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Rules and Regulations

Federal Register
Vol. 64, No. 100
Tuesday, May 25, 1999

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2604

RIN 3209–AA22

Amendments to the Office of Government Ethics Freedom of Information Act Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule amendments.

SUMMARY: The Office of Government Ethics is amending its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. The revisions include the new response time for FOIA requests, procedures for requesting expedited processing, additional categories of documents available in OGE's FOIA reading room facility, the availability of certain public information on OGE's Web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, OGE's amendments increase the general FOIA search fees somewhat. Finally, OGE is making some other changes, including updating revisions and corrections. This rulemaking only deals with such matters at OGE; it is not an executive branchwide regulation.

EFFECTIVE DATE: June 24, 1999.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917; telephone: 202–208–8000, ext. 1110; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: In this rulemaking, the Office of Government Ethics is amending its regulation at 5 CFR part 2604 under the Freedom of Information Act (FOIA), 5 U.S.C. 552. On December 3, 1998, OGE published proposed rule amendments to its FOIA regulation at 63 FR 66769–66772. Comments from the public and the agencies were requested, to be submitted by February 1, 1999. No comments were received on the proposed amendments, and OGE is therefore adopting them as final with just a few clarifying changes noted below. A summary highlighting the most significant amendments follows. The amendments were explained in somewhat greater detail in the preamble to the proposed rule.

The primary focus of these amendments is to codify in OGE's FOIA regulation various requirements under the 1996 Electronic FOIA Amendments, Public Law No. 104–231. Thus, in a newly redesignated paragraph (a)(1) of § 2604.305, OGE would codify in its FOIA regulation the new statutorily prescribed general 20 working day response time for responding to FOIA requests. In addition, OGE is adding a new paragraph (a)(2) to § 2604.305 on response to requests for expedited processing within 10 calendar days where the requester shows and certifies ''compelling need'' as defined in the amended law and new paragraph (e) of § 2604.301 of OGE's FOIA regulation.

The Electronic FOIA Amendments require that deleted portions of copies of documents released in part be identified and that a volume estimation of materials withheld in whole be given, unless exempt information would thereby be revealed. The Office of Government Ethics is codifying this requirement in new paragraph (b)(3) of § 2604.303 of its FOIA regulation. In a separate revision to § 2604.303, paragraph (a) is being revised to provide expressly that OGE can, in addition to referral of a request (or portion thereof), alternatively consult with another Government agency in cases where responsive records originated at the other agency and then respond to a requester with respect thereto.

The general requirement to honor a form or format request, unless the record requested is not readily reproducible in the requested form or format, is set forth in revised paragraph (c) of § 2604.302. The definitions of the terms ''records'' and ''search'' in § 2604.103 now more explicitly include electronic records and automated searches (along with paper records and manual searches).

The Office of Government Ethics is also clarifying in the revised headings and text of subpart B, § 2604.201 and now, in this final rule, § 2604.202 as well that, as a small agency with a limited FOIA practice, it has a FOIA public reading room *facility*, rather that a ''room'' per se. Reading room facility materials created by OGE since October 1, 1996 (and in certain cases before then, if feasible), are also available via computer telecommunications on OGE's Internet World Wide Web site at the following Uniform Resource Locator address: http://www.usoge.gov. The Web site is referenced in new paragraph (a)(2) of § 2604.201 of the OGE FOIA regulation. The Electronic FOIA Amendments also added a new category of such publicly available materials, copies of records created by OGE which are requested and released to individual FOIA requesters which OGE determines have become or are likely to become the subject of multiple requests, together with a general index thereof. The Office of Government Ethics is adding reference to such documents at new paragraph (b)(4) of § 2604.201 of its FOIA regulation. Further, OGE is adding a new paragraph (d) to § 2604.201 regarding permissible deletions from records covered in this section in order to prevent a clearly unwarranted invasion of personal privacy.

In § 2604.501(b)(1)(i), OGE is raising the hourly rate for manual searches for responsive records by a homogeneous class of OGE personnel by 10% to reflect increased salaries and overhead since the OGE FOIA regulations were initially issued in February 1995.

In addition, OGE notes that in revised subpart F on annual FOIA reports it is describing the items of information now required under the Electronic FOIA Amendments and Department of Justice guidance in the annual OGE reports, which are to be submitted to the Justice Department and posted on OGE's Web site. This final rule incorporates a couple of minor changes to § 2604.602(b)(11), (b)(15) and (b)(16) as previously proposed to clarify that administrative appeal information is to be provided under 5 U.S.C. 552(a)(6) and to specify that the staff time and costs of FOIA processing are estimates and include part-time/occasional staff (in estimated work years).

Finally, OGE is making various other minor changes, updates and corrections to its FOIA regulation. Moreover, as noted in the proposed rule, OGE is not adopting multitrack processing of its FOIA requests due to the limited number of requests received each year and the lack of any FOIA backlog.

Matters of Regulatory Procedure

Executive Order 12866

In issuing these amendments to its Freedom of Information Act regulation, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Office of Government Ethics Director, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these amendments will not have a significant economic impact on a substantial number of small entities because they only affect Freedom of Information Act matters at OGE.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these amendments do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2604

Confidential business information, Freedom of information.

Approved: February 16, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2604 as follows:

PART 2604—[AMENDED]

1. The authority citation for part 2604 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

§ 2604.103 [Amended]

2. In § 2604.103, the text of the definition of the term ''Records'' is amended by adding, in the second parenthetical, between the words ''as'' and ''punchcards'' the words ''electronic documents, electronic mail,'', and the text of the definition of the term ''Search'' is amended by adding between the words ''material'' and ''that'' the words ''manually or by automated means''.

3. The heading of subpart B is revised to read as follows:

Subpart B—FOIA Public Reading Room Facility and Web Site; Index Identifying Information for the Public

4. Section 2604.201 is amended by:

a. Revising the heading;

b. Redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2);

c. Adding the word ''facility'' after the word ''room'' at each place it appears in newly redesignated paragraph (a)(1), including the paragraph heading, and in paragraphs (b) and (c);

d. Removing the telephone number ''(202) 523–5757'' and the FAX number ''(202) 523–6325'' in the last sentence of newly redesignated paragraph (a)(1) and adding in their place the new telephone number ''202–208–8000'' and FAX number ''202–208–8037'', respectively;

e. Removing the word ''and'' at the end of paragraph (b)(3);

f. Redesignating paragraph (b)(4) as paragraph (b)(5); and

g. Adding new paragraphs (b)(4) and (d).

The revision and additions read as follows:

§ 2604.201 Public reading room facility and Web site.

(a)(1) * * *

(2) *Web site.* The records listed in paragraph (b) of this section, which are created on or after November 1, 1996, or which OGE is otherwise able to make electronically available (if feasible), along with the OGE FOIA and Public Records Guide and OGE's annual FOIA reports, are also available via OGE's Web site (Internet address: http://www.usoge.gov).

(b) * * *

(4) Copies of records created by OGE that have been released to any person under subpart C of this part which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index of such records; and

* * * * *

(d) OGE may delete from the copies of materials made available under this section any identifying details necessary to prevent a clearly unwarranted invasion of personal privacy. Any such deletions will be explained in writing and the extent of such deletions will be indicated on the portion of the records that are made available or published, unless the indication would harm an interest protected by the FOIA exemption pursuant to which the deletions are made. If technically feasible, the extent of any such deletions will be indicated at the place in the records where they are made.

§ 2604.202 [Amended]

5. Section 2604.202 is amended by adding between the words ''room'' and ''which'' in paragraph (a) the word ''facility''.

6. Section 2604.301 is amended by removing the telephone number ''(202) 523–5757'' in the first sentence of paragraph (a) and adding in its place the following text (with the new telephone and FAX numbers) '' 202–208–8000, or FAX, 202–208–8037'', and by adding a new paragraph (e) to read as follows:

§ 2604.301 Requests for records.

* * * * *

(e) *Seeking expedited processing.* (1) A requester may seek expedited processing of a FOIA request if a compelling need for the requested records can be shown.

(2) ''Compelling need'' means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(3) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

7. Section 2604.302 is amended by revising the heading and first sentence of paragraph (b) and revising paragraph (c) to read as follows:

§ 2604.302 Response to requests.

* * * * *

(b) *Referral to, or consultation with, another agency.* When a requester seeks access to records that originated in another Government agency, OGE will normally refer the request to the other agency for response; alternatively, OGE may consult with the other agency in the course of deciding itself whether to grant or deny a request for access to such records. * * *

(c) *Honoring form or format requests.* In making any record available to a

requester, OGE will provide the record in the form or format requested, if the record already exists or is readily reproducible by OGE in that form or format. If a form or format request cannot be honored, OGE will so inform the requester and provide a copy of a nonexempt record in its existing form or format or another convenient form or format which is readily reproducible. OGE will not, however, generally develop a completely new record (as opposed to providing a copy of an existing record in a readily reproducible new form or format, as requested) of information in order to satisfy a request.

* * * * *

8. Section 2604.303 is amended by removing the word ''and'' following paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(4), and adding a new paragraph (b)(3) to read as follows:

§ 2604.303 Form and content of responses.

* * * * *

(b) * * *

(3) When only a portion of a document is being withheld, the amount of information deleted and the FOIA exemption(s) justifying the deletion will generally be indicated on the copy of the released portion of the document. If technically feasible, such indications will appear at the place in the copy of the document where any deletion is made. If a document is withheld in its entirety, an estimate of the volume of the withheld material will generally be given. However, neither an indication of the amount of information deleted nor an estimation of the volume of material withheld will be included in a response if doing so would harm an interest protected by any of the FOIA exemptions pursuant to which the deletion or withholding is made; and

* * * * *

9. Section 2604.305 is amended by redesignating paragraph (a) as paragraph (a)(1), by removing the number ''10'' in newly redesignated paragraph (a)(1) and adding in its place the number ''20'', and by adding a new paragraph (a)(2) to read as follows:

§ 2604.305 Time limits.

(a)(1) * * *

(2) *Request for expedited processing.* When a request for expedited processing under § 2604.301(e) is received, the General Counsel will respond within ten calendar days from the date of receipt of the request, stating whether or not the request for expedited processing has been granted. If the request for expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

* * * * *

§ 2604.402 [Amended]

10. Section 2604.402 is amended by removing the word ''exemption'' in the first sentence of paragraph (b) and adding in its place the word ''Exemption''.

§ 2604.501 [Amended]

11. Section 2604.501 is amended by removing the dollar amounts ''$10.00'' and ''$20.00'' from the second sentence of paragraph (b)(1)(i) and adding in their place the dollar amounts ''$11.00'' and ''$22.00'', respectively, and by removing the citation to ''§ 2604.104(q)'' in the first sentence of paragraph (b)(3) and adding in its place the citation ''§ 2604.103''.

12. Subpart F is revised to read as follows:

Subpart F—Annual OGE FOIA Report

§ 2604.601 Electronic posting and submission of annual OGE FOIA report.

On or before February 1 of each year, OGE shall electronically post on its Web site and submit to the Office of Information and Privacy at the United States Department of Justice a report of its activities relating to the Freedom of Information Act (FOIA) during the preceding fiscal year.

§ 2604.602 Contents of annual OGE FOIA report.

(a) The Office of Government Ethics will include in its annual FOIA report the following information for the preceding fiscal year:

(1) The number of FOIA requests for records pending before OGE as of the end of the fiscal year;

(2) The median number of calendar days that such requests had been pending before OGE as of that date;

(3) The number of FOIA requests for records received by OGE;

(4) The number of FOIA requests that OGE processed;

(5) The median number of calendar days taken by OGE to process different types of requests;

(6) The number of determinations made by OGE not to comply with FOIA requests in full or in part;

(7) The reasons for each such determination;

(8) A complete list of all statutes upon which OGE relies to authorize withholding of information under FOIA Exemption 3, 5 U.S.C. 552(b)(3);

(9) A description of whether a court has upheld the decision of the agency to withhold information under each such statute;

(10) A concise description of the scope of any information withheld under each such statute;

(11) The number of administrative appeals made by persons under 5 U.S.C. 552(a)(6);

(12) The result of such appeals;

(13) The reason for the action upon each appeal that results in a denial of information;

(14) The total amount of fees collected by OGE for processing requests;

(15) The number of full-time staff and part-time/occasional staff (in estimated work years) of OGE devoted to processing requests for records under the FOIA; and

(16) The estimated total amount expended by OGE for processing such requests.

(b) In addition, OGE will include in the report such additional information about its FOIA activities as is appropriate and useful in accordance with Justice Department guidance and as otherwise determined by OGE.

[FR Doc. 99–13145 Filed 5–24–99; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–12]

Modification of Class D Airspace and Class E Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace and Class E airspace at Minot, ND. This action corrects technical errors in the legal descriptions of the Class D airspace and the Class E airspace extension to the Class D airspace for Minot International Airport, and amends the Class E surface area for the airport to include the Class E airspace extension. The purpose of these actions is to make technical corrections to the airspace legal descriptions in order to make the Class D airspace and Class E airspace for the airport consistent with each other, and to provide adequate controlled airspace for instrument approach procedures when the airport traffic control tower (ATCT) is closed.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East

Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, March 3, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and Class E airspace at Minot, ND (64 FR 10243). The proposal was to correct the legal description of the existing controlled airspace to reflect the actual configuration of that controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, and Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace and Class E airspace at Minot, ND, to make technical corrections to the legal descriptions of the Class D airspace and the Class E airspace extension to the Class D airspace for Minot International Airport, and by amending the Class E surface area for the airport to include the Class E extension to the surface area. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL ND D Minot, ND [Revised]

Minot International Airport, ND
(Lat. 48°15′34″ N., long. 101°16′52″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 4.2-mile radius of the Minot International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL ND E4 Minot, ND [Revised]

Minot International Airport, ND
(Lat. 48°15′34″ N., long. 101°16′52″ W.)
Minot VORTAC
(Lat. 48°15′34″ N., long. 101°17′13″ W.)

That airspace extending upward from the surface within 3.5 miles each side of the Minot VORTAC 129° radial, extending from the 4.2-mile radius of the airport to 7.0 miles southeast of the VORTAC, and within 3.5 miles each side of the Minot VORTAC 260° radial, extending from the 4.2-mile radius of the airport to 7.0 miles west of the VORTAC, and within 3.5 miles each side of the Minot VORTAC 327° radial, extending from the 4.2-mile radius of the airport to 7.0 miles northwest of the VORTAC, and within 3.5 miles each side of the Minot VORTAC 097° radial, extending from the 4.2-mile radius to 7.0 miles east of the VORTAC, excluding the portion which overlies the Minot AFB, ND, Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL ND E2 Minot, ND [Revised]

Minot International Airport, ND
(Lat. 48° 15′ 34″N., long. 101° 16′ 52″W.)
Minot VORTAC
(Lat. 48° 15′ 37″N., long. 101° 17′ 13″W.)

Within a 4.2-mile radius of the Minot International Airport and within 3.5 miles each side of the Minot VORTAC 129° radial, extending from the 4.2-mile radius of the airport to 7.0 miles southeast of the VORTAC, and within 3.5 miles each side of the Minot VORTAC 260° radial, extending from the 4.2-mile radius of the airport to 7.0 miles west of the VORTAC, and within 3.5 miles each side of the Minot VORTAC 327° radial, extending from the 4.2-mile radius of the airport to 7.0 miles northwest of the VORTAC, and within 3.5 miles each side of the Minot VORTAC 097° radial, extending from the 4.2-mile radius to 7.0 miles east of the VORTAC, excluding the portion which overlies the Minot AFB, ND, Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

* * * * *

Issued in Des Plaines, Illinois on May 12, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–13228 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–13]

Modification of Class D Airspace and Class E Airspace; Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace and Class E airspace at Rochester, MN. This action corrects technical errors in the legal descriptions of the Class D airspace and the Class E airspace extension to the Class D airspace for Rochester International Airport, and amends the Class E surface area for the airport to include the Class

E airspace extension. The purpose of these actions is to make technical corrections to the airspace legal descriptions in order to make the Class D airspace and Class E airspace for the airport consistent with each other, and to provide adequate controlled airspace for instrument approach procedures when the airport traffic control tower (ATCT) is closed.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, March 3, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class C airspace and Class E airspace at Rochester, MN (64 FR 10238). The proposal was to correct the legal description of the existing controlled airspace to reflect the actual configuration of that controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment supporting the proposal was received from the City of Dodge Center, MN, Airport Advisory Board. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, and Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace and Class E airspace at Rochester, MN, to make technical corrections to the legal descriptions of the Class D airspace and the Class E airspace extension to the Class D airspace for Rochester International Airport, and by amending the Class E surface area for the airport to include the Class E extension to the surface area. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL MN D Rochester, MN [Revised]

Rochester International Airport, MN
(Lat. 43°54′32″ N., long. 092°29′53″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.2-mile radius of the Rochester International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL MN E4 Rochester, MN [Revised]

Rochester International Airport, MN
(Lat. 43°54′32″ N., long. 092°29′53″ W.)
Rochester VOR/DME
(Lat. 43°46′58″ N., long. 092°35′49″ W.)

