

(c) *Payment of lump sum.* If a missing participant whose designated benefit was determined under § 4050.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. This election is not effective unless the missing participant's spouse consents (if such consent would be required under section 205 of ERISA). The single sum equals the designated benefit plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

§ 4050.10 Annuity or elective lump sum—beneficiary of deceased missing participant.

This section applies to a beneficiary of a deceased missing participant whose designated benefit was determined under § 4050.5(a)(3) (no lump sum) or § 4050.5(a)(4) (elective lump sum) and whose benefit is not payable under § 4050.9.

(a) *If deceased missing participant's benefit was not in pay status as of the deemed distribution date.* The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was not in pay status as of the deemed distribution date as follows.

(1) *General rule.* (i) *Beneficiary.* The PBGC will pay a benefit to the surviving spouse of a missing participant who was a participant (unless the surviving spouse has properly waived a benefit in accordance with section 205 of ERISA).

(ii) *Form and amount of benefit.* The PBGC will pay the survivor benefit in the form of a single life annuity. Each monthly (or other periodic) benefit payment will equal 50 percent of the quotient that results when the unloaded designated benefit is divided by the present value (determined as of the deemed distribution date under the missing participant annuity assumptions, and assuming that the missing participant survived to the deemed distribution date) of a $1 monthly (or other periodic) joint and 50 percent survivor annuity beginning on the annuity starting date, under which reduced payments (at the 50 percent level) are made only after the death of the missing participant during the life of the spouse (and not after the death of the spouse during the missing participant's life).

(iii) *Time of benefit.* The PBGC will pay the survivor benefit beginning at the time elected by the surviving spouse (which may not be before the later of the date of the election or the earliest date on which the surviving spouse could have begun receiving benefits under the plan).

(2) *If missing participant died before deemed distribution date.* Notwithstanding the provisions of paragraph (a)(1) of this section, if a beneficiary of a missing participant who died before the deemed distribution date establishes to the PBGC's satisfaction that he or she is the proper beneficiary or would have received benefits under the plan in a form, at a time, or in an amount different from the benefit paid under paragraph (a)(1)(ii) or (a)(1)(iii) of this section, the PBGC will make payments in accordance with the facts so established, but only in the guaranteed benefit form.

(3) *Elective lump sum.* Notwithstanding the provisions of paragraphs (a)(1) and (a)(2) of this section, if the beneficiary of a missing participant whose designated benefit was determined under § 4050.5(a)(4) (elective lump sum) so elects, the PBGC will pay his or her benefit in the form of a single sum. The single sum will be equal to the actuarial present value (determined as of the deemed distribution date under the missing participant annuity assumptions) of the death benefit payable on the annuity starting date, plus interest (at the designated benefit interest rate) from the deemed distribution date to the date as of which the PBGC pays the benefit.

(b) *If deceased missing participant's benefit was in pay status as of the deemed distribution date.* The PBGC will pay a benefit with respect to a deceased missing participant whose benefit was in pay status as of the deemed distribution date as follows.

(1) *Beneficiary.* The PBGC will pay a benefit to the beneficiary (if any) of the benefit that was in pay status as of the deemed distribution date.

(2) *Form and amount of benefit.* The PBGC will pay a monthly (or other periodic) amount equal to the monthly (or other periodic) amount, if any, that the beneficiary would have received under the form of payment in effect, plus a lump sum payment equal to the payments the beneficiary would have received under the plan after the missing participant's death and before the date as of which the benefit is paid under paragraph (b)(4) of this section, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date as of which the benefit is paid under paragraph (b)(4) of this section.

(3) *Lump sum payment to estate.* The PBGC will make a lump sum payment to the missing participant's estate equal to the payments that the missing participant would have received under the plan for the period before the missing participant's death, plus interest on the missed payments (at the plan rate up to the deemed distribution date and thereafter at the designated benefit interest rate) to the date when the lump sum is paid. Notwithstanding the preceding sentence, if a beneficiary of a missing participant other than the estate establishes to the PBGC's satisfaction that the beneficiary is entitled to the lump sum payment, the PBGC will pay the lump sum to such beneficiary.

(4) *Time of benefit.* The PBGC will pay the survivor benefit beginning when the beneficiary is located.

(5) *Spouse deceased.* If the PBGC locates the estate of the deceased missing participant's spouse under circumstances where a benefit would have been paid under this paragraph (b) if the spouse had been located while alive, the PBGC will pay to the spouse's estate a lump sum payment computed in the same manner as provided for in paragraph (b)(2) of this section based on the period from the missing participant's death to the death of the spouse.