That airspace extending upward from the surface within 3.1 miles each side of the Rochester VOR/DME 028° radial extending from the 4.2-mile radius of the Rochester International Airport to 7.0 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MN E2 Rochester, MN [Revised]

Rochester International Airport, MN
(Lat. 43°54′32″ N., long. 092°29′53″ W.)
Rochester VOR/DME
(Lat. 43°46′58″ N., long. 092°35′49″ W.)

Within a 4.2-mile radius of the Rochester International Airport and within 3.1 miles each side of the Rochester VOR/DME 028° radial extending from the 4.2-mile radius of the Rochester International Airport to 7.0 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

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Issued in Des Plaines, Illinois on May 12, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–13235 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–14]

Modification of Class D Airspace and Class E Airspace; Wilmington, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace and Class E airspace at Wilmington, OH. This action corrects technical errors in the legal descriptions of the Class D airspace and the Class E airspace extension to the Class D airspace for Airborne Airpark, and amends the Class E surface area for the airport to include the Class E airspace extension. The purpose of these actions is to make technical corrections to the

airspace legal descriptions in order to make the Class D airspace and Class E airspace for the airport consistent with each other, and to provide adequate controlled airspace for instrument approach procedures when the airport traffic control tower (ATCT) is closed.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, March 3, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and Class E airspace at Wilmington, OH (64 FR 10241). The proposal was to correct the legal description of the existing controlled airspace to reflect the actual configuration of that controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, and Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace and Class E airspace at Wilmington, OH, to make technical corrections to the legal descriptions of the Class D airspace and the Class E airspace extension to the Class D airspace for Airborne Airpark, and by amending the Class E surface area for the airport to include the Class E extension to be surface area. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL OH D Wilmington, OH [Revised]

Wilmington, Airborne Airpark, OH
(Lat. 39° 25′ 41″ N., long. 083° 47′ 32″ W.)
Wilmington, Hollister Field Airport, OH
(Lat. 39° 26′ 15″ N., long. 083° 42′ 30″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of the Airborne Airpark, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/facility directory.

* * * * *

Paragraph 6004 Class E airspace aeras designated as an extension to a Class D surface area.

* * * * *

AGL OH E4 Wilmington, OH [Revised]

Wilmington, Airborne Airpark, OH
(Lat. 39° 25′ 41″ N., long. 083° 47′ 32″ W.)
Wilmington, Hollister Field Airport, OH
(Lat. 39° 26′ 15″ N., long. 083° 42′ 30″ W.)
Midwest VOR/DME
(Lat. 39° 25′ 47″ N., long. 083° 48′ 04″ W.)

That airspace extending upward from the surface within 3.7 miles each side of the Midwest VOR/DME 215° radial, extending from the 4.2-mile radius of the Airborne Airpark to 7.0 miles southwest of the airport, and within 3.7 miles each side of the Midwest VOR/DME 041° radial extending from the 4.2-mile radius of the airport to 7.0 miles northeast of the airport, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL OH E2 Wilmington, OH [Revised]

Wilmington, Airborne Airpark, OH
(Lat. 39° 25′ 41″ N., long. 083° 47′ 32″ W.)
Wilmington, Hollister Field Airport, OH
(Lat. 39° 26′ 15″ N., long. 083° 42′ 30″ W.)

Within a 4.2-mile radius of the Airborne Airpark and within 3.7 miles each side of the Midwest VOR/DME 215° radial, extending from the 4.2-mile radius of the Airborne Airpark to 7.0 miles southwest of the airport, and within 3.7 miles each side of the Midwest VOR/DME 041° radial extending from the 4.2-mile radius of the airport to 7.0 miles northeast of the airport, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/facility Director.

* * * * *

Issued in Des Plaines, Illinois on May 12, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–13237 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–15]

Modification of Class E Airspace; Jackson, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Jackson, MI. This action corrects the times of operation of the Class E airspace extension associated with the Class D airspace for Jackson County-Reynolds Field, and amends the Class E surface areas for the airport to include an airspace extension. The purpose of these actions is to make the Class D airspace and the associated Class E airspace extension for the airport consistent with each other, and to provide adequate controlled airspace for instrument approval procedures when the airport traffic control tower (ATCT) is closed.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, March 3, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Jackson, MI (64 FR 10242). The proposal was to correct the legal description of the existing controlled airspace to reflect the actual configuration of that controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, and Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Jackson, MI, to make technical corrections to the legal descriptions of the Class E airspace extension to the Class D airspace for Jackson County-Reynolds Field, and by amending the Class E surface area for the airport to include the Class E extension to the surface area. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL MI E4 Jackson, MI [Revised]

Jackson County—Reynolds Field, MI
(Lat. 42° 15′ 35″N., long. 084° 27′ 34″W.)
Jackson VOR/DME
(Lat. 42° 15′ 35″N., long. 084° 27′ 31″W.)

That airspace extending upward from the surface within 1.7 miles each side of the Jackson VOR/DME 236° radial extending from the 4.0-mile radius of the Jackson County-Reynolds Field to 7.0 miles southwest of the VOR/DME, and within 1.7 miles each side of the Jackson VOR/DME 307° radial extending from the 4.0-mile radius of the Jackson County-Reynolds Field to 7.0 miles northwest of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Jackson, MI [Revised]

Jackson County-Reynolds Field, MI
(Lat. 42° 15′ 35″N., long. 084° 27′ 34″W.)

Within a 4.0-mile radius of the Jackson County-Reynolds Field and within 1.7 miles each side of the Jackson VOR/DME 236° radial extending from the 4.0-mile radius of the Jackson County-Reynolds Field to 7.0 miles southwest of the VOR/DME, and within 1.7 miles each side of the Jackson VOR/DME 307° radial extending from the 4.0-mile radius of the Jackson County-Reynolds Field to 7.0 miles northwest of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

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Issued in Des Plaines, Illinois on May 12, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–13231 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–4]

Modification of Class E Airspace; Chico, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Chico, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13L and GPS RWY 31R at Chico Municipal Airport has made this action necessary. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 31R SIAP to Chico Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations Chico Municipal Airport, Chico, CA.

EFFECTIVE DATE: 0901 UTC July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On March 30, 1999, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Chico, CA (64 FR 15142). Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 13L and GPS RWY 31R SIAP at Chico Municipal Airport. This action will provide adequate controlled airspace for IFR operations at Chico Municipal Airport, Chico, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 modifies the Class E airspace area at Chico, CA. Controlled airspace extending upward from 700 feet above the surface is required for aircraft executing the GPS RWY 13L and GPS RWY 31R SIAP at Chico Municipal Airport. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 31R SIAP at Chico Municipal Airport, Chico, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AWP CA E5 Chico, CA [Revised]

Chico Municipal Airport, CA
(Lat. 39°47′44″N, long. 121°51′30″W)
Chico VOR/DME
(Lat. 39°47′23″N, long. 121°50′50″W)
Ranchaero Airport
(Lat. 39°43′15″N, long. 121°52′04″W)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Chico Municipal Airport and within 1.8 miles each side of the Chico VOR/DME 316° radial, extending from the 4.3-mile radius to 7 miles northwest of the Chico VOR/DME and that airspace 1.8 miles west and 3.5 miles east of the Chico VOR/DME 164° radial extending from the 4.3-mile radius to 6 miles south of the Chico VOR/DME and that airspace within 1.8 miles each side of the Chico VOR/DME 222° radial extending from the 4.3-mile radius to 6.6 miles southwest of the Chico VOR/DME, excluding the portion within a 1-mile radius of the Ranchaero Airport.

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Issued in Los Angeles, California, on May 12, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–13234 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–16]

Modification of Class E Airspace; Muskegon, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Muskegon, MI. This action corrects the times of operation of the Class E airspace extension associated with the Class D airspace for Muskegon County Airport, and amends the Class E surface area for the airport to include an airspace extension. The purpose of these actions is to make the Class D airspace and the associated Class E airspace extension for the airport consistent with each other, and to provide adequate controlled airspace for instrument approach procedures when the airport traffic control tower (ATCT) is closed.

EFFECTIVE DATE: 0901 UTC, September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, March 3, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Muskegon, MI (64 FR 10239). The proposal was to correct the legal description of the existing controlled airspace to reflect the actual configuration of that controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, and Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Muskegon, MI, to make technical corrections to the legal descriptions of the Class E airspace extension to the Class D airspace for Muskegon County Airport, and by amending the Class E surface area for the airport to include the Class E extension to the surface area. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL MI E4 Muskegon, MI [Revised]

Muskegon County Airport, MI
(Lat. 43° 10′ 10″N., long. 086° 14′ 18″W.)
Muskegon VORTAC
(Lat. 43° 10′ 09″N., long. 086° 02′ 22″W.)

That airspace extending upward from the surface within 1.3 miles each side of the Muskegon VORTAC 271° radial extending from the VORTAC to the 4.2-mile radius of the Muskegon County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Muskegon, MI [Revised]

Muskegon County Airport, MI
(Lat. 43° 10′ 10″N., long. 086° 14′ 18″W.)

Within a 4.2-mile radius of the Muskegon County Airport and within 1.3 miles each side of the Muskegon VORTAC 271° radial extending from the VORTAC to the 4.2-mile radius of the Muskegon County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/facility Directory.

* * * * *

Issued in Des Plaines, Illinois on May 12, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–13236 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 92F–0368]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a grafted copolymer of cross-linked sodium polyacrylate with polyvinyl alcohol for use as a fluid absorbent in food-contact material. This action responds to a petition filed by Stockhausen, Inc.

DATES: The regulation is effective May 25, 1999; written objections and requests for a hearing by June 24, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–206), 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 28, 1992 (57 FR 48803), FDA announced that a food additive petition (FAP 2B4323) had been filed by Stockhausen, Inc., 2408 Doyle St., Greensboro, NC 27406. The petition proposed to amend the food additive regulations to provide for the safe use of cross-linked sodium polyacrylate and/or a grafted copolymer of cross-linked sodium polyacrylate with vinyl alcohol for use as a fluid absorbent in food-contact material.

The original petition sought approval of several formulations of the additive and the use of the additive as a fluid absorbent in food-contact materials used in the packaging of fruit, meat, poultry, and vegetables. In a subsequent submission to the agency, the petitioner requested that approval of the additive be limited to its use as a fluid absorbent in food-contact materials used in the packaging of poultry. The petitioner also amended its request to seek approval for only the grafted copolymer of cross-linked sodium polyacrylate. In addition, the petitioner provided a more detailed description of the manufacturing of the additive copolymer, which also provided a more accurate name for the additive, ''grafted copolymer of cross-linked sodium polyacrylate with polyvinyl alcohol.'' Therefore, this regulation is limited to the grafted copolymer of cross-linked sodium polyacrylate intended for use as a fluid absorbent in food-contact materials used in the packaging of poultry.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive can achieve its intended technical effect, and therefore, (3) the regulations in 21 CFR part 177 should be amended as set forth below in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the

documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before June 24, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1211 is added to subpart B to read as follows:

§ 177.1211 Cross-linked polyacrylate copolymers.

Cross-linked polyacrylate copolymers identified in paragraph (a) of this section may be safely used as articles or components of articles intended for use in contact with food in accordance with the following prescribed conditions:

(a) *Identity*. For the purpose of this section, the cross-linked polyacrylate copolymers consist of the grafted copolymer of cross-linked sodium polyacrylate identified as 2-propenoic acid, polymers with *N*,*N*-di-2-propenyl-2-propen-1-amine and hydrolyzed polyvinyl acetate, sodium salts, graft (CAS Reg. No. 166164–74–5).

(b) *Adjuvants*. The copolymers identified in paragraph (a) of this section may contain optional adjuvant substances required in the production of such copolymers. The optional adjuvant substances may include substances permitted for such use by regulations in parts 170 through 179 of this chapter, substances generally recognized as safe in food, and substances used in accordance with a prior sanction or approval.

(c) *Extractives limitations*. The copolymers identified in paragraph (a) of this section, in the finished form in which they will contact food, must yield low molecular weight (less than 1,000 Daltons) extractives of no more than 0.15 percent by weight of the total polymer when extracted with 0.2 percent by weight of aqueous sodium chloride solution at 20 °C for 24 hours. The low molecular weight extractives shall be determined using size exclusion chromatography or an equivalent method. When conducting the extraction test, the copolymer, with no other absorptive media, shall be confined either in a finished absorbent pad or in any suitable flexible porous article, (such as a ''tea bag'' or infuser), under an applied pressure of 0.15 pounds per square inch (for example, a 4x6 inch square pad is subjected to a 1.6 kilograms applied mass). The solvent used shall be 60 milliliters aqueous sodium chloride solution per gram of copolymer.

(d) *Conditions of use*. The copolymers identified in paragraph (a) of this section are limited to use as a fluid absorbent in food-contact materials used in the packaging of frozen or refrigerated poultry.

Dated: May 17, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13093 Filed 5–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–163]

RIN 2115–AE46

Special Local Regulations: Fleet's Albany Riverfest, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the annual Fleet's Albany Riverfest. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Hudson River, in the vicinity of Albany, New York.

DATES: This final rule is effective June 24, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 1, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM), entitled Special Local Regulations: Fleet's Albany Riverfest, Hudson River, New York in the **Federal Register** (64 FR 4814). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The City of Albany sponsors this annual festival which includes a water ski show, speedboat demonstration, and

other marine activities on the Hudson River. The sponsor expects no spectator craft for this event. The regulated area for this festival encompasses all waters of the Hudson River from the Dunn Memorial Bridge (river mile 145.4) to the Albany Rensselaer Swing Bridge (river mile 146.2). The regulation is effective annually from 12 p.m. until 4 p.m. on the third Saturday and Sunday of July. The regulation prohibits all vessels, swimmers, and personal watercraft not participating in the event from transiting this portion of the Hudson River during the festival. It is needed to protect boaters from the hazards associated with a water ski show, speedboat demonstration, and other marine activities being held in the area. Marine traffic will be able to transit through the regulated area for 30 minutes during the event. Public notifications for the transit time will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to the proposed rule.

Regulatory Evaluation

This final 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 not been reviewed 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 final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Hudson River during the event, the effect of this regulation will not be significant for several reasons: the limited duration that the regulated area will be in effect, marine traffic will be able to transit through the regulated area for 30 minutes during the event; the Port Commissioner's office for the Port of Albany has stated there is infrequent commercial traffic north of the Dunn Memorial Bridge (river mile 145.4); commercial vessels can plan their transits up the river around the time the regulated area is in effect as they will have advance notice of the event; it is an annual event with local support; and advance notifications will be made to the local maritime community by the Local Notice to mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered 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 fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates.* A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

In accordance with agency procedures for implementing the National Environmental Policy Act (NEPA), the Coast Guard has considered the environmental impact of the Special Local Regulations together with the impacts of the marine event with which it is associated. In accordance with these NEPA implementing procedures, listed in Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(h) and (35)(a) this final rule is categorically excluded from further environmental analysis and documentation.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

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

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

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

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 100

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

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.122 to read as follows:

§ 100.122 Fleet's Albany Riverfest, Hudson River, New York.

(a) *Regulated Area.* All waters of the Hudson River from the Dunn Memorial Bridge (river mile 145.4) to the Albany Rensselaer Swing Bridge (river mile 146.2).

(b) *Regulations.* (1) Vessels, swimmers, and personal watercraft of

any nature not participating in this event are prohibited from entering or moving within the regulated area unless authorized by the Patrol Commander.

(2) Marine traffic will be able to transit through the regulated area for 30 minutes during the event. Public notifications for the transit time will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Effective period.* This section is in effect annually from 12 p.m. until 4 p.m. on the third Saturday and Sunday of July.

Dated: May 10, 1999.

R.M. Larrabee,

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

[FR Doc. 99–13157 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–155]

RIN 2115–AE46

Special Local Regulations: Hudson Valley Triathlon, Hudson River, Kingston, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the annual Hudson Valley Triathlon. This action is necessary to provide for the safety of life on navigable waters during the event. This event is intended to restrict vessel traffic in the Hudson River, in the vicinity of Kingston Point Reach.

DATES: This final rule is effective June 24, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 1, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM), entitled Special Local Regulations: Hudson Valley Triathlon, Hudson River, Kingston, New York in the **Federal Register** (64 FR 4812). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The New York Triathlon Club sponsors this annual triathlon with approximately 500 swimmers competing in this event. The sponsor expects no spectator craft for this event. The race will take place on the Hudson River in the vicinity of Kingston Point Reach. The regulated area encompasses all waters of the Hudson River within a 1000 yard radius of approximate position 41°56′06″ N 073°57′57″ W (NAD 1983). This area encompasses approximately 1,800 yards of Kingston Point Reach, from just south of Lighted Buoy 74 (LLNR 38285) north to Lighted Buoy 77 (LLNR 38300). The regulation is effective annually from 7 a.m. until 9 a.m. on the first Sunday after July 4th. The regulation prohibits all vessels, swimmers, and personal watercraft not participating in the event from transiting this portion of the Hudson River during the race. It is needed to protect swimmers and boaters from the hazards associated with 500 swimmers competing in a confined area of the Hudson River. Recreational vessels are not precluded from transiting the Hudson River in the vicinity of the regulated area because an alternate route is available. They can transit on the east side of the Hudson River and return to the west side at Ulster Landing or Turkey Point to the north, or at the mouth of Rondout Creek to the south of the local regulated area. Recreational vessels can not simply transit around the area because there are many mid-river shoals, with depths less than 3 feet, north of the local regulated area. Commercial vessels will be precluded from transiting the area because the local regulated area encompasses 1,800 yards of Kingston Point Reach and there is no viable alternative route.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to the proposed rule.

Regulatory Evaluation

This final 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 not been reviewed 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 final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Hudson River during the race, the effect of this regulation will not be significant for several reasons: the limited duration on a Sunday morning that the regulated area will be in effect, recreational vessels will be able to transit to the east of the regulated area, commercial vessels can plan their transits up the river around the time the regulated area is in effect as they will have advance notice of the event, it is an annual event with local support, and advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 6501 *et seq.*), the Coast Guard considered 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 fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates.* A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

In accordance with agency procedures for implementing the National Environmental Policy Act (NEPA), the Coast Guard has considered the environmental impact of the Special Local Regulations together with the impacts of the marine event with which it is associate. In accordance with these NEPA implementing procedures, listed in Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(h) and (35)(a) this final rule is categorically excluded from further environmental analysis and documentation.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

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

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

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

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 100

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

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.121 to read as follows:

§ 100.121 Hudson Valley Triathlon, Hudson River, Kingston, New York.

(a) *Regulated Area.* All waters of the Hudson River within a 1000 yard radius of approximate position 41°56′06″ N 073°57′57″ W (NAD 1983). This area encompasses approximately 1,800 yards of Kingston Point Reach, from just south of Lighted Buoy 74 (LLNR 38285) north to Lighted Buoy 77 (LLNR 38300).

(b) *Regulations.* (1) Vessels, swimmers, and personal watercraft of any nature not participating in this event are prohibited from entering or moving within the regulated area unless authorized by the Patrol Commander.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Effective period.* This section is in effect annually from 7 a.m. until 9 a.m. on the first Sunday after July 4th.

Dated: May 10, 1999.

R.M. Larrabee,

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

[FR Doc. 99–13158 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–032]

RIN 2115–AE47

Drawbridge Operation Regulations; Lake Champlain, NY & VT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations for the US2 Bridge, mile 91.8, between South Hero Island and North Hero Island over Lake Champlain in Vermont. This change is being made to relieve vehicular traffic congestion due to frequent bridge openings during the boating season. It is expected that this final rule will better balance the needs of vehicular traffic and the needs of navigation during peak traffic hours by scheduling bridge openings on the hour and half hour.

DATES: This final rule is effective June 24, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, MA 02110–3350, between 7 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Lake Champlain, NY and VT, in the **Federal Register** (64 FR 1155) on January 8, 1999. The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested and none was held.

Background

The US2 Bridge, mile 91.8, over Lake Champlain in Vermont, has a vertical clearance of 4.7 feet at mean high water and 9.7 feet at mean low water.

The current operating regulations published in both 33 CFR 117.993(b) and 117.797(b) require the bridge to open from May 15th through October 15th, on signal from 7 a.m. to 9 p.m., on four hours advance notice from 9 p.m. to 7 a.m., and on twenty-four hours advance notice from October 16th through May 14th.

This published operating schedule, from May 15th to October 15th, 7 a.m. to 9 p.m., was too disruptive on the great deal of vehicular traffic that used the US2 Bridge.

Vehicular delay and congestion at the bridge due to openings was a significant problem. Several years ago, without the Coast Guard's knowledge, the bridge owner, Grand Isle County residents, and Grand Isle County mariners met to try to develop a bridge operating schedule that was less disruptive to vehicular traffic than the published regulations. The schedule developed at this meeting changed the May 15th to October 15th on call operating hours to 8 a.m. to 8 p.m. and restricted openings to on the hour and half-hour. The 4 hour advance notice period changed to 8 p.m. to 8 a.m., but the schedule for October 16th to May 14th remained the same. The bridge owner adopted the schedule and has operated the US2 Bridge under it for several years.

The Coast Guard recently learned that the US2 Bridge was not operating in accordance with the published requirements from May 15th to October 15th and directed the bridge owner to operate the bridge according to 33 CFR 117.993(b). After receiving the Coast Guard's direction to operate the US2 Bridge in accordance with 33 CFR 117.993(b), the bridge owner submitted a request to change the operating regulations to allow the bridge to operate in accordance with the schedule developed at the meeting.

Based upon bridge opening data, vehicle traffic counts, and that the bridge had been operating under the new schedule for several years without noted problems, the Coast Guard has determined that the operating regulations balance the needs of navigation and vehicular traffic.

The Coast Guard has determined that the change from immediate on signal openings on the hour and half hour balances the needs of navigation and vehicular traffic. In 1998, from May 15th through October 15th, 8 a.m. to 8 p.m., there were 1,125 openings with 2,917 boats passing through, for an average of 2.6 boats per opening. In 1997, during the same time period, there were 1,122 openings with 2,551 boats passing through, for an average of 2.3 boats per opening. This data suggests that if the bridge opened on signal versus on the hour and half hour, there could have been over 2,000 openings during those time periods. Restricting bridge openings from on signal to on the hour and half hour effectively reduced the number of openings while it only added, at most, a 30 minute delay for boaters who requested an opening.

This restriction on openings has clear benefits to vehicular traffic because in May 1998, an average of 2,402 vehicles per day used the bridge from 8 a.m. to 8 p.m., and in July 1998, an average of 3,439 vehicles per day used the bridge from 8 a.m. to 8 p.m. Based on the above, the Coast Guard has determined that restricting bridge openings from on signal to on signal on the hour and half hour balances the needs of navigation and vehicular traffic.

The Coast Guard has determined that changing the on call operating hours from 7 a.m. to 9 p.m., May 15th through October 15th, to 8 a.m. to 8 p.m., May 15th through October 15th, balances the needs of navigation and vehicular traffic. The Coast Guard does not have relevant bridge log data from 7 a.m. to 8 a.m. and from 8 p.m. to 9 p.m. to help determine whether the proposed change is reasonable because the bridge has been operating from 8 a.m. to 8 p.m. over the past several years. However, based on an analysis of the bridge log data from 8 a.m. to 9 a.m. and from 7 p.m. to 8 p.m., the Coast Guard is confident that changing on call hours to 8 a.m. to 8 p.m. is reasonable.

In 1998, from May 15th through October 15th, 8 a.m. to 8 p.m., there were 1,125 openings, and 1,064 of those openings (94.6%) occurred between 9 a.m. and 7 p.m. Similarly, in 1997 during the same periods, 96.2% of bridge openings occurred between 9 a.m. and 7 p.m. Based on the above data, the Coast Guard concludes the needs of navigation between 7 a.m. to 8 a.m. and 8 p.m. to 9 p.m. would also not be significant if the bridge operated under the current operating regulations.

Vehicular traffic will benefit from the restriction on operating hours. In 1997 and 1998, over 150 vehicles per day used the bridge between 7 a.m. and 8 a.m., and over 130 vehicles per day used the bridge between 8 p.m. and 9 p.m. Relatively few bridge openings are requested during hours that there is significant vehicular traffic. Based on the above, the Coast Guard has determined it is reasonable to change the US2 Bridge's operating hours from 7 a.m. to 9 p.m., May 15th through October 15th, to 8 a.m. to 8 p.m., May 15th through October 15th.

The Coast Guard did consider leaving the bridge operating regulations unchanged. This alternative was rejected because openings could effectively double, based on average boats per opening, from what they were in 1997 and 1998 during hours when vehicle traffic is at its peak. Doubling the number of openings during peak traffic hours would have a substantial negative impact on vehicular traffic. The Coast Guard also realizes that the US2 Bridge has been operating over the past several years under this operating schedule, and all indications lead the Coast Guard to believe that this operating schedule balances the needs of navigation and vehicular traffic.

Discussion of Comments and Changes

The Coast Guard received no comments and no changes have been made to this final rule.

Regulatory Evaluation

This final 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 not been reviewed 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; Feb. 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has been operating unofficially on this schedule for several years and the Coast Guard has not received any comments or complaints to date regarding this operating schedule for the bridge. The Coast Guard believes this final rule will promulgate a more balanced schedule of operation and still meet the needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*), the Coast Guard considers whether this final 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 less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction N16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.993(b) to read as follows:

§ 117.993 Lake Champlain

* * * * *

(b) The draw of the US2 Bridge, mile 91.8, over Lake Champlain, between South Hero Island and North Hero Island, shall operate as follows:

(1) The draw shall open on signal on the hour and the half hour from May 15th through October 15th from 8 a.m. to 8 p.m. daily.

(2) The draw shall open on signal from May 15th through October 15th from 8 p.m. to 8 a.m. if at least four hours notice is given by calling the number posted at the bridge.

(3) The draw shall open on signal from October 16th through May 14th if at least four hours notice is given by calling the number posted at the bridge.

* * * * *

3. Revise § 117.797(b) to read as follows:

§ 117.797 Lake Champlain

* * * * *

(b) The draw of the US2 Bridge, mile 91.8, over Lake Champlain, between South Hero Island and North Hero Island, shall operate as follows:

(1) The draw shall open on signal on the hour and the half hour from May 15th through October 15th from 8 a.m. to 8 p.m. daily.

(2) The draw shall open on signal from May 15th through October 15th from 8 p.m. to 8 a.m. if at least four hours notice is given by calling the number posted at the bridge.

(3) The draw shall open on signal from October 16th through May 14th if at least four hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: May 13, 1999.

R.M. Larrabee,

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

[FR Doc. 99–13241 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 77, 80, 81, 82, 83, 152, 207, 220, 221, 222, 301, 303, 306, 308, 320, 324, 325, 328, 333, and 336

RIN 3067–AC91

Removal of Certain Parts of Title 44 CFR

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule removes 20 parts from title 44 of the Code of Federal Regulations. The rules we are removing are no longer authorized, covered in other regulations, or are complete, discontinued, or otherwise obsolete.

EFFECTIVE DATE: This rule is effective June 24, 1999.

FOR FURTHER INFORMATION CONTACT: H. Crane Miller, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3340, (telefax)(202) 646–4536, or (email) crane.miller@fema.gov.

SUPPLEMENTARY INFORMATION: We published a proposed rule on February 18, 1999, 64 FR 8048–8050, and received no comments. Removal of these rules is part of our continuing efforts to update and streamline FEMA regulations. For readers' convenience, we are reprinting our reasons for removing these parts.

Part 77—Acquisition of Flood Damaged Structures

The National Flood Insurance Reform Act of 1994 removed the authority underlying Part 77, Acquisition of Flood Damaged Structures, when it repealed § 1362 of the National Flood Insurance Act (Pub. L. 103–325, title V, § 551(a), Sept. 23, 1994, 108 Stat. 2269). Regulations governing acquisition of flood damaged structures are now found in 44 CFR part 78.

Parts 80—Description of Program and Offer to Agents, 81—Purchase of Insurance and Adjustment of Claims, 82—Protective Device Requirements, and 83—Coverages, Rates, and Prescribed Policy Forms

These parts contain the regulations for the Federal Crime Insurance Program (FCIP), the authorization for which expired on September 30, 1996. The Congress established the FCIP in 1970 under Title VI of the Housing and Urban Development Act of 1970 to make crime insurance available at affordable rates in any State where a critical market unavailability situation for crime insurance existed and had not been met through State action or to make affordable crime insurance available in states where no affordable crime insurance was available and the state had taken no action. No new crime insurance coverage is available under this program, and with the exception of a few remaining claims in process, the program is no longer active. See 12 U.S.C. 1749bbb(a).

Part 152—State Grants for Arson Research

The authorization under the Arson Prevention Act of 1994 expired on September 30, 1996 and was not renewed by Congress. The Act authorized FEMA to make grants to States or consortia of States for competitive arson research, prevention and control grant awards. Part 152 established the uniform administrative rules under which the States or consortia of States applied for, and administered, the grants. The Director of FEMA delegated his responsibilities under the Act to the U.S. Fire Administration, which, working through its grantees, completed the research authorized under this program. See the Arson Prevention Act of 1994, Pub.L. 103–254, approved May 19, 1994, 108 Stat. 679.

Part 207—Great Lakes Planning Assistance

The Great Lakes Planning Assistance Act of 1988, approved November 23, 1988, expired one year later and was not

extended by Congress. The Act authorized FEMA's Director to assist 8 Great Lakes States (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin) to reduce and prevent damage from high water levels in the Great Lakes. The assistance included a one-time grant up to $250,000 for preparation of mitigation and emergency plans, coordinating available State and Federal Assistance, developing and implementing measures to reduce damages due to high water levels, and assisting local governments in developing and implementing plans to reduce damages. The Act required the Great Lake States to submit grant applications within one year after the enactment of the Act—by November 23, 1989. See the Great Lakes Planning Assistance Act of 1988, Pub.L. 100–707, approved November 23, 1988, 102 Stat. 4711

Parts 220—Temporary Relocation Assistance, 221—Permanent Relocation Assistance, and 222—Superfund Cost Share Eligibility Criteria for Permanent and Temporary Relocation

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URARPA) provided for moving costs, relocation benefits, and other expenses incurred by persons displaced as a result of Federal and federally assisted programs. Under § 2(c) of Executive Order 12580 of January 23, 1987 the President delegated to the Director of FEMA the functions vested in the President by the Act to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for. Using redelegation authority granted elsewhere in the executive order, FEMA Acting Director Jerry D. Jennings redelegated FEMA's authority under § 2(c) of E.O. 12580 to the Environmental Protection Agency (EPA) on August 8, 1990. William K. Reilly, Administrator of EPA, gave his consent to the redelegation on October 31, 1990.

Effective April 2, 1989, EPA adopted the U.S. Department of Transportation regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Act. See 40 CFR 4.1. When FEMA delegated its relocation assistance authority to EPA in 1990, that redelegated authority came under the regulations and procedures of the U.S. Department of Transportation. We are removing this part because separate FEMA regulations on the subject are unnecessary and experience shows that these separate regulations cause confusion to those that seek relocation assistance under the Superfund and under FEMA's Hazard Mitigation Grant Program.

Part 301—Contributions for Civil Defense Equipment

Part 301 prescribed the basic terms and conditions under which our Agency contributes Federal funds to States for to procure civil defense equipment under the provisions of section 201(i) of the Civil Defense Act of 1950. Repeal of the Civil Defense Act of 1950 and publication of 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, make this part obsolete.

Part 303—Procedure for Withholding Payments for Financial Contributions under the Federal Civil Defense Act

Part 303 established procedures by which the Director may withhold payments of financial contributions to States or persons, or may limit such payments to specified programs or projects under section 401(h) of the Civil Defense Act of 1950. Repeal of the Civil Defense Act of 1950 and publication of 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, make this part obsolete.

Part 306—Official Civil Defense Insigne

The authorization for the insigne no longer exists and the civil defense program has been merged into emergency preparedness. This part prescribed the official Civil Defense insigne authorized by the Federal Civil Defense Act of 1950 (FCDA). The insigne could have been used by any State or local civil defense organization and by persons engaged in civil defense activities approved by such organizations. The rule also established requirements for the reproduction, manufacture, display, sale, possession, and wearing of the insigne. The Congress repealed the FCDA in 1994 (Pub.L. 103–337, approved October 5, 1994, 108 Stat. 2663, 3100–3111), and restated its authorities as Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). In this restatement, Congress did not include any provision authorizing the Civil Defense insigne.

Part 308—Labor Standards for Federally Assisted Contracts

FEMA no longer needs the special labor rules provided in this section. These regulations, combined with those in CFR 29, Part 5, prescribed the labor standards applicable to construction work financed, even in part, with Federal funds authorized by section 201(i) of the Federal Civil Defense Act of 1950, as amended, (50 U.S.C. App. 2281) and provided to any State (and to a political subdivision of the State, where applicable). The Secretary of Labor approved the regulations in part 308, to the extent that they varied from those published in 29 CFR part 5, to meet FEMA's particular needs. We no longer need separate rules to government labor standards and will rely on the Federal Acquisition Regulation (FAR) and Department of Labor regulations to cover labor standards for our contracts.