§ 4050.11 Limitations.

(a) *Exclusive benefit.* The benefits provided for under this part will be the only benefits payable by the PBGC to missing participants or to beneficiaries based on the benefits of deceased missing participants.

(b) *Limitation on benefit value.* The total actuarial present value of all benefits paid with respect to a missing participant under §§ 4050.8 through 4050.10, determined as of the deemed distribution date, will not exceed the missing participant's designated benefit.

(c) *Guaranteed benefit.* If a missing participant or his or her beneficiary establishes to the PBGC's satisfaction that the benefit under §§ 4050.8 through

4050.10 (based on the designated benefit actually paid to the PBGC) is less than the minimum benefit in this paragraph (c), the PBGC will instead pay the minimum benefit. The minimum benefit is the lesser of:

(1) The benefit as determined under the PBGC's rules for paying guaranteed benefits in trusteed plans under subparts A and B of part 4022 of this chapter (treating the deemed distribution date as the termination date for this purpose); or

(2) The benefit based on the designated benefit that should have been paid under § 4050.5.

(d) *Limitation on annuity starting date.* A missing participant (or his or her survivor) may not elect an annuity starting date after the later of—

(1) The required beginning date under section 401(a)(9) of the Code; or

(2) The date when the missing participant (or the survivor) is notified of his or her right to a benefit.

§ 4050.12 Special rules.

(a) *Missing participants located quickly.* Notwithstanding the provisions of §§ 4050.8 through 4050.10, if the PBGC or the plan administrator locates a missing participant within 30 days after the PBGC receives the missing participant's designated benefit, the PBGC may in its discretion return the missing participant's designated benefit to the plan administrator, and the plan administrator must make distribution to the individual in such manner as the PBGC will direct.

(b) *Qualified domestic relations orders.* Plan administrators must and the PBGC will take the provisions of qualified domestic relations orders (QDROs) under section 206(d)(3) of ERISA or section 414(p) of the Code into account in determining designated benefits and benefit payments by the PBGC, including treating an alternate payee under an applicable QDRO as a missing participant or as a beneficiary of a missing participant, as appropriate, in accordance with the terms of the QDRO. For purposes of calculating the amount of the designated benefit of an alternate payee, the plan administrator must use the assumptions for a missing participant who is a beneficiary under § 4050.5(b).

(c) *Employee contributions.* (1) *Mandatory employee contributions.* Notwithstanding the provisions of § 4050.5, if a missing participant made mandatory contributions (within the meaning of section 4044(a)(2) of ERISA), the missing participant's designated benefit may not be less than the sum of the missing participant's mandatory contributions and interest to the deemed distribution date at the plan's rate or the rate under section 204(c) of ERISA (whichever produces the greater amount).

(2) *Voluntary employee contributions.* (i) *Applicability.* This paragraph (c)(2) applies to any employee contributions that were not mandatory (within the meaning of section 4044(a)(2) of ERISA) to which a missing participant is entitled in connection with the termination of a defined benefit plan.

(ii) *Payment to PBGC.* A plan administrator, in accordance with the missing participant forms and instructions, must pay the employee contributions described in paragraph (c)(2)(i) of this section (together with any earnings thereon) to the PBGC, and must file Schedule MP with the PBGC, by the time the designated benefit is due under § 4050.6. Any such amount must be in addition to the designated benefit and must be separately identified.

(iii) *Payment by PBGC.* In addition to any other amounts paid by the PBGC under §§ 4050.8 through 4050.10, the PBGC will pay any amount paid to it under paragraph (c)(2)(ii) of this section, with interest at the designated benefit interest rate from the date of receipt by the PBGC to the date of payment by the PBGC, in the same manner as described in § 4050.8 (automatic lump sums), except that if the missing participant died before the deemed distribution date and there is no beneficiary, payment will be made to the missing participant's estate.

(d) *Residual assets.* The PBGC will determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of this part apply to any distribution (to participants and beneficiaries who cannot be located) of residual assets remaining after the satisfaction of plan benefits (as defined in § 4041.2 of this chapter) in connection with the termination of a defined benefit plan. Unless the PBGC otherwise determines, the payment of residual assets for a participant or beneficiary who cannot be located, and the submission to the PBGC of the related Schedule MP (or amended Schedule MP), must be made no earlier than the date when the post-distribution certification is filed with the PBGC, and no later than the later of—

(1) The 30th day after the date on which all residual assets have been distributed to all participants and beneficiaries other than those who cannot be located and for whom payment of residual assets is made to the PBGC, and

(2) The date when the post-distribution certification is filed with the PBGC.