Part 320—Dispersion and Protective Construction: Policy, Criteria, Responsibilities (DMO–1)

This part described the policy, criteria and responsibilities for new facilities and major expansions of existing facilities important to national security to reduce the risk of damage in the event of an attack. This rule does not conform to Administration policy, which eliminates FEMA's role in geographic dispersal of industry in the DPA's congressional policy statement. For this reason we are removing part 320.

Part 324—National Security Policy Governing Scientific and Engineering Manpower (DMO–5)

This part provided policy on the training and use of scientific and engineering manpower as it affects the national security. It stated that ''each department and agency of the Federal Government should (a) review its current manpower policies and update its policies and programs for scientific and engineering manpower to assure their maximum contribution to national security and emergency preparedness, (b) base its policies and actions on projected peacetime and emergency requirements, and (c) encourage and support private sector efforts to assure the fulfillment of future requirements for this critical manpower resource.''

Issuance of any guidance on the subject is the responsibility of the Department of Labor under E.O. 12656. Under section 1201(1) of E.O.12656 the Secretary of Labor is to ''* * * issue guidance to ensure effective use of civilian workforce resources during national security emergencies.'' We are removing this part in recognition that each department and agency has responsibility for their scientific and engineering manpower policies, projected needs, and use of the private sector to help meet their needs, and to affirm that any guidance in this area to

other departments and agencies is to be provided by the Department of Labor.

Part 325—Emergency Health and Medical Occupations

This part listed the Emergency Health and Medical Occupations for use during and after emergencies. The Department of Health and Human Services (HHS) and the U. S. Public Health Service (USPHS) are responsible for maintaining this list under the Federal Response Plan (FRP). In addition, under section 801(1) of E.O. 12656, the Secretary of HHS is to ''develop national plans * * * to mobilize the health industry and health resources for the provision of health, mental health, and medical services in national security emergencies.'' We are removing this part to clarify and affirm the roles of HHS and USPHS in planning and providing information in this critical area.

Part 328—General Policies for Strategic and Critical Materials Stockpiling (DMO–11)

FEMA no longer has the responsibility for policies regarding the stockpiling of strategic and critical materials. E.O. 12626, National Defense Stockpile Manager, dated Feb. 25, 1988, transferred the FEMA Director's authorities to the Secretary of the Department of Defense. E.O. 12626 revoked E.O. 12155 of September 10, 1979, which initially delegated the responsibility for the national defense stockpile policy to the FEMA Director.

Part 333–Peacetime Screening

This part provided for FEMA to adjudicate any unresolved differences between the Department of Defense (DoD) and civilian employers that seek to exempt key employees who are members of the Ready Reserve from military duties. FEMA's role derives from a 1968 statement of understanding between DoD and the Office of Emergency Planning (OEP). FEMA succeeded to the responsibilities of OEP when President Carter established FEMA under Reorganization Plan No. 3 of 1978 and Executive Order 12148. Neither OEP nor FEMA ever adjudicated a difference between DoD and an employer under the authority of this part. The responsibility falls outside FEMA's principal areas of all-hazards emergency management. We do not have the experience, expertise, or resources to fulfill obligations under the part should the need arise, and are discussing an orderly transition with the Department of Defense.

Part 336–Predesignation of Nonindustrial Facilities (NIF) for National Security Emergency Use

This part described policies and procedures under the NIF program to improve the Nation's ability to mobilize nonindustrial facilities (such as hotels, motels, office buildings, and educational institutions) for Department of Defense or essential civilian needs in times of national security emergencies. Predesignation of nonindustrial facilities is no longer a priority in today's national security emergency environment. FEMA no longer provides policy, criteria, and planning guidance for this area. For these reasons we propose to remove this part.

Compliance with Federal Administrative Requirements

National Environmental Policy Act

Our regulations categorically exclude this proposed rule from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. We have not prepared an environmental assessment or an environmental impact statement.

Regulatory Flexibility Act

We do not expect this proposed rule (1) to affect small entities adversely, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities. The proposed rule would remove regulations for programs that are no longer authorized, covered in other regulations, or are complete, discontinued, or otherwise obsolete.

As Director I certify that this rule is not a major rule under Executive Order 12291 and that the rule will not have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It removes 20 parts from title 44 of the Code of Federal Regulations that are no longer authorized, covered in other regulation, or are complete, discontinued, or otherwise obsolete. The rule does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects

44 CFR Part 77

Flood insurance, Grant programs—natural resources, Intergovernmental relations.

44 CFR Part 80

Crime insurance, Reporting and recordkeeping requirements.

44 CFR Part 81

Claims, Crime insurance, Reporting and recordkeeping requirements.

44 CFR Part 82

Crime insurance, and Security measures.

44 CFR Part 83

Crime insurance, Reporting and recordkeeping requirements.

44 CFR Part 207

Disaster assistance, Flood control, Grant programs—housing and community development, Great Lakes, Reporting and recordkeeping requirements, and Technical assistance.

44 CFR Part 220

Administrative practice and procedure, Disaster assistance, Grant programs—environmental protection, Grant programs—housing and community development, Hazardous substances, Relocation assistance,

Reporting and recordkeeping requirements, and Superfund.

44 CFR Part 221

Disaster assistance, Grant programs—environmental protection, Grant programs—housing and community development, Hazardous substances, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, and Superfund.

44 CFR Part 222

Administrative practice and procedure, Disaster assistance, Grant programs—environmental protection, Hazardous substances, Intergovernmental relations, Relocation assistance, Reporting and recordkeeping requirements, and Superfund.

44 CFR Part 301

Civil defense, Grant programs—national defense, and Reporting and recordkeeping requirements.

44 CFR Part 303

Administrative practice and procedure, Civil defense, and Grant programs—national defense.

44 CFR Part 306

Civil defense, Penalties, Seals and insignia.

44 CFR Part 308

Civil defense, Grant programs—national defense, Minimum wages, and Reporting and recordkeeping requirements.

44 CFR Part 320

National defense, Security measures.

44 CFR Part 324

Engineers, Manpower, National defense, and Scientists.

44 CFR Part 325

Health professions, Manpower, and National defense.

44 CFR Part 328

Strategic and critical materials.

44 CFR Part 333

Armed forces reserves.

For the reasons set forth in the preamble and under the authority of Reorganization Plan No. 3 of 1978, E.O. 12127, and E.O. 12148, 44 CFR, Chapter 1, is amended by removing and reserving the following parts:

Part 77—Acquisition of Flood Damaged Structures;

Part 80—Description of program and offer to agents;

Part 81—Purchase of insurance and adjustment of claims;

Part 82—Protective device requirements;

Part 83—Coverages, rates, and prescribed policy forms;

Part 152—State grants for arson research, prevention, and control;

Part 207—Great Lakes planning assistance;

Part 220—Temporary Relocation Assistance;

Part 221—Permanent Relocation assistance;

Part 222—Superfund cost share eligibility criteria for permanent and temporary relocation;

Part 301—Contributions for civil defense equipment;

Part 303—Procedure for withholding payments for financial contributions under the Federal Civil Defense Act;

Part 306—Official civil defense insigne;

Part 308—Labor standards for federally assisted contracts;

Part 320—Dispersion and protective construction: policy, criteria responsibilities (DMO–1);

Part 324—National security policy governing scientific and engineering manpower (DMO–5);

Part 325—Emergency health and medical occupations;

Part 328—General policies for strategic and critical materials stockpiling (DMO–11);

Part 333—Peacetime screening; and

Part 336—Predesignation of nonindustrial facilities (NIF) for national security emergency use.

Dated: May 18, 1999.

James L. Witt,

Director.

[FR Doc. 99–13184 Filed 5–24–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–61; FCC 99–13]

1998 Biennial Regulatory Review—''Annual Report of Cable Television Systems,'' Form 325

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises and streamlines the Form 325, ''Annual Report of Cable Television Systems,'' which is provided for in the Commission's rules. The Form 325 solicits basic operational information from cable television systems. In the past, in order to ensure the accuracy and usefulness of the data obtained, the Form 325 was mailed to every cable system in the country. In an effort to reduce the administrative burdens imposed upon both the cable industry and the Commission, while still allowing the Commission access to the public information necessary for it to carry out its regulatory functions, the Commission not only modified the form but also drastically reduced the universe of system operators required to file the form.

DATES: These rules are effective June 24, 1999 except for § 76.403, which contains modified information collection requirements that require OMB approval. The Commission will publish a notice in the **Federal Register** at a later date announcing the effective date. Written comments by the public on the modified information collection requirements should be submitted on or before June 24, 1999.

ADDRESSES: A copy of any comments on the modified information collection requirements in §§ 76.403 should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, S.W., Washington, DC 20554, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen Kosar, Consumer Protection and Competition Division, Cable Services Bureau at (202) 418–1053. For additional information concerning the information collection requirements contained herein, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

Summary of Action

1. As part of the Commission's 1998 biennial regulatory review of its regulations conducted pursuant to Section 11 of the Telecommunications Act of 1996, the Commission issued a Report and Order which revises and streamlines the Form 325, ''Annual Report of Cable Television Systems,'' which is provided for in section 76.403 of the Commission's rules. In this proceeding, the Commission sought to strike a balance to reduce the burdens placed upon the industry and on Commission resources in the Form 325 information collection process while still retaining access to core information that is needed by the Commission in order to perform its regulatory functions.

2. In the Report and Order, the Commission drastically reduced the number of system operators required to file the form. In the past, the Form 325

information collection process applied to every cable system in the country—nearly 11,000 systems. The Report and Order states that the Commission now believes that sufficient information could be collected to monitor the cable industry by sending out approximately 1,100 forms, an overall reduction of over 9,000 forms. In this regard, all cable systems with 20,000 or more subscribers will be required to file the form annually. For those systems with less than 20,000 subscribers, the Commission will utilize a stratified sampling methodology in order to collect information from that group, as opposed to a mandatory requirement to have all of those systems file Form 325.

3. The current four part Form 325 will be replaced with a streamlined, user-friendly Form 325 containing a reduced number of questions. In addition, information will no longer be collected on both a Community Unit Identification Number (''CUID'') basis and a Physical System Identification Number (''PSID'') basis, but will be collected solely on a PSID basis. This method of reporting information on a system basis will eliminate a previously cumbersome and excessively detailed procedure designed to elicit information regarding cable operators and the communities they serve on an individual community unit basis.

4. The following modifications will be made to the revised Form 325:

General Information

5. In this portion of the form, the Commission will solicit information from cable operators regarding the number of subscribers served by their systems as well as the number of potential subscribers (homes passed) that cable operators can access from their systems. Additionally, information will be sought regarding miles of cable plant and how much of the plant is devoted to coaxial cable or fiber optic cable, including the number and average nodal sizes in terms of subscribers served. Cable operators will also be required to report whether their cable systems use microwave facilities as part of the cable plant.

6. In addition, questions on the form will solicit general information regarding the provision of digital services so that the Commission can better assess the technical capabilities of cable systems and the future of the cable industry. In that regard, the form will ask for information including: number of cable modems deployed and the number of cable modem subscribers; number of subscribers requiring set-top boxes and the number of set-top boxes in inventory and deployed—analog/digital/hybrid—and total amount of analog spectrum versus digital spectrum.

Frequency and Signal Distribution Information

7. In this part of the form, the Commission will seek information pertaining to areas such as transmitted spectrum and channel capacity. Specifically, information will be sought regarding upstream channel usage (i.e., two-way capability) in order to ascertain the capabilities of cable operators to transmit information from their subscribers' premises back to the cable headend. The form also will request information regarding downstream channel usage in order to ascertain the total number of video channels, both analog and digital, capable of being carried on a system, including the number of digital channels per 6 MHz of spectrum. Of that number, information will be sought regarding the total number of channels, including all non-video channels, activated and delivered on the system. Operators also will be asked to provide information about aggregate totals for addressable converters, modems deployed, and the number of telephony subscribers that use their systems. The form will also require operators to submit their channel lineups and to identify which stations are carried pursuant to leased access, government access, public and educational access, and which stations are carried pursuant to must carry or retransmission consent provisions. Finally, operators will be asked to provide information regarding the number of tiers carried on their systems and how many channels may be carried on each of those tiers.

8. This Report and Order also modifies section 76.615 of the Commission's rules which requires cable operators to notify the Commission annually of all signals carried in the aeronautical radio frequency bands, a requirement previously fulfilled by the filing of a Form 325. Since all cable operators will no longer be required to file Form 325, this requirement will now be satisfied by a cable operator filing Commission Form 320, ''Basic Signal Leakage Performance Report.''

Final Regulatory Flexibility Analysis

9. *Background.* As required by the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the Notice of Proposed Rule Making (''NPRM'') in this proceeding. The Commission sought written public comment on the possible impact of the proposed policies and rules on small entities in the NPRM, including comments on the IRFA. This Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order conforms to the RFA.

10. *Need for Action and Objectives of the Rules.* Section 11 of the 1996 Telecommunications Act requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an excellent opportunity for a thorough examination of all of the Commission's regulations.

11. *Summary of Significant Issues Raised by the Public Comments in Response to the IRFA.* While no commenter has specifically responded to the IRFA, several commenters allege that the current requirement to file a Form 325 is unnecessarily burdensome. Commenters generally contend that the current Form 325 has outlived its usefulness and the information contained therein is available from other sources.

12. *Description and Estimate of the Number of Small Entities to which Rules will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that might be affected by the rules here adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a small business concern is one which: (a) is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria by the SBA. The rule implementing a streamlined Form 325 that we adopt in this Report and Order only will affect cable systems.

13. *SBA Definitions for Cable.* The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. According to the Census Bureau data from 1992, there were approximately 1,758 cable systems with less than $11 million in revenue.

14. *Additional Cable System Definitions.* In addition, the

Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving no more than 400,000 subscribers nationwide. Based on recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators.

15. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 cable subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less total 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable systems that would qualify as small cable operators under the definition in the Communications Act.

16. *Description of Reporting, Recordkeeping and Other Compliance Requirements.* This analysis examines the costs and administrative burdens associated with our rules and requirements. The rule we adopt today significantly reduces the burden on the cable industry. The rule requires that all cable systems having 20,000 or more subscribers, and a sampling of cable operators having less than 20,000 subscribers, must file a streamlined Form 325. This will result in reducing the filing burden from nearly 11,000 to approximately 1,100 forms filed by cable operators. In addition, the form itself has been modified to be less burdensome. We estimate that it will take operators approximately 2 hours to fill out each newly revised Form 325. No other compliance requirements are imposed.

17. *Steps Taken to Minimize Significant Economic Impact on Small and Significant Alternatives Considered.* We believe that our amended rule will alleviate Form 325 filings for some small cable operators under the SBA's definition of small businesses. In addition, by our action of streamlining Form 325, the burden on all cable operators will be substantially reduced.

18. It is ordered that, pursuant to authority found in Sections 4(i), 303(r) and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 548 that section 76.403 of the Commission's rules, and section 76.615 of the Commission's rules, are amended as set forth in the rule changes.

19. It is further ordered that the rules as amended shall become effective 30 days after publication in the **Federal Register**. The information collections contained in these rules shall become effective 70 days after publication in the **Federal Register**, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

20. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Paperwork Reduction Act

This Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and found to impose new or modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in this Report and Order as required by the 1995 Act. Public comments are due June 24, 1999. 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 shall 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: 3060–0061.

Title: Annual Report of Cable Television Systems—Form 325.

Type of Review: Revision of existing collection.

Respondents: Business and for-profit entities.

Number of Respondents: approximately 1,100.

Estimated Time per Response: 2 hours.

Total Estimated Annual Burden to Respondents: 2,200 hours.

Total Estimated Annual Cost to Respondents: $2,200. Postage, stationery and photocopying costs pertaining to this filing requirement are estimated to be $2 per filing. 1,100 x $2 = $2,200.

Needs and Uses: The modified Form 325 will primarily assist the Commission in collecting information regarding the conversion of cable systems from the analog to the digital medium. The information collected will allow the Commission to monitor the scope of the conversion process. The information solicited also will help to assess industry compliance with Commission rules and to monitor industry trends in various areas.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.403 is revised to read as follows:

§ 76.403 Cable television system reports.

The operator of every operational cable television system that serves 20,000 or more subscribers shall file with the Commission a Form 325 soliciting general information and frequency and signal distribution information on a Physical System Identification Number (''PSID'') basis. These forms shall be completed and returned to the Commission within 60 days after the date of receipt by the operator.

Note: The Commission retains its authority to require Form 325 to be filed by a sampling of cable operators with less than 20,000 subscribers.

3. Section 76.615 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 76.615 Notification requirements.

All cable television operators shall comply with each of the following notification requirements:

(a) The operator of the cable system shall notify the Commission annually of all signals carried in the aeronautical radio frequency bands, noting the type of information carried by the signal (television picture, aural, pilot carrier, or system control etc.) The timely filing of the FCC Form 320 will meet this requirement.

* * * * *

[FR Doc. 99–13010 Filed 5–24–99; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 253

[DFARS Case 99–D003]

Defense Federal Acquisition Regulation Supplement; Work Stoppage Report

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate the requirement for use of a specific form to report work stoppages resulting from labor disputes. The form is unnecessary, as the DFARS provides guidance for preparation of a narrative report on this subject.

EFFECTIVE DATE: May 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 99–D003.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule eliminates the requirement for use of DD Form 1507, Work Stoppage Report, to report labor disputes that could interfere with contract performance. The form is unnecessary in view of the narrative reporting requirement at DFARS 222.101–3–70.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D003.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 222 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 222 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 222 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Section 222.101–3 is revised to read as follows:

222.101–3 Reporting labor disputes.

The contract administration office shall—

(1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely; and

(2) Disseminate information on labor disputes in accordance with departmental procedures.

3. Section 222.101–3–70 is amended by revising the introductory text of paragraph (b) to read as follows:

222.101–3–70 Impact of labor disputes on defense programs.

* * * * *

(b) Each contracting activity involved shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining the impact, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor. This reporting requirement is assigned Report Control Symbol DD–ACQ(AR)1153. The report must be in narrative form and must include—

* * * * *

PART 253—FORMS

4. The note at the end of Part 253 is amended by removing the entry ''253.303–1507 Work Stoppage Report.''.

[FR Doc. 99–13040 Filed 5–24–99; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 237

[DFARS Case 99–D008]

Defense Federal Acquisition Regulation Supplement; Contracts Crossing Fiscal Years

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit contracting officers to enter into contracts for the procurement of severable services that cross fiscal years. The Federal Acquisition Regulation (FAR) authorizes the heads of executive agencies to enter into such contracts. This DFARS rule delegates the authority to DoD contracting officers.

EFFECTIVE DATE: May 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 99–D008.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule adds guidance at DFARS 232.703–3 and 237.106 to supplement the FAR rule that was published as Item VIII of Federal Acquisition Circular 97–09 on October 30, 1998 (63 FR 58600). The FAR rule implemented Section 801 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 801 amended 10 U.S.C. 2410a to provide authority to enter into contracts for the procurement of severable services that cross fiscal years. The FAR rule permits the head of an executive agency to enter into such contracts. This

DFARS rule delegates the authority to DoD contracting officers.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subparts will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D008.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 232 and 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 232 and 237 are amended as follows:

1. The authority citation for 48 CFR Parts 232 and 237 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

2. Section 232.703–3 is added to read as follows:

232.703–3 Contracts crossing fiscal years.

(b) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 2410a).

PART 237—SERVICE CONTRACTING

3. Section 237.106 is revised to read as follows:

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed 1 year. The nature of the duties must be—

(i) Temporary (not more than 1 year); or

(ii) Intermittent (not cumulatively more than 130 days in 1 year).

(2) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 2410a).

[FR Doc. 99–13039 Filed 5–24–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–99–5416]

RIN 2127–AH36

Federal Motor Vehicle Theft Prevention Standard; Final Listing of Model Year 2000 High-Theft Vehicle Lines

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

ACTION: Final rule.

SUMMARY: This final rule announces NHTSA's determination for model year (MY) 2000 high-theft vehicle lines that are subject to the parts-marking requirements of the Federal motor vehicle theft prevention standard, and high-theft lines that are exempted from the parts-marking requirements because the vehicles are equipped with antitheft devices determined to meet certain statutory criteria for MY 2000, pursuant to the statute relating to motor vehicle theft prevention.

EFFECTIVE DATE: The amendment made by this final rule is effective May 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Motor Vehicle Theft Group, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: The ''Anti Car Theft Act of 1992,'' P. L. 102–519, amended the law relating to the parts-marking of major component parts on designated high-theft vehicle lines and other motor vehicles. The Anti Car Theft Act amended the definition of ''passenger motor vehicle'' in 49 U.S.C. § 33101(10) to include a ''multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.'' Since ''passenger motor vehicle'' was previously defined to include passenger cars only, the effect of the Anti Car Theft Act is that certain multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines may be determined to be high-theft vehicles subject to the Federal motor vehicle theft prevention standard (49 CFR Part 541).

The purpose of the theft prevention standard is to reduce the incidence of motor vehicle theft by facilitating the tracing and recovery of parts from stolen vehicles. The standard seeks to facilitate such tracing by requiring that vehicle identification numbers (VINs), VIN derivative numbers, or other symbols be placed on major component vehicle parts. The theft prevention standard requires motor vehicle manufacturers to inscribe or affix VINs onto covered original equipment major component parts, and to inscribe or affix a symbol identifying the manufacturer and a common symbol identifying the replacement component parts for those original equipment parts, on all vehicle lines selected as high-theft.

The Anti Car Theft Act also amended 49 U.S.C. § 33103 to require NHTSA to promulgate a parts-marking standard applicable to major parts installed by manufacturers of ''passenger motor vehicles (other than light duty trucks) in not to exceed one-half of the lines not designated under 49 U.S.C. § 33104 as high-theft lines.'' Section 33103(a) further directed NHTSA to select only lines not designated under § 33104 of this title as high theft lines. NHTSA lists each of these selected lines in Appendix B to Part 541. Since § 33103 did not specify marking of replacement parts for below-median lines, the agency does not require marking of replacement parts for these lines. NHTSA published a final rule amending 49 CFR Part 541 to include the definitions of MPV and LDT, and major component parts. See 59 F.R. 64164, December 13, 1995.

49 U.S.C. § 33104(a)(3) specifies that NHTSA shall select high-theft vehicle lines, with the agreement of the manufacturer, if possible. Section 33104(d) provides that once a line has been designated as likely high-theft, it remains subject to the theft prevention standard unless that line is exempted under § 33106. Section 33106 provides that a manufacturer may petition to have a high-theft line exempted from the requirements of § 33104, if the line is equipped with an antitheft device as standard equipment. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with the theft

prevention standard in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high-theft, and the lines which are being listed for the first time and will be subject to the theft prevention standard beginning in a given model year. It also identifies those lines that are exempted from the theft prevention standard for a given model year under § 33104. This listing also identifies those lines (except light-duty trucks) in Appendix B to Part 541 that have theft rates below the 1990/1991 median theft rate but are subject to the requirements of this standard under § 33103.

On July 15, 1998, the final listing of high-theft lines for the MY 1999 vehicle lines was published in the **Federal Register** (63 FR 38096). The final listing identified four vehicle lines that were listed for the first time and became subject to the theft prevention standard beginning with the 1999 model year.

Subsequent to publishing the MY 1999 listing, the agency was also informed that six vehicle lines, the Chrysler Executive Sedan/Limousine, the Ferrari 308, the Mazda GLC, the Suzuki Samarai, the Toyota Starlet and the Volkswagen Rabbit ceased production prior to becoming subject to the theft prevention standard. Therefore, these lines have been deleted from Appendix A of this listing. Additionally, prior to this listing, Jaguar Cars informed the agency that the XJ40 nameplate was used only as a bodystyle codename for the XJ line prior to introduction of the vehicle. Jaguar Cars also informed the agency that the XJ6 nameplate erroneously listed in Appendix A should also be deleted because it represents a six-cylinder model of the XJ car line and not a new vehicle line. Therefore, the Jaguar XJ40 and XJ6 vehicle nameplates have been deleted from Appendix A of this listing.

For MY 2000, the agency identified five new vehicle lines that are likely to be high-theft lines, in accordance with the procedures published in 49 CFR Part 542. The new lines are the Daewoo Nubira, the Daewoo Korando (MPV), the Honda S2000, the Nissan Xterra (MPV) and the Toyota Echo. In addition to these five vehicle lines, the list of high-theft vehicle lines includes all lines previously designated as high-theft and listed for prior model years.

The list of lines that have been exempted by the agency from the parts-marking requirements of Part 541 includes high-theft lines newly exempted in full beginning with MY 2000. The three vehicle lines newly exempted in full are the Ford Taurus, the General Motors Pontiac Grand Am and the Nissan Altima. Additionally, three petitions for modifications to existing antitheft systems installed in lines partially exempted by the agency were granted full exemptions from the parts-marking requirements. Beginning with MY 2000, the three partially exempted lines, the General Motors Buick LeSabre, Cadillac Deville and Pontiac Bonneville are exempted from the parts-marking requirements in full. Additionally, subsequent to publishing the MY 1999 listing of high-theft and exempted lines, the agency granted the Ford Motor Company an exemption from the parts-marking requirements of the theft prevention standard for its Mustang car line beginning with the 1999 model year. Therefore, the Ford Mustang car line has been added to Appendix A–I of this listing. Furthermore, Appendix A–I has been amended to reflect a nameplate change for the General Motors Chevrolet Lumina/Monte Carlo car line. The Chevrolet Lumina/Monte Carlo nameplate has been changed to Chevrolet Impala/Monte Carlo beginning with MY 2000.

Additionally, the agency became aware that ten vehicle lines, the Ferrari Testarossa, the Ford Festiva, the General Motors' Chevrolet Celebrity, Chevrolet Sprint and Oldsmobile Custom Cruiser, the Mazda Navajo, the Nissan Axxess, the Porsche 944, the Volvo 760 and the Volkswagen Fox ceased production prior to becoming subject to the theft prevention standard in MY 1997. Therefore, these lines have been deleted from Appendix B of this listing. The Land Rover Range Rover (MPV) has also been removed from Appendix B because it is rated at more than 6,000 pounds gross vehicle weight.

The vehicle lines listed as being subject to the parts-marking standard have previously been designated as high-theft lines in accordance with the procedures set forth in 49 CFR Part 542. Under these procedures, manufacturers evaluate new vehicle lines to conclude whether those new lines are likely to be high theft. The manufacturer submits these evaluations and conclusions to the agency, which makes an independent evaluation; and, on a preliminary basis, determines whether the new line should be subject to the parts-marking requirements. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider the preliminary determinations. Within 60 days of the receipt of these requests, the agency makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new lines on the high-theft list has been the subject of a final determination under either 49 U.S.C. § 33103 or § 33104.

The vehicle lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR Part 543 and 49 U.S.C. § 33106.

Similarly, the low-theft lines listed as being subject to the parts-marking standard have previously been designated in accordance with the procedures set forth in 49 U.S.C. § 33103.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listing of selections and exemptions is not contemplated by 49 U.S.C. Chapter 331.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, the selections in this final rule have previously been made in accordance with the provisions of 49 U.S.C. § 33104, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of 49 CFR Part 541 for MY 2000. Further, this listing does not actually exempt lines from the requirements of 49 CFR Part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of actions for MY 2000 that the agency has already taken, a full regulatory evaluation has not been prepared.

2. Regulatory Flexibility Act

The agency has also considered the effects of this listing under the

Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule is simply to inform the public of those lines that are already subject to the requirements of 49 CFR Part 541 for MY 2000. The agency believes that the listing of this information will not have any economic impact on small entities.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

4. Federalism

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

5. Civil Justice Reform

This final rule does not have a retroactive effect. In accordance with § 33118 when the Theft Prevention Standard is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part. 49 U.S.C. § 33117 provides that judicial review of this rule may be obtained pursuant to 49 U.S.C. § 32909. Section 32909 does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

1. The authority citation for Part 541 continues to read as follows:

Authority: 49 U.S.C. 33102–33104 and 33106; delegation of authority at 49 CFR 1.50.

2. In Part 541, Appendices A, A–I, A–II and B are revised. Appendices A, A–I, A–II and B are revised to read as follows:

APPENDIX A TO PART 541—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject lines
ALFA ROMEO	Milano 161.
	164.
BMW	Z3.
	6 Car Line.
CHRYSLER	Chrysler Cirrus.
	Chrysler Fifth Avenue/Newport.
	Chrysler Laser.
	Chrysler LeBaron/Town & Country.
	Chrysler LeBaron GTS.
	Chrysler's TC.
	Chrysler New Yorker Fifth Avenue.
	Chrysler Sebring.
	Chrysler Town & Country.
	Dodge 600.
	Dodge Aries.
	Dodge Avenger.
	Dodge Colt.
	Dodge Daytona.
	Dodge Diplomat.
	Dodge Lancer.
	Dodge Neon.
	Dodge Shadow.
	Dodge Stratus.
	Dodge Stealth.
	Eagle Summit.
	Eagle Talon.
	Jeep Cherokee (MPV).
	Jeep Grand Cherokee (MPV).
	Jeep Wrangler (MPV).
	Plymouth Caravelle.
	Plymouth Colt.
	Plymouth Laser.
	Plymouth Gran Fury.
	Plymouth Neon.
	Plymouth Reliant.
	Plymouth Sundance.
	Plymouth Breeze.
CONSULIER	Consulier GTP.
DAEWOO	Korando (MPV).[1]
	Nubira.[1]
FERRARI	Mondial 8.
	328.
FORD	Ford Aspire.
	Ford Escort.
	Ford Probe.
	Ford Thunderbird.
	Lincoln Continental.
	Lincoln Mark.
	Lincoln Town Car.
	Mercury Capri.
	Mercury Cougar.
	Merkur Scorpio.
	Merkur XR4Ti.

APPENDIX A TO PART 541—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD—Continued

Manufacturer	Subject lines
GENERAL MOTORS	Buick Electra.
	Buick Reatta.
	Buick Skylark.
	Chevrolet Malibu.
	Chevrolet Nova.
	Chevrolet Blazer (MPV).
	Chevrolet Prizm.
	Chevrolet Venture (MPV).[2]
	Chevrolet S–10 Pickup.
	Geo Storm.
	Chevrolet Tracker (MPV).
	GMC Jimmy (MPV).
	GMC Safari (MPV).
	GMC Sonoma Pickup.
	Oldsmobile Achieva (MYs 1997–1998).[3]
	Oldsmobile Bravada.
	Oldsmobile Cutlass.
	Oldsmobile Cutlass Supreme (MYs 1988–1997).[4]
	Oldsmobile Intrigue.
	Pontiac Fiero.
	Pontiac Grand Prix.
	Saturn Sports Coupe.
HONDA	Accord.
	CRV (MPV).
	Odyssey (MPV).
	Passport.
	Prelude.
	S2000.[1]
	Acura Integra.
HYUNDAI	Accent.
	Sonata.
	Tiburon.
ISUZU	Amigo.
	Impulse.
	Rodeo.
	Stylus.
	Trooper/Trooper II.
	VehiCross (MPV).[5]
JAGUAR	XJ.
KIA MOTORS	S–II.
LOTUS	Elan.
MASERATI	Biturbo.
	Quattroporte 228.
MAZDA	626.
	MX–3.
	MX–5 Miata.
	MX–6.
MERCEDES-BENZ	190 D.
	190 E.
	260E (1987–1989).
	300 SE (1988–1990).
	300 TD (1987).
	300 SDL (1987).
	300 SEL 420 SEL. (1987–1990).
	560 SEL (1987–1990).
	560 SEC (1987–1990).
	560 SL.

APPENDIX A TO PART 541—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD—Continued

Manufacturer	Subject lines
MITSUBISHI	Cordia.
	Eclipse.
	Mirage.
	Montero (MPV).
	Montero Sport (MPV).
	Tredia.
	3000GT.
NISSAN	240SX.
	Pathfinder.
	Sentra/200SX.
	Xterra.[1]
PEUGEOT	405.
PORSCHE	924S.
SUBARU	XT.
	SVX.
	Forester.
	Legacy.
SUZUKI	X90.
	Sidekick (MYs 1997–1998).[6]
	Vitara (MPV).
TOYOTA	Toyota 4-Runner (MPV).
	Toyota Avalon.
	Toyota Camry.
	Toyota Celica.
	Toyota Corolla/Corolla Sport.
	Toyota Echo.[1]
	Toyota MR2.
	Toyota RAV4 (MPV).
	Toyota Sienna (MPV).
	Toyota Tercel.
	Lexus RX300 (MPV).
VOLKSWAGEN	Audi Quattro.
	Volkswagen Scirocco.

[1] Lines added for MY 2000.
[2] Replaced the Chevrolet Lumina Minivan nameplate beginning with MY 1997.
[3] Renamed the Oldsmobile Alero beginning with MY 1999.
[4] Renamed the Oldsmobile Intrigue beginning with MY 1998.
[5] Line added for MY 1999.
[6] Renamed the Suzuki Vitara beginning with MY 1999 (includes Vitara and Grand Vitara models).

APPENDIX A–I—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Subject lines
AUSTIN ROVER	Sterling.