(e) *Sufficient distress terminations.* In the case of a plan undergoing a distress termination (under section 4041(c) of ERISA) that is sufficient for at least all guaranteed benefits and that distributes its assets in the manner described in section 4041(b)(3) of ERISA, the benefit assumed to be payable by the plan for purposes of determining the amount of the designated benefit under § 4050.5 is limited to the title IV benefit plus any benefit to which funds under section 4022(c) of ERISA have been allocated.

(f) *Similar rules for later payments.* If the PBGC determines that one or more persons should receive benefits (which may be in addition to benefits already provided) in order for a plan termination to be valid (*e.g.*, upon audit of the termination), and one or more of such individuals cannot be located, the PBGC will determine, in a manner consistent with the purposes of this part and section 4050 of ERISA, how the provisions of this part apply to such benefits.

(g) *Discretionary extensions.* Any deadline under this part may be extended in accordance with the rules described in § 4041.30 of this chapter.

(h) *Payments beginning after required beginning date.* If the PBGC begins paying an annuity under § 4050.9(a) or 4050.10(a) to a participant or a participant's spouse after the required beginning date under section 401(a)(9)(C) of the Code, the PBGC will pay to the participant or the spouse (or their respective estates) or both, as appropriate, the lump sum equivalent of the past annuity payments the participant and spouse would have received if the PBGC had begun making payments on the required beginning date. The PBGC will also pay lump sum equivalents under this paragraph (g) if the PBGC locates the estate of the participant or spouse after both are deceased. (Nothing in this paragraph (g) will increase the total value of the benefits payable with respect to a missing participant.)

Appendix A to Part 4050—Examples of Designated Benefit Determinations for Missing Participants Under § 4050.5

The calculation of the designated benefit under § 4050.5 is illustrated by the following examples.

Example 1. Plan A provides that any participant whose benefit has a value at distribution of $1,750 or less will be paid a lump sum, and that no other lump sums will be paid. P, Q, and R are missing participants.

(1) As of the deemed distribution date, the value of P's benefit is $1,700 under plan A's assumptions. Under § 4050.5(a)(1), the plan administrator pays the PBGC $1,700 as P's designated benefit.

(2) As of the deemed distribution date, the value of Q's benefit is $3,700 under plan A's assumptions and $3,200 under the missing participant lump sum assumptions. Under § 4050.5(a)(2), the plan administrator pays the PBGC $3,200 as Q's designated benefit.

(3) As of the deemed distribution date, the value of R's benefit is $3,400 under plan A's assumptions, $3,600 under the missing participant lump sum assumptions, and $3,450 under the missing participant annuity assumptions. Under § 4050.5(a)(3), the plan administrator pays the PBGC $3,450 as R's designated benefit.

Example 2. Plan B provides for a normal retirement age of 65 and permits early commencement of benefits at any age between 60 and 65, with benefits reduced by 5 percent for each year before age 65 that the benefit begins. The qualified joint and 50 percent survivor annuity payable under the terms of the plan requires in all cases a 16 percent reduction in the benefit otherwise payable. The plan does not provide for elective lump sums.

(1) M is a missing participant who separated from service under plan B with a deferred vested benefit. M is age 50 at the deemed distribution date, and has a normal retirement benefit of $1,000 per month payable at age 65 in the form of a single life annuity. M's benefit as of the deemed distribution date has a value greater than $3,500 using either plan assumptions or the missing participant lump sum assumptions. Accordingly, M's designated benefit is to be determined under § 4050.5(a)(3).

(2) For purposes of determining M's designated benefit, M is assumed to be married to a spouse who is also age 50 on the deemed distribution date. M's monthly benefit in the form of the qualified joint and survivor annuity under the plan varies from $840 at age 65 (the normal retirement age) ($1,000 x (1–.16)) to $630 at age 60 (the earliest retirement age) ($1,000 x (1–5 x (.05)) x (1–.16)).