APPENDIX A–I—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543—Continued

Manufacturer	Subject lines
BMW	3 Car Line.
	5 Car Line.
	7 Car Line.
	8 Car Line.
CHRYSLER	Chrysler Conquest.
	Chrysler Imperial.
FORD	Mustang.[1]
	Taurus.[2]
GENERAL MOTORS	Buick LeSabre.
	Buick Park Avenue.
	Buick Regal/Century.
	Buick Riviera.
	Cadillac Allante.
	Cadillac Deville.
	Cadillac Seville.
	Chevrolet Cavalier.
	Chevrolet Corvette.
	Chevrolet Lumina/Monte Carlo (MYs 1996–1999).[3]
	Oldsmobile Alero.
	Oldsmobile Aurora.
	Oldsmobile Toronado.
	Pontiac Bonneville.
	Pontiac Grand Am.[2]
	Pontiac Sunfire.
HONDA	Acura CL.
	Acura Legend (MYs 1991–1996).[4]
	Acura NSX.
	Acura RL.
	Acura SLX.
	Acura TL.
	Acura Vigor (MYs 1992–1995).
ISUZU	Impulse (MYs 1987–1991).
JAGUAR	XK8.
MAZDA	929.
	RX–7.
	Millenia.
MERCEDES-BENZ	124 Car Line (the models within this line are):
	260E.
	300D.
	300E.
	300CE.
	300TE.
	400E.
	500E.
	129 Car Line (the models within this line are):
	300SL.
	500SL.[5]
	600SL.[6]
	SL320.
	SL500.
	SL600.
	202 Car Line (the models within this line are):
	C220.
	C230.
	C280.
	C36.
	C43.
MITSUBISHI	Galant.
	Starion.
	Diamante.
NISSAN	Nissan Altima.[2]
	Nissan Maxima.
	Nissan 300ZX.
	Infiniti I30.
	Infiniti J30.
	Infiniti M30.
	Infiniti QX4.
	Infiniti Q45.
PORSCHE	911.
	928.
	968.
	Boxster.
SAAB	900.
	9000.
TOYOTA	Toyota Supra.
	Toyota Cressida.
	Lexus ES.
	Lexus GS.
	Lexus LS.
	Lexus SC.
VOLKSWAGEN	Audi 5000S.
	Audi 100/A6.
	Audi 200/S4/S6.
	Audi Cabriolet.
	Volkswagen Cabrio.
	Volkswagen Corrado.
	Volkswagen Golf/GTI.
	Volkswagen Jetta/Jetta III.
	Volkswagen Passat.

[1] Exempted in full beginning with MY1999.
[2] Exempted in full beginning with MY 2000.
[3] Renamed Chevrolet Impala/Monte Carlo beginning with MY 2000.
[4] Renamed the Acura RL beginning with MY 1997.
[5] Renamed the SL500 beginning with MY 1994.
[6] Renamed the SL600 beginning with MY 1994.

APPENDIX A–II TO PART 541—HIGH-THEFT LINES WITH ANTITHEFT DEVICES WHICH ARE EXEMPTED IN-PART FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturers	Subject lines	Parts to be marked
GENERAL MOTORS	Cadillac Eldorado	Engine, Transmission.
	Cadillac Sixty Special [1]	Engine, Transmission.
	Oldsmobile Ninety-Eight	Engine, Transmission.
	Pontiac Firebird	Engine, Transmission.
	Chevrolet Camaro	Engine, Transmission.
	Oldsmobile Eighty-Eight	Engine, Transmission.

[1] Renamed the Cadillac Concours beginning with MY 1994.

APPENDIX B—PASSENGER MOTOR VEHICLE LINES (EXCEPT LIGHT-DUTY TRUCKS) WITH THEFT RATES BELOW THE 1990/91 MEDIAN THEFT RATE, SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject lines
Ford	Crown Victoria.
	Mercury Grand Marquis.
	Mercury Sable.
General Motors	Chevrolet Astro (MPV).
	GMC Safari (MPV).
Honda	Civic.

Issued on May 18, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13159 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 970703165–9117–03; I.D. 062397A]

RIN 0648–AK00

Taking and Importing Marine Mammals; Taking of Marine Mammals Incidental to Power Plant Operations

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from North Atlantic Energy Service Corporation (North Atlantic), issues regulations to govern the unintentional take of small numbers of seals incidental to routine operations of the Seabrook Station nuclear power plant, Seabrook, NH (Seabrook Station). Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. This rulemaking does not authorize this activity; such authorization is under the jurisdiction of the Nuclear Regulatory Commission and is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of affecting the least practicable adverse impact on the species, and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective from July 1, 1999, through June 30, 2004.

ADDRESSES: A copy of the application, Environmental Assessment (EA) and other available documents may be obtained by writing to Donna Wieting, Acting Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring MD 20910–3226, or by telephoning the contacts listed below (see **FOR FURTHER INFORMATION CONTACT:** NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, or Scott Sandorf, Northeast Regional Office, NMFS, (978) 281–9388.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s) of marine mammals, will not have an unmitigable adverse impact on the availability of these species for subsistence uses, and if regulations are prescribed setting forth the permissible method of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On June 16, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from North Atlantic to take marine mammals incidental to routine operations of the Seabrook Station. Seabrook Station is a single unit, 1,150 megawatt nuclear power generating facility located in Seabrook, NH. Cooling water for plant operations is supplied by three intake structures approximately 1 mile (1.6 km) offshore in about 60 feet (18.3 m) of water. During normal power operations, about 469,000 gallons per minute are drawn through the intakes to a 19–foot (5.8 m) diameter, 3–mile long (4.8 km) tunnel beneath the seafloor and into large holding bays (called forebays) at the power plant. Lethal takes of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) are known to have occurred and are expected to continue to occur as the animals enter the cooling water intake structures and apparently drown enroute to the forebays.

Each of the three seawater intake structures consists of a velocity cap that is connected to the subterranean intake tunnel by vertical risers. The velocity intake caps are 30 feet (9.1 m) in diameter and rest, mushroom-like, on top of 9–foot (2.7 m) diameter risers that vertically descend 110 feet (33.5 m) to connect with the horizontal intake tunnel. The bottom of the horizontal intake cap opening is 10 feet (3.05 m) above the ocean bottom, and the intake openings are covered by vertical bars that are spaced 16 in. (40.6 cm) apart. The intent of the vertical bars is to reduce the amount of large debris that can enter the intake. The purpose of the

cooling water intake design is to minimize the rate of water flow at the entrance to the intakes and thereby minimize the entrainment of marine organisms. The rate of water flow at the edge of the velocity intake caps during normal, continuous power operations is about 0.5 feet per second (0.15 m/sec; 0.3 knots).

Because the structures are offshore and submerged, seals have not been observed entering the intakes, but they are discovered in the forebays of the station. It is not believed that the horizontal flow rate at the entrance to the intakes is strong enough to sweep seals into the intakes. The animals may swim into the structures in pursuit of prey or by curiosity. Once inside the velocity cap, the rate of water flow increases in the risers and intake tunnel. The accelerating, downward turning flow and the low-light conditions may disorient the seals and may inhibit their escape from the intakes. For an object traveling passively with the water flow, the minimum transit time from the offshore intake velocity cap to the forebay is approximately 80 minutes. A seal that enters the intakes and is unable to find its way out would not be able to survive the transit through the intake tunnel to the plant.

Though Seabrook Station has been in commercial operation since August 1990, no seal takes were known to have occurred prior to 1993 when the remains of two seals were discovered. In 1994, the remains of seven seals were found and, in 1995, the remains of six to seven were found. In 1996, 12 to 17 animals were taken and, in 1997, 10 seals were taken at the facility. Lethal takes for 1998 totaled 13 seals. Given that the local abundance of harbor seals is known to be increasing and that plant operations are scheduled to continue, as yet unmodified, takes are likely to continue to occur in the coming years. The expected number of takes cannot be estimated at this point, but an examination of past years' takes may illustrate a trend for upcoming years.

Description of the Habitat and Marine Mammals Affected by the Activity

A description of the U.S. Atlantic coast environment, including marine mammal abundance, distribution, and habitat can be found in the EA on this rule. Additional information on Atlantic coast marine mammals can be found in Waring *et al.* (1998). These documents are available upon request (see **ADDRESSES**).

Summary of Potential Impacts

From the initial report of a take in 1993 through 1998, the remains of 50 to 56 seals have been discovered in Seabrook Station's forebays or on the devices used to clean the forebays' condenser intake screens. Human access to the forebays is restricted and visibility is poor. Consequently, intact animals occasionally go undetected in the forebay, and pieces of hide and bones are recovered in the screen washings as the animals decompose, causing uncertainty in the total number of animals taken to date. The remains are turned over to authorized members of the Northeast Marine Mammal Stranding Network for analysis and disposal. Through 1998, the remains of four gray seals, and skull fragments of two harp seals and of one hooded seal have been identified. Thirty-seven of the seals have been positively identified as harbor seals. For the harbor seals whose ages could be determined, the majority have been young-of-the-year. Where possible, examination has shown that 11 of the seals were males and 16 were females. To summarize, 44 of the seals taken have been identified to species and 27 have been identified to sex.

The regulations limit the annual incidental take for the operation of Seabrook Station to 20 harbor seals and four of any combination of gray, harp and hooded seals. Harbor seals have constituted the majority of animals taken; consequently, that species has been allocated a separate annual authorization. These limits are considered very conservative because they are well within the Potential Biological Removal (PBR) level for those species whose PBR levels have been calculated. The PBR level for the western North Atlantic harbor seals is 1,859 and the minimum population estimate is 30,990. The gray seal's regional population is not as large as that of the harbor seal. The PBR level is 122 and has a minimum population estimate of 2,010 in U.S. waters. Harp and hooded seals do not have a calculated PBR level because the minimum population in U.S. waters is unknown. While there is no PBR level calculated for the harp or hooded seals, the minimum population estimates for these species are 4.8 million and 400,000, respectively.

Mitigation

North Atlantic is presently investigating a number of measures to prevent or reduce the lethal taking of seals at Seabrook Station. To date, no preventative measures have been implemented, but some alternatives seem to warrant further study. Designs of a physical barrier system and an acoustical deterrence array are still being evaluated. These alternatives are being reviewed for practicability with regard to nuclear power safety, costs, and ability to withstand the high energy offshore environment.

It should be recognized that, due to inherent difficulties in designing, constructing, and maintaining a structure or device in the offshore high energy environment of the intakes, only a reliable and durable mitigation system is feasible. Any chosen mitigation measure must also be economically and technologically feasible as a means to effect ''the least practicable adverse impact'' on the described pinniped species. To ensure that any mitigation method that may be employed is feasible, NMFS is allowing North Atlantic to use this authorization period to fully explore any feasible mitigation methods. If a method or combination of methods is found to be feasible, it must also be tested, constructed, deployed, and be operational during the defined schedule that occurs within the 5-year authorization.

If, after North Atlantic conducts the appropriate feasibility studies, it is determined that no mitigation measure is proven to be feasible due to technological, economic, or safety reasons, then at the next renewal of the authorization, NMFS and North Atlantic must further explore and undertake steps to promote the conservation of the population of Gulf of Maine seals as a whole. These measures may take the form of studies that examine population trends, migration patterns, or enhancement of the survival of young-of-the-year seals.

Monitoring

This final rule requires North Atlantic personnel to continue their efforts to monitor the station for the presence of entrapped seals. Timely awareness of a take allows for a more comprehensive evaluation on the level of takes and on the characteristics of each seal. Seals that go undetected in the intake circulating system may decompose and be missed during examination of screen wash debris.

Monitoring under the final rule must include: (1) twice daily visual inspection of the circulating water and service water forebays, (2) daily inspections of the intake transition structure from April 1 through December 1, unless weather conditions prevent safe access to the structure, (3) screen washings once per day during the peak months of seal takes and twice a week during non-peak months of seal takes, and (4) examination of the screen wash debris to determine if any seal remains are present.

Reporting Requirements

Seal takes must be reported to NMFS through both oral and written notification. NMFS must be notified via telephone by the close of business on the next day following the discovery of any marine mammal or marine mammal parts. Written notification to NMFS must be made within 30 days. The written notification must also contain the results of any examinations conducted by qualified members of the Marine Mammal Stranding Network as well as any other information relating to the take.

Comments and Responses

On August 25, 1998, NMFS published a proposed rule for this action in the *Federal Register* (63 FR 45213). During the 45-day comment period, NMFS received comments from a number of organizations. The comments received are addressed here.

Compliance with the MMPA

Comment 1: In Seabrook's application, it states that no takes of gray seals have occurred. Takes of this species have occurred at the station, and this fact should be corrected in an amendment to the application.

Response: At the time that the application was submitted by North Atlantic, no takes of gray seals had yet been reported. However, the application did request an exemption for takes of gray seals due to the potential for takes, and the proposed rule also described an authorization for this species. Therefore, no amendment is necessary.

Comment 2: Mitigation measures should be attempted prior to any exemption being issued.

Response: Incidental taking of seals due to this activity requires an authorization under the MMPA. An authorization under the MMPA is required by the applicant to continue taking these seals incidental to its activity. If the issuance of an authorization is delayed, the applicant could continue to be in violation of the take prohibitions of the MMPA. As part of this rulemaking, North Atlantic will have to investigate mitigation alternatives. Morever, the MMPA does not require as a condition of granting incidental take authorizations, that mitigation measures be in place before the granting of the authorization.

Comment 3: Plant officials should be held accountable for the deaths of all seals that are taken prior to any authorization being issued.

Response: The taking of marine mammals is prohibited under the MMPA unless exempted by the MMPA or authorized by permit. While seal takes at Seabrook Station in the past constitute a violation of the MMPA, NOAA has discretion on whether to enforce the provisions of the MMPA. Because North Atlantic has fully cooperated with NMFS by preparing an application for a small take exemption and has promptly notified NMFS of each take, NOAA has determined that no benefit would be gained by issuing notices of violation at this time.

Comment 4: The proposed rule is against the spirit of the MMPA because it justifies the killing of four species of seals by assuming that the hardiest seal species is doing fine and that harbor seals best lend themselves to evaluating future trends in the regional seal population. The proposed rule does not reflect this conclusion nor reflect the fact that marine mammal populations fluctuate and can not be predicted with certainty.

Response: Section 101(a)(5)(A) of the MMPA directs NMFS to allow, upon request, the incidental taking, including lethal taking, of marine mammals by U.S. citizens who engage in an otherwise lawful activity (other than commercial fishing) within a specified geographical region if certain findings are met and regulations issued. One of these findings is that the taking must have no more than a negligible impact upon the species in question. While marine mammal populations may fluctuate, harbor seal surveys have been conducted in this region since 1981. Since that date, the estimated average population increase was 4.2 percent for harbor seals. In addition, the Western North Atlantic populations of gray, harp, and hooded seals appear to be increasing (Waring *et al.*, 1998). While the exact numbers of a particular marine mammal population may be difficult to identify, NMFS is able to determine relative trends for these particular species in U.S. waters. However, based upon comments received, the final rule has been revised and will have an authorized annual take limit of twenty harbor seals and four of any combination of gray, harp, and hooded seals.

Comment 5: If optimum sustainable population (OSP) has not been determined for some of the species, no authorization can be issued under the MMPA. Since there is no PBR level established for harp and hooded seals, the OSP cannot be determined. Therefore, the negligible impact can not be determined. As in *Kokechik Fisherman's Association v. Secretary of Commerce*, the proposed rule violates the MMPA.

Response: NMFS had determined that the *Kokechik* case does not bar issuance of a section 101(a)(5)(A) authorization in this case. Takings under section 101(a)(5)(A) of the MMPA, which authorizes the taking of small numbers of marine mammals by activities other than commercial fishing, are allowed if certain conditions are satisfied and the taking is having no more than a negligible inpact. Since these activities are having no more than a negligible impact on species and stocks, they are clearly exempt from the requirements of sections 103 and 104 with respect to making OSP determinations for each affected stock prior to any take authorization (section 101(a)(5)(C)(ii)).

As described in detail in the joint NMFS/U.S. Fish and Wildlife Service 1989 final rulemaking implementing the 1988 MMPA Amendments to the small take authorization section (see 54 FR 40338, September 29, 1989), a formal OSP determination is not required to make a negligible impact determination. Instead, as in this case, NMFS can make judgements on a case by case basis on how the anticipated incidental taking will affect the status and population trends of the species or stocks concerned.

Comment 6: In addressing the level of impacts, the MMPA and Clean Water Act (CWA), section 316(b), are in conflict. The standards under the MMPA are in conflict with the CWA when examining the technology available and the requirements for utilizing what is considered appropriate technology under both the MMPA and the CWA. Accordingly, in reconciling these two statutory schemes, the emphasis should be on the greatest level of protection possible. The Environmental Protection Agency (EPA) and NMFS should also engage in active consultation and coordination on this matter to ensure that NMFS and EPA exercise their respective authorities in a coordinated fashion.

Response: NMFS has been discussing, and will continue to discuss, this action with the EPA with respect to the MMPA and EPA's authority under the CWA. Nothing in this MMPA rulemaking prohibits the EPA from taking any other independent action under its authorities under the CWA. This regulation applies only to NMFS and its authority to issue regulations under the MMPA.

Comment 7: Why was 5 years chosen as the maximum duration of the authorization when a duration of lesser time could have been selected?

Response: Since Seabrook will likely remain in operation until at least 2026, North Atlantic could conceivably require a number of authorizations

under the MMPA. By choosing 5 years as the duration of the authorization, NMFS is attempting to take a farsighted approach to any regulatory requirements. Also, during this initial authorization period, North Atlantic will be undertaking a number of steps to attempt to mitigate the seal takes, and this process may require the majority of this initial authorization period. However, the Letter of Authorization (LOA) must be renewed annually and if North Atlantic is not complying with the conditions of the LOA, or, if other information becomes available about the level of impact of the taking of seals, then NMFS may revoke the authorization.

Marine Mammal Concerns

Comment 8: From the information presented by NMFS, it appears that the taking that would be authorized over the 5-year period would have a negligible impact on the affected populations.

Response: NMFS concurs with this assessment.

Comment 9: Species accounts in the draft EA and the application should be corrected to match the most recent stock assessments.

Response: The final EA will contain the information from the most recent NMFS marine mammal stock assessments. However, the application does not need to be corrected because it used the stock assessment information that was most current at the time of its submission.

Comment 10: The draft EA has no discussion of other sources of mortality to these marine mammal species such as mortality related to fishery interactions.

Response: The final EA contains information on other sources of mortality, such as mortality from commercial fishery interactions.

Comment 11: Any takes of harp seals when combined with the total allowable catch in Canada and the directed fishery in Greenland approaches or exceeds what would be the PBR level when calculated using the United States PBR level formula.

Response: For a take of a species to be authorized under this process, the incidental take of that species must have no more than a negligible impact on the species or stock of marine mammal. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' To date, there have been two reported takes of harp seals at Seabrook Station (one in 1995 and one in 1997). NMFS stated in its 1998 Stock Assessment Report that harp seals are primarily a Canadian stock with an estimated minimum population of 4.8 million. This final rule establishes a maximum take of four harp seal per year if no takes of gray or hooded seals occur. Therefore, incidental takes of harp seals by North Atlantic have, and will continue to have, no more than a negligible impact.

Comment 12: Given that no PBR level exists for harp and hooded seals, should North Atlantic be required to initiate a population study of these species in order to determine whether its operation will really have a negligible impact?

Response: Although there are no established PBR levels for harp and hooded seals, there is sufficient information for these species that allows for an estimate of their population sizes and trends in abundance. Both stocks indicate an increasing population size in U.S. waters. Considering these increasing U.S. and Western North Atlantic stock sizes, and given that the location of the major portion of harp and hooded seal populations is in Canadian waters, population studies of these species is unnecessary. For this rulemaking, NMFS considered the best scientific information available relative to pinniped populations, in addition, there is no actual requirement in the MMPA for the applicant to fund or conduct additional research.

Comment 13: A proposed annual authorization of 34 seals seems unnecessarily high, given the annual takes in previous years.

Response: A conservative number was proposed as the limit for authorized annual takes to ensure, in part, that North Atlantic would have the ability to pursue mitigation options without the risk of reaching their annual authorization limit and thereby invalidating their authorization under the MMPA for the remainder of the year. However, due to the more stable incidental take levels that occurred in 1997 (10 seals) and 1998 (13 seals) and based upon comments received, the final rule lowers the annual take authorization to 20 harbor seals and 4 of any combination of gray, harp, and hooded seals. Lowering the annual authorization to 24 seals from the previous limit of approximately 34 animals more closely parallels the current observed trends in takes.

Comment 14: Could the rule employ a graduated take limit that increases over the length of the authorization to account for range expansion and population increases?

Response: While the comment has merit, an increasing quota is unnecessary (see response to comment 13). The maximum length of time for the small take authorization under the MMPA to North Atlantic is 5 years. At the time of any future rulemaking for reauthorization of an exemption under the MMPA, revised conservative take limits may be set that would reflect recent knowledge of the respective pinniped populations and the takes documented during the authorization. Any revised take limit would also reflect the utilization of any mitigation measures that are in effect at the intake cooling water structures.

Comment 15: Is the annual authorized take allowed to increase with increasing PBR level?

Response: As mentioned previously, based upon comments received, the final rule uses a different method of establishing the total annual authorized takes than that originally proposed. For each year of this authorization, a maximum of 20 harbor seals may be taken as well as a maximum of 4 of any combination of gray, harp, and hooded seals per year. Those levels are not proposed to increase during this 5-year authorization. Depending upon the success of implemented mitigation, future authorizations may propose increased or decreased levels of take whether or not individual PBRs increase.

Comment 16: The draft EA erroneously states that the New Hampshire coastal area is not in the primary range of the gray seal.

Response: The New Hampshire coastal region is not a known breeding or pupping area for the gray seal. While colonies do exist in the Nantucket area, the New Hampshire coastal area is at the edge of the range for the species and is not considered a concentration area for gray seals.

Mitigation Concerns

Comment 17: Further testing and design of barriers should be undertaken, and this should be a condition of any temporarily granted small take authorization.

Response: If a mitigation measure such as barriers is determined, by NMFS, to be feasible with respect to such factors as nuclear power safety, available technology, economics, and the ability of the measure to withstand the high energy offshore environment, a pilot program must be implemented to test any alternative that is chosen as a mitigation design. Any testing of a mitigation alternative will take place after an authorization is initially issued.

Comment 18: The use of Acoustic Harassment Devices (AHDs) is opposed as a deterrence option at Seabrook Station. They displace cetaceans as

demonstrated in the Olesiuk *et al.* (1995) paper relating to harbor porpoise in British Colombia. Harbor porpoise were displaced up to 3.5 kilometers from the source of the AHDs.

Response: The evidence being presented that AHDs displace cetaceans, specifically harbor porpoise, is based only on the single cited study which was conducted in a very different physical environment from that which occurs at Seabrook Station. Around aquaculture facilities in Maine, harbor porpoise have been observed among pens with active AHDs. Therefore, it is unknown whether or not AHDs would displace harbor porpoise in this case. In determining whether AHDs are practicable mitigation measures NMFS will consider all of the pros and cons of such devices and their impact on pinnipeds and other marine mammals.

Comment 19: The use of AHDs as a deterrent option would likely constitute a form of intentional taking not allowed under Section 101(a)(5)(A) of the MMPA.

Response: Section 101(a)(5)(A) requires NMFS to implement ''regulations setting forth * * * permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat * * *.'' Therefore, when mitigation measures have been identified to lower the potential for marine mammals to be seriously injured or killed, those measures, including intentional harassment measures would need to be authorized under the appropriate provision of the MMPA.

Comment 20: Why is NMFS allowing a delay in implementing possible mitigation measures after it has received the required report of possible mitigation measures?

Response: The delay is necessary to allow the applicant the time necessary to conduct a pilot study at the site of the intakes as well as to possibly install a more permanent mitigation measure following that study. The applicant could implement measures in a shorter period of time than was determined to be feasible.

Comment 21: Commenters were concerned over the time period for implementation of a chosen mitigation alternative once a method was determined feasible. Comments suggested that flexibility be given to North Atlantic to take advantage of outages (periods when the intakes are shut down) when, implementing alternatives, both before and after the 42-month period.

Response: NMFS has determined that the 42 months is a practicable and reasonable requirement for have North Atlantic to implement its mitigation measures. If an outage is required to complete any necessary installation, then North Atlantic will have to utilize an outage period prior to the 42-month period. Moreover, North Atlantic is free to use any outage before the end of the 42-month period to implement mitigation measures.

Monitoring Concerns

Comment 22: The increased visual inspections of the forebays are identifying seals in the forebay before they significantly decompose.

Response: NMFS agrees that the increased visual inspections are identifying seals more frequently than in the past. However, seal remains are still being recovered in the screen wash assessments, so the visual inspections are not completely effective in discovering seals.

Comment 23: North Atlantic has been using high powered searchlights to inspect the forebays for the past year which has made the visibility adequate to identify seal carcasses during the twice-daily visual inspections.

Response: The use of searchlights may contribute to an increase in the ability of inspectors to observe any animals in the forebay. However, occasionally water conditions prevent observation of seals beneath the surface of the water, regardless of the tools currently being used by inspectors.

Comment 24: In the unlikely event that a seal is not observed visually and decomposes, any seal fragments will be noticed during the screen wash assessment.

Response: While seal remains are observed during screen wash assessments that were not previously visually observed, there is no conclusive proof that current methods of inspection are able to observe all seals taken. However, the majority of seals are likely discovered under current practices.

Comment 25: In months in which seal mortality has been the greatest, screen cleanings (in the forebays) should occur twice a day rather than twice a week.

Response: NMFS agrees in part. At present, North Atlantic conducts twice-a-week screen washings, as well as visual inspections of both forebays at least twice per day. However, given that seals are being occassionally missed by visual inspections of the forebays, requiring one screen washing per day during the peak months of seal takes is considered by NMFS to be adequate to better monitor and record seal takes. During non-peak months of seal takes, screen washings will be required twice a week.

Comment 26: The requirement for the frequency of inspection of the intake transition structure should be changed to two inspections per week between June 1 and October 31 of each year as opposed to the proposed rule requirement for year-round daily inspections.

Response: To make the monitoring more effective, the requirement for the inspection of the intake transition structure is changed from the proposed rule to daily inspections from April 1 through December 1 of each year unless weather conditions prevent safe access to the structure.

Comment 27: The personnel inspecting the intake circulating water system and screen wash debris should be determined to be qualified, based on their having a sufficient knowledge of pinniped identification, rather than by a determination of the NMFS Regional Administrator to approve inspecting personnel.

Response: The final rule reflects this comment by allowing North Atlantic to designate inspection personnel based on a determination that they have the ability to accurately identify pinniped and marine mammal individuals and marine mammal parts that occur as a result of the inspections and assessments.

Comment 28: Is the nearfield monitoring (as described in Seabrook's application) sufficient to document migration, habitat use, and foraging behavior of the species? Would this monitoring be required only if it is determined that no mitigation measure is feasible?

Response: Monitoring sufficient to documenting habitat and foraging behavior is not necessary for this authorization. However, as was stated in the proposed rule, if no mitigation is found to be feasible, then studies that explore components of pinniped ecology in the region may be required. Therefore, at the present time, the studies that North Atlantic currently undertakes for nearfield monitoring of seals are considered sufficient.

Reporting Concerns

Comment 29: In the report that North Atlantic will have to submit describing potential mitigation measures, North Atlantic should also be required to fully describe those measures that it had previously considered, but determined would not be feasible.

Response: NMFS concurs and the final rule includes this change.

Comment 30: Oral reports made upon the discovery of a seal or seal parts should be allowed to be made by the close of business on the next day

following the finding of any seals or seal parts or other marine mammal parts.

Response: NMFS concurs and has modified the rule accordingly.

Comment 31: A request was made to change the requirement for the submission of any necropsy reports to NMFS from 15 business days to 30 days to better accommodate the staff from the New England Aquarium who perform the examinations.

Response: NMFS concurs and has modified the rule accordingly.

Changes From the Proposed Rule

NMFS has modified the final rule as follows:

1. The annual authorized take in § 216.130(b) is limited to a maximum of 20 harbor seals and four of any combination of gray, harp, and hooded seals. These numbers more closely parallel observed takes in recent years but still provide the applicant a conservative limit with which to pursue a mitigation alternative.

2. The effective dates of the rule stated in § 216.131 is effective from July 1, 1999, through June 30, 2004.

3. The report required by § 216.134 to be submitted within 6 months from the issuance of the final rule must include a full description of any mitigation measures that were previously considered, but determined not to be feasible. This will allow NMFS to conduct a more thorough review of any mitigation alternatives prior to any implementation of a measure at the intakes.

4. The date § 216.134 requires for any chosen mitigation measure to be implemented by is no later than 42 months after the date of issuance of the final rule. The elimination of the option to have any chosen mitigation alternative implemented by 42 months or at the closest scheduled plant outage before or after that date will allow the applicant sufficient time to study and implement a mitigation alternative yet establishes a definitive deadline for work to be completed.

5. Section 216.135(b) requires that personnel performing inspections have sufficient knowledge of pinniped identification to discover seal or seal parts during the required inspections and assessments. This removes the burden of the NMFS Regional Administrator to review each individual who is assigned inspection duties by North Atlantic.

6. Section 216.135(d) requires that the intake transition structure be inspected daily from April 1 through December 1 unless weather conditions prevent safe access to the structure. NMFS believes that given the weather conditions at the intake transition structure and the periodic nature of the majority of seal takes, there would be no added benefit gained from year-round daily inspections.

7. Section 216.135(e) requires one screen washing per day during the peak months of seal takes as specified in the LOA. During non-peak months of seal takes, screen washings are required twice a week. Increasing the frequency of screen washings during the peak months of seal takes may allow for a greater opportunity to observe any seals that have been transported to the forebays that were not otherwise observed visually during the regular forebay inspections.

8. Section 216.135(f) requires oral notification to NMFS to occur within one business day following the discovery of any seal or seal parts, or other marine mammal or marine mammal parts. This change provides prompt notification to NMFS of any seal takes but accounts for the work schedule of NMFS personnel who receive the reports.

9. Section 216.135(h) requires that NMFS receives written notification of the discovery of any seal or seal parts, or other marine mammal or marine mammal part, within 30 days from the time. This change will allow the staff at the New England Aquarium more time to conduct the required necropsies and examinations of any seal carcasses recovered.

Conclusions

Based upon the information contained in North Atlantic's application, in the EA prepared for this action, and in this document, NMFS has determined that the taking of up to 20 harbor seals and four of any combination of gray, harp, and hooded seals, annually during the next five years, would have no more than a negligible impact (as defined in § 216.3) on these stocks of marine mammals. The best scientific information available indicates that the harbor seal stocks are increasing at about 4.2 percent annually. In addition, the Western North Atlantic populations of gray, harp, and hooded seal stocks also appear to be increasing in abundance (Waring *et al.*, 1998). The small number of takes by Seabrook is unlikely to reduce the rate of reproduction of these animals.

National Environmental Policy Act

In conjunction with the notice of proposed authorization, NMFS released a draft EA that addressed the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. Comments received on the draft EA during the comment period have been addressed in this document. As a result of the findings made in the revised EA, NMFS has concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. As a result of that finding, an Environmental Impact Statement will not be prepared. A copy of the EA is available upon request (see **ADDRESSES**).

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that, if adopted, it would not have a significant economic impact on a substantial number of small entities in the meaning of the Regulatory Flexibility Act. No comments were received on the certification and the basis for it has not changed. Accordingly, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the provisions of the PRA and which has been approved by the OMB under control number 0648–0151. This is the requirement for an annual report. Requirements for reporting on seals and seal parts found, and on mitigation measures taken are not subject to the PRA since they apply only to a single respondent and are not in a rule of general applicability.

The reporting burden for this collection is estimated to be approximately 80 hours, including the time for gathering and maintaining the data needed and for completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties,

Reporting and recording requirements, Seafood, Transportation.

Dated: May 18, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.3 a new definition for ''Administrator, Northeast Region'' is added in alphabetical order to read as follows:

§ 216.3 Definitions.

* * * * *

Administrator, Northeast Region means Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298

* * * * *

3. Subpart L is added to read as follows:

Subpart L—Taking of Marine Mammals Incidental to Power Plant Operations

Sec.

Subpart L—Taking of Marine Mammals Incidental to Power Plant Operations

§ 216.130 Specified activity, specified geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*), and hooded seals (*Cystophora cristata*) by U.S. citizens engaged in power plant operations at the Seabrook Station nuclear power plant, Seabrook, NH.

(b) The incidental take of harbor, gray, harp, and hooded seals under the activity identified in this section is limited to 20 harbor seals and 4 of any combination of gray, harp, and hooded seals for each year of the authorization.

§ 216.131 Effective dates.

Regulations in this subpart are effective from July 1, 1999 through June 30, 2004.

§ 216.132 Permissible methods of taking.

Under a Letter of Authorization issued to North Atlantic Energy Services Corporation for Seabrook Station, the North Atlantic Energy Services Corporation may incidentally, but not intentionally, take marine mammals specified in § 216.130 in the course of operating the station's intake cooling water system.

§ 216.133 Prohibitions.

Notwithstanding takings authorized by § 216.130(a) and by the Letter of Authorization, issued under § 216.106, the following activities are prohibited:

(a) The taking of harbor seals, gray seals, harp seals, and hooded seals that is other than incidental.