(3) Under § 4050.5(a)(3), M's benefit is to be valued using the missing participant annuity assumptions. The select and ultimate interest rates on Plan B's deemed distribution date are 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in paragraph (2) of the definition of ''missing participant annuity assumptions'' in § 4050.2, the plan administrator determines that the benefit commencing at age 60 is the most valuable benefit (*i.e.*, the benefit at age 60 is more valuable than the benefit at ages 61, 62, 63, 64 or 65). The present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is $5.4307 if the benefit begins at age 60. (Because a new spouse may succeed to the survivor benefit, the mortality of the spouse during the deferral period is ignored.) Thus, without adjustment (loading) for expenses, the value of the benefit beginning at age 60 is $41,056 (12 x $630 x 5.4307). The designated benefit is equal to this value plus an expense adjustment of $300, or a total of $41,356.

Appendix B to Part 4050—Examples of Benefit Payments for Missing Participants Under §§ 4050.8 Through 4050.10

The provisions of §§ 4050.8 through 4050.10 are illustrated by the following examples.

Example 1. Participant M from Plan B (see Example 2 in Appendix A of this part) is located. M's spouse is ten years younger than M. M elects to receive benefits in the form of a joint and 50 percent survivor annuity commencing at age 62.

(1) M's designated benefit was $41,356. The unloaded designated benefit was $41,056. As of Plan B's deemed distribution date (and using the missing participant annuity assumptions), the present value per dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity commencing at age 62 and reflecting the *actual* age of M's spouse) is $4.7405. Thus, the monthly benefit to M at age 62 is $722 ($41,056 / (4.7405 x 12)). M's spouse will receive $361 (50 percent of $722) per month for life after the death of M.

(2) If M had instead been found to have died on or after the deemed distribution date, and M's spouse wanted benefits to commence when M would have attained age 62, the same calculation would be performed to arrive at a monthly benefit of $361 to M's spouse.

Example 2. Participant P is a missing participant from Plan C, a plan that allows elective lump sums upon plan termination. Plan C's administrator pays a designated benefit of $10,000 to the PBGC on behalf of P, who was age 30 on the deemed distribution date.

(1) P's spouse, S, is located and has a death certificate showing that P died on or after the deemed distribution date with S as spouse. S is the same age as P, and would like survivor benefits to commence immediately, at age 55 (as permitted by the plan). S's benefit is the survivor's share of the joint and 50 percent survivor annuity which is actuarially equivalent, as of the deemed distribution date, to $9,700 (the unloaded designated benefit).

(2) The select and ultimate interest rates on Plan C's deemed distribution date were 7.50 percent for the first 20 years and 5.75 percent thereafter. Using these rates and the blended mortality table described in paragraph (2) of the definition of ''missing participant annuity assumptions'' in § 4050.2, the present value as of the deemed distribution date of each dollar of annual benefit (payable monthly as a joint and 50 percent survivor annuity) is $2.4048 if the benefit begins when S and P would have been age 55. Thus, the monthly benefit to S commencing at age 55 is $168 (50 percent of $9,700 / (2.4048 x 12)). Since P could have elected a lump sum upon plan termination, S may elect a lump sum. S's lump sum is the present value as of the deemed distribution date (using the missing participant annuity assumptions) of the monthly benefit of $168, accumulated with interest at the designated benefit interest rate to the date paid.

Issued in Washington, DC, this 3rd day of November, 1997.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 97–29500 Filed 11–6–97; 8:45 am]

BILLING CODE 7708–01–P

Friday
November 7, 1997

Part IV

Environmental Protection Agency

Department of Agriculture

Office of the Secretary

Clean Water Act; Vice President's Initiatives; Notice

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[FRL–5919–6]

Clean Water Act; Vice President's Initiatives

AGENCY: Environmental Protection Agency and Department of Agriculture.

ACTION: Notice of Vice President Gore's Clean Water Initiatives.

SUMMARY: On October 18, 1997, Vice President Gore announced a set of Clean Water Initiatives to celebrate the 25th anniversary of the Clean Water Act. In a memorandum to Heads of Departments and Agencies, he asked the Secretary of Agriculture (USDA) and the Administrator of the Environmental Protection Agency (EPA) to convene this effort.

Despite many successes in cleaning up our Nation's waters, significant challenges remain. For example, harmful organisms in our waters and polluted runoff continue to pose threats to human health, fish and wildlife. To help solve these problems, the Vice President directed Federal agencies to develop a comprehensive Action Plan within 120 days to improve and strengthen water pollution control efforts across the county. He also identified a number of specific initiatives to achieve these major goals: enhanced protection of public health; more effective control of polluted runoff; and increased community participation in local watershed management. Agencies will also emphasize high levels of public participation and access to information, innovative solutions, and cooperative relationships with private parties and landowners.

USDA, EPA and other Federal agencies have begun work on the Action Plan. Since public involvement is an important part of this effort, the agencies are planning a series of constituent meetings to discuss the Action Plan. An Internet website is being created to provide the public with information about this effort.

Groups or individuals may submit comments on actions that agencies should undertake in response to the Vice President's memorandum and are encouraged to specifically identify their topical interests and suggest ways to involve the public in development of the Action Plan. In addition to public involvement in the Action Plan, each element of the Plan will have substantial, and in some cases formal, opportunities for public involvement in the specific agency actions. The Plan will not determine the outcome of regulations, but will identify the overall goals of agency actions and the vision of how they fit together.

DATES: Written submissions should be addressed to one of the persons listed directly below on or before December 8, 1997.

ADDRESSES: Comments should be sent to Denise Coleman, Room 6032S, PO Box 2890, U.S. Department of Agriculture, Washington, D.C. 20013 or Robert Goo, Assessment and Watershed Protection Division (4503F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Denise Coleman, USDA; (202) 720–1845 or Robert Goo at (202) 260–7025.

SUPPLEMENTARY INFORMATION: The full text of Vice President Gore's Clean Water Initiative, October 18, 1997, Memorandum follows.

Dated: November 4, 1997.

Robert Perciasepe,

Assistant Administrator, Office of Water, Environmental Protection Agency.

James R. Lyons,

Under Secretary, Natural Resources and Environment, Department of Agriculture.

October 18, 1997.

Memorandum for Heads of Departments and Agencies

From the Vice President

Subject: Clean Water Initiatives

The twenty-fifth anniversary of the Clean Water Act presents an opportunity for all Americans to celebrate the successes of the Act to date, and to recognize the vital role of clean water in protecting public health and securing our economic future. In 25 years, the Clean Water Act has stopped billions of pounds of pollution from flowing into our rivers, lakes, and streams, and doubled the number of waterways that are safe for swimming and fishing. Rivers once polluted enough to catch fire, lakes once devoid of life, and streams once used as open sewers are now restored centerpieces of healthy communities because of the Clean Water Act.

This is also an appropriate occasion to recognize that, despite significant progress, the challenge for all of us in protecting our Nation's waters remains unfinished. The health of our people continues to be threatened by exposure to harmful organisms in our waters; consumption of fish from many of our waters presents a threat to the most vulnerable among us; polluted runoff has for too long eluded control under conventional regulatory approaches. Communities need Federal help and partnership to protect water quality on a community-led, watershed basis, rather than through piecemeal steps. It is incumbent on all Federal agencies to respond to these challenges in a manner that honors and furthers the goals of the Clean Water Act. Agencies must bring to these challenges a new vision, one which ensures that the level of effort is commensurate with the importance of clean water to the health and well-being of every community.

I am therefore requesting that the Secretary of Agriculture and the Administrator of the Environmental Protection Agency (EPA), in consultation with all other affected agencies develop a comprehensive Action Plan that builds on the Administration's clean water successes over the past five years and addresses three major goals: enhanced protection from public health threats posed by water pollution; more effective control of polluted runoff; and promotion of water quality protection on a watershed basis. This Action Plan will be informed by the following principles:

- Agencies will develop cooperative approaches that promote coordination and reduce duplication among Federal, State and local agencies and Tribal governments wherever possible.
- Agencies will ensure participation of community groups and the public to the maximum extent practicable. Such participation will include community and public access to information, to protect the public's right-to-know about water quality issues.
- Agencies will emphasize innovative approaches to pollution control, including, where appropriate, incentives, market-based mechanisms, and cooperative partnerships with landowners and other private parties.

The Action Plan developed according to these principles will encompass all appropriate regulatory, incentive, compliance, enforcement, and budgetary steps, and will include, at a minimum, the following elements:

Protecting Public Health

1. EPA and the Department of Commerce (acting through the National Oceanic and Atmospheric Administration (NOAA)) will identify steps to reduce the need for fish consumption advisories, giving particular attention to toxics that affect fetal and childhood development. The Action Plan will also identify steps to ensure protection of children from exposure to harmful organisms on our beaches and other recreational waters.

2. EPA will identify the major sources of nitrogen and phosphorous in our waters, and identify actions to address these sources. In particular, EPA will accelerate water quality criteria for waters in every geographic region in the country. Specifically, EPA will establish a schedule so that EPA and the states are implementing a criteria system for nitrogen and phosphorous runoff for lakes, rivers, and estuaries by the year 2000.

Preventing Polluted Runoff

3. EPA will expedite new standards for targeted problems of polluted runoff.

Specifically, EPA will expedite its new strategy from animal feeding operations that produce polluted runoff, and include in that strategy specific commitments to revise outdated regulations. EPA will ensure that final regulations for polluted runoff from storm water are in place by March 1, 1999.

4. Prior to or as part of the Action Plan, the Department of Agriculture (USDA) will notify the states through the **Federal Register** of the availability of the Conservation Reserve Enhancement Program (CREP) and shall provide further guidance to the states in presenting proposals. USDA will work with states to help them develop proposals leading to as many agreements as practicable that will address critical water quality, soil erosion, and fish and wildlife habitat needs, including habitat needed for threatened and endangered species. USDA will work with states to identify whether such agreements could be used to protect important habitat for fish in the Pacific Northwest, California, and other areas where significant natural resources may be affected by diminished water quality. While this further guidance is being developed, USDA will continue to work expeditiously with states to complete pending proposals by states to protect water quality and habitat through CREP.

5. NOAA and EPA will have in place all 29 state Coastal Nonpoint Pollution Control Programs by June 30, 1998, beginning with the highest priority watersheds. NOAA and EPA will work with States to ensure that these programs are fully approved by December 31, 1999.

6. NOAA and EPA will develop an action-oriented strategy to comprehensively address coastal nonpoint source pollution. This strategy will be based on the full array of NOAA's and EPA's scientific, educational, technical assistance, and management programs. This strategy will be coordinated with other Federal agencies and coastal states and territories, and will consider the needs of approved state Coastal Nonpoint Pollution Control Programs.

7. The Action Plan will include a strategy for ensuring that lands and facilities owned, managed, or controlled by Federal agencies are national models and laboratories for effective watershed planning and control of polluted runoff. The Action plan will include a strategy to ensure that Federal actions, programs, and activities do not contribute to the sprawl or other forms of development that may exacerbate the problem of polluted runoff or other water quality problems.

8. The Action Plan will include a strategy to achieve a net gain of as many as 100,000 acres of wetlands by the year 2005. USDA and the Department of the Interior (DOI) will ensure that they use common data and reference points in determining whether these goals have been met. Consistent with USDA's Buffer Initiative, the Action Plan will achieve a goal of 2 million miles of buffer strips protecting waters from agricultural runoff by the year 2002.

Ensuring Community-Based Watershed Management

9. The Action Plan will include a strategy for enhancing partnerships with state and local agencies, Tribal governments, and local communities in protecting water quality on a watershed basis.

10. USDA will develop a strategy for ensuring that agricultural producers in 1000 critical rural watersheds have the technical and financial assistance they need to abate polluted runoff and to comply with applicable standards, using programs and authorities like the Environmental Quality Incentives Program, the Conservation Reserve Program, the Wetlands Reserve Program, and others. This effort will be undertaken in a manner consistent with USDA's goals for watershed and basin-level planning. This effort also will give preference to states that have mechanisms in place to ensure effective cooperation among Federal, state, and local agencies as well as with local landowners and the public.

11. USDA, in consultation with DOI, will develop a strategy to ensure proper stewardship of federally managed watersheds, and to restore watersheds adversely affected by past management practices. The strategy will address the need to address runoff from abandoned mines, to eliminate unnecessary roads, to improve road maintenance, and to ensure coordinated watershed management strategies regardless of jurisdictional boundaries. Working with local landowners, USDA will develop a strategy for addressing nonpoint source pollution in those watersheds that consist of a mix of public private lands, to make more effective use of resources to address high-priority restoration efforts in these watersheds.

All elements of the Action Plan will provide for appropriate input from state and local agencies, Tribal governments, Members of Congress, and the public. EPA and USDA will consider, in developing the Plan, what further steps are needed to establish a national consensus on the elements of the Plan.

The Action Plan will be submitted to me within one-hundred twenty (120) days, following review by the Council on Environmental Quality and the Office of Management and Budget (OMB). The Administrator of EPA and the Secretary of Agriculture, and all affected agencies, will ensure that all elements of the Action Plan are coordinated with OMB and consistent with the President's budget.

All independent regulatory agencies are requested to assist in the implementation of this memorandum.

[This memorandum is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, or any other person.]

This memorandum will be published in the **Federal Register**.

[FR Doc. 97–29592 Filed 11–6–97; 8:45 am]

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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

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