(b) The taking of any marine mammal not authorized in this applicable subpart or by any other law or regulation.

(c) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

§ 216.134 Mitigation requirements.

The holder of the Letter of Authorization is required to report, within 6 months from the issuance of a final rule, to the Administrator, Northeast Region, NMFS, on possible mitigation measures effecting the least practicable adverse impact on the seals specified in § 216.130. The report shall also include a recommendation of which measures, if any, the holder could feasibly implement. A description of any mitigation measures that Seabrook Station has considered, but determined would not be feasible, must be included as well. After submission of such report, NMFS shall determine whether the holder of the Letter of Authorization must implement measures to effect the least practicable adverse impact on the seals. If NMFS determines that such measures must be implemented then NMFS shall specify, after consultation with the holder of the Letter of Authorization, the schedule and other conditions for implementation of the measures. Implementation of such measures must be completed no later than 42 months after the date of issuance of the final rule. Failure of the holder of the Letter of Authorization to implement such measures in accordance with the NMFS specifications may be grounds to invalidate the Letter of Authorization.

§ 216.135 Monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with NMFS and any other Federal, state, or local agency monitoring the impacts of the activity on harbor, gray, harp, or hooded seals.

(b) The holder of the Letter of Authorization must designate a qualified individual or individuals capable of identifying any seal or seal parts or marine mammal or marine mammal parts, that occur in the intake circulating system, including the intake transition structure, both forebays, and any marine mammal or marine mammal parts observed as a result of screen washings conducted.

(c) The holder of the Letter of Authorization must conduct at least two daily visual inspections of the circulating water and service water forebays during the period specified in the Letter of Authorization.

(d) The holder of the Letter of Authorization must conduct at least daily inspections of the intake transition structure from April 1 through December, unless weather conditions prevent safe access to the structure.

(e) The holder of the Letter of Authorization must conduct screen washings at least daily during the months of higher incidents of observed takes and this period will be specified in the Letter of Authorization. During the months not specified in the LOA, screen washings will be conducted twice a week. Examination of the debris must be conducted to determine if any seal remains are present.

(f) The holder of the Letter of Authorization must report orally to the Northeast Regional Administrator, NMFS, by telephone or other acceptable means, any marine mammals or marine mammal parts found in the locations specified in § 216.135(b) through (e). Such oral reports must be made by the close of the next business day following the finding of any marine mammal or marine mammal parts.

(g) The holder of the Letter of Authorization must arrange to have a necropsy examination performed by qualified individuals on any marine mammal or marine mammal parts recovered through monitoring as specified under § 216.135(b) through (e).

(h) The holder of the Letter of Authorization must also provide written notification to the Administrator, Northeast Region, NMFS, of such marine mammal or marine mammal parts found within 30 days from the time of the discovery. This report must

contain the results of any examinations or necropsies of the marine mammals in addition to any other information relating to the circumstances of the take.

(i) An annual report, identifying mitigation measures implemented to effect the least practicable adverse impact on the seals and/or are being considered for implementation pursuant to the requirements specified at § 216.134, must be submitted to the Administrator, Northeast Region, NMFS, within 30 days prior to the expiration date of the issuance of the Letter of Authorization.

§ 216.136 Renewal of the Letter of Authorization.

(a) A Letter of Authorization issued under § 216.106 for the activity identified in § 216.130(a) may be renewed annually provided the following conditions and requirements are satisfied:

(1) Timely receipt of the reports required under § 216.135, which have been reviewed by the Administrator, Northeast Region, NMFS, and determined to be acceptable;

(2) A determination that the maximum incidental take authorizations in § 216.130(b) will not be exceeded; and

(3) A determination that research on mitigation measures required under § 216.134(a) and the Letter of Authorization have been undertaken.

(b) If a species' annual incidental take authorization is exceeded, NMFS will review the documentation submitted under § 216.135, to determine whether or not the taking is having more than a negligible impact on the species or stock involved. The Letter of Authorization may be renewed provided a negligible impact determination is made and other conditions and requirements specified in § 216.136(a) are satisfied, and provided that any modifications of the Letter of Authorization that may be required are done pursuant to § 216.137.

(c) Notice of issuance of a renewal of the Letter of Authorization will be published in the **Federal Register** within 30 days of issuance.

§ 216.137 Modifications to the Letter of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under § 216.136, without modification, is not considered a substantive modification.

(b) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.130, the Letter of Authorization issued pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

§§ 216.138—216.140 [Reserved]

[FR Doc. 99–13205 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 960318084–8274–04; I.D. 071596C]

RIN 0648–AG55

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities; Correction

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

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rulemaking, which was published on December 1, 1998, regarding an incidental small take exemption under the Marine Mammal Protection Act (MMPA) to take a small number of marine mammals incidental to shock testing the USS SEAWOLF submarine in the offshore waters of the U.S. Atlantic coast.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1998 (63 FR 66069), NMFS published the final rulemaking governing the taking of marine mammals incidental to shock testing the USS SEAWOLF. The taking of marine mammals incidental to legitimate activities is authorized by section

101(a)(5)(A) of the MMPA, provided the takings are small and having no more than a negligible impact on affected marine mammal stocks. In order to mitigate takings of marine mammals to the lowest level practicable as required by the MMPA, NMFS limited the taking of marine mammals to a period between May 1 through September 30 of any single year within the 5-year period of authorization.

Need for Correction

As published, the DATES section in the final rule is in error and in need of correction. While the effective dates for the authorization to conduct a shock trial on the USS SEAWOLF found in 50 CFR 216.162. will remain effective from May 1 through September 1 of any single year between the years 2000 and 2004, in order for the document to be published in the upcoming Code of Federal Regulations, the DATES contained in the preamble to the rule will need to be changed. This change is necessary to reflect that the period of validity for the regulations will run from the end of the delayed effectiveness period required by the Administrative Procedure Act through the last day of the period of authorization under the 5-year MMPA authorization.

Correction

In the **Federal Register** of December 1, 1998, in FR Doc.98–31933, on page 66070, in the first column, correct the ''DATES'' caption to read:

DATES: Effective from January 1, 1999, through September 30, 2004.

Dated: May 17, 1999.

Gary C. Matlock,

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

[FR Doc. 99–13204 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 100
Tuesday, May 25, 1999

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 71

[Airspace Docket No. 99–AGL–33]

Proposed Modification of Class E Airspace; Minneapolis, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Minneapolis, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 26, has been developed for Anoka County-Blaine Airport (Janes Field). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before July 12, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–33, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communication should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this proposal must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–33.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Minneapolis, MN, to accommodate aircraft executing the proposed GPS Rwy 26 SIAP at Anoka County-Blaine Airport (Janes Field) by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward 700 feet or more above the surface of the earth are pubished in paragraph 6005 to FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be pubished subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

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

* * * * *

AGL MN E5 Minneapolis MN [Revised]

Minneapolis-St. Paul International Airport (Wold-Chamberlain) Airport DME
(Lat., 44°52′29″N., long. 93°12′23″W.)
Minneapolis, Anoka County-Blaine Airport (Janes Field), MN
(Lat., 44°08′42″N., long. 93°12′41″W.)
St. Paul, Lake Elmo Airport, MN
(Lat., 44°59′51″N., long. 92°51′20″W.)
Minneapolis, Airlake Airport, MN
(Lat., 44°37′40″N., long. 93°13′41″W.)
Farmington VORTAC
(Lat., 44°37′51″N., long. 93°10′55″W.)

That airspace extending upward from 700 feet above the surface within a 20.0-mile radius for the Minneapolis-St. Paul International Airport (Wold-Chamberlain) Airport DME antenna, and within a 6.5-mile radius of the Anoka County-Blaine Airport (Janes Field), and within a 6.3-mile radius of Lake Elmo Airport, and within a 6.4-mile radius of the Airlake Airport and within 3.3 miles each side of the 084° bearing from the Farmington VORTAC extending from the 6.4-mile radius to 14.8 miles east of the Airlake Airport.

* * * * *

Issued in Des Plaines, Illinois on May 12, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–13229 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

28 CFR Part 32

[OJP (BJA)–1216]

RIN 1121–AA51

Public Safety Officers' Educational Assistance Program

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Public Safety Officers' Benefits Office, Justice.

ACTION: Proposed rulemaking.

SUMMARY: Amendments are being proposed to regulations on Federal Law Enforcement Dependents Assistance (FLEDA), to comply with the changes made to the authorizing statute, and by the Police, Fire, and Emergency Officers' Educational Assistance Act of 1998. The amendments expand the FLEDA program to authorize financial educational assistance to the dependents of all public safety officers whose deaths or permanent disabilities resulted in the payment of benefits under the Public Safety Officers' Benefits (PSOB) Program.

DATE: Comments will be received no later than 5:00 pm on July 9, 1999.

ADDRESSES: All comments must be written and should be sent to: Ashton Flemmings, Chief, Public Safety Officers' Benefits Office, 810 7th Street, NW. Washington DC 20531.

FOR FURTHER INFORMATION CONTACT: Ashton Flemmings, Chief, Public Safety Officers' Benefits Office, 810 7th Street, NW., Washington, DC 20531. Telephone: (202) 307–0635 or toll free at 1–888–744–6513.

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) proposes to amend the regulations governing the Federal Law Enforcement Dependents' Assistance (FLEDA) program, found at 28 CFR part 32, Subpart B, to comply with the amendments to its authorizing statute, 42 U.S.C. 3796 *et seq.*, enacted by the Police, Fire, and Emergency Officers' Educational Assistance Act of 1998, Pub. L. No. 104–238, 112 Stat. 3495, (November 13, 1998), (hereinafter the Public Safety Officers' Educational Assistance Act or PSOEA Act). The PSOEA Act expands the scope of eligibility for financial assistance for higher education to the dependents of all public safety officers, including Federal firefighters and state and local officers, who are killed or permanently and totally disabled in the line of duty. Previously, the FLEDA program only made available financial assistance for higher education to the dependents of Federal law enforcement officers who were killed or permanently and totally disabled in the line of duty. The amendments being proposed to this subpart, in accordance with the PSOEA Act, will allow the spouses and children of all public safety officers who are killed or permanently and totally disabled in the line of duty, and with respect to whom a claim has been approved under the Public Safety Officers' Benefits (PSOB) program, to receive these educational benefits.

To reflect the expansion of the program, therefore, the name of the program is proposed to be changed from the ''Federal Law Enforcement Dependents' Assistance'' (FLEDA) program to the ''Public Safety Officers' Educational Assistance'' (PSOEA) program. Likewise, the references in subpart B to ''Civilian federal law enforcement'' or ''Federal law enforcement'' are proposed to be changed to ''public safety.''

Section 32.37 of the regulation is proposed to be amended to comply with the mandate of section 2(4) of the PSOEA Act, which requires the issuance of regulations regarding the use of ''sliding scale based on financial need to ensure that an eligible dependent who is in financial need receives priority in receiving funds'' under this program. In accordance with this section, BJA intends to calculate of the amount of assistance, if needed, in such a manner so to ensure those applicants who are in the greatest financial need, *i.e.*, would be unable to attend a program of study at a qualified institution of higher education in the absence of some measure of assistance, receive an amount that would allow them to do so and to which they would otherwise be entitled to under this provision. While the PSOEA Act requires, if needed, reduction of the total amount of assistance by the amount calculated using the sliding scale, it is anticipated that no such reduction will be necessary, and that all eligible dependents will be able to receive the total amount of benefits for which they qualify. In order to do this, applicants may submit a statement of financial need, with documentation of such need, including information regarding all assets and sources of income, such as the Internal Revenue Service's form 1040. If the student is dependent on his or her parents for support, information regarding the parents income and assets may be required. This information will only be used to give priority in awarding funds in the event that it appears that amounts appropriated for

the program are not sufficient to allow for all eligible applicants to receive the total amount for which they qualify.

Retroactive eligibility to on or after May 1, 1992 will continue for the dependents of Federal law enforcement officers killed in the line of duty. The dependents of Federal law enforcement officers, who were permanently and totally disabled in the line of duty, are entitled to receive benefits under this program if the disability occurred on or after October 1, 1996, the date of the enactment of the original authorizing legislation for FLEDA. The dependents of all other public safety officers, consistent with the authorization, will be eligible for benefits on a retroactive basis if the public safety officer was killed in the line of duty on or after October 1, 1997. The regulations are being proposed to be amended at section 32.35(a) to reflect this allowance.

This program will continue to recognize the sacrifices and invaluable contributions made to the nation's safety by all public safety officers through the availability of this assistance. The program authorizes the payment of benefits to eligible dependents for attendance only at an approved program of education at institutions for higher education. The standards regarding eligible institutions and the calculation of education benefits remain unchanged from the standards currently used under the FLEDA program, and readers are encouraged to consult the preamble to the FLEDA final rule at 62 FR 37713, July 15, 1997, for a detailed discussion of the operation and mechanics of the program.

While the regulation, on the whole, remains very much unchanged, comments are sought from all interested persons on any of the information contained herein, and particularly on the use of a sliding scale to ensure benefits are paid to those with the greatest financial need. All comments received on or before the closing date will be carefully considered.

In order to implement the PSOEA program promptly to provide financial assistance to qualified dependents, the public comment period for this rule is forty-five days.

Executive Order 12866

This regulation has been written and reviewed in accordance with Executive Order 12866, Sec. 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, Sec. 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The FLEDA program will be administered by the Office of Justice Programs, and any funds distributed under it shall be distributed to individuals, not entities, and the economic impact is limited to the Office of Justice Program's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private section, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The collection of information requirements contained in the proposed regulation have been approved by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)). In accordance with 5 CFR 1320.5(b), the OMB control number pertaining to the collection of information is 1121–0220.

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Disability benefits, Law enforcement officers.

For the reasons set out in the preamble, the Bureau of Justice Assistance proposes to amend 28 CFR part 32 as follows:

PART 32—PUBLIC SAFETY OFFICER'S DEATH AND DISABILITY BENEFITS

1. The authority citation for Part 32 continues to read as follows:

Authority: Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3711 *et seq.*)

Subpart B—[Amended]

2. The heading of Subpart B is amended by revising ''Federal Law Enforcement Dependents'' to read ''Public Safety Officers' Educational''.

3. Section 32.31 is revised to read as follows:

§ 32.31 Purpose.

This subpart implements the Federal Law Enforcement Dependents Assistance Act of 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, which authorizes the payment of financial assistance for the purpose of higher education to the dependents of public safety officers who are found, under the provisions of subpart A of this part, to have died as a direct and proximate result of a personal injury sustained in the line of duty, or to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty.

4. Section 32.32 is amended by revising paragraphs (a),(b)(3),(c),(d), and (f) to read as follows:

§ 32.32 Definitions.

* * * * *

(a) *The Act* means the Federal Law Enforcement Dependents Assistance Act of 1996, Pub. L. 104–238, Oct. 3, 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, Pub. L. 104–238, codified as Subpart 2 of Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796d *et seq.*

(b) * * *

(3) *PSOEA* means the Public Safety Officers' Educational Assistance program administered by the Bureau under this subpart.

(c) *Public safety officer* is an officer as defined in § 32.2(j), with respect to whom PSOB benefits have been approved under subpart A of this part on account of the officer's death or disability in the line of duty.

(d) *Child* means any person who was the biological, adopted, or posthumous child, or the stepchild, of a public safety officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part. A step-child must meet the provisions set forth in § 32.15.

(e) * * *

(f) *Dependent* means the child or spouse of any eligible public safety officer.

* * * * *

5. Section 32.33 is amended by revising paragraph(a)(1) to read as follows:

§ 32.33 Eligibility for assistance.

(a) * * *

(1) The child of any public safety officer with respect to whom PSOB benefits have been approved under subpart A of this part;

* * * * *

6. Section 32.34 is amended by revising paragraph (b)(2) to read as follows:

§ 32.34 Application for assistance.

* * * * *

(b) * * *

(2) In the case of a disabled public safety officer approved for PSOB benefits under subpart A of this part, applicants for assistance under this subpart must submit birth or marriage certificates or other proof of relationship consistent with §§ 32.12 (spouse) and 32.13 (child), if such evidence had not been submitted with respect to the PSOB claim.

* * * * *

§ 32.35 [Amended]

7. Section 32.35(a) is amended by inserting ''or permanently and totally disabled in the line of duty on or after October 3, 1996, and each dependent of a public safety officer killed in the line of duty on or after October 1, 1997'' after ''1992.''

8. Section 32.37 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 32.37 Determination of benefits.

* * * * *

(c) Benefits payable under this subpart shall be in addition to any other benefit that may be due from any other source, except that, if the PSOEA assistance in combination with other benefits would exceed the total approved costs for the applicant's program of education, the assistance under this subpart will be reduced by the amount of such excess.

(d) Benefits will be calculated in such a manner so as to ensure those applicants who qualify for benefits, and who are in financial need, i.e. would be unable to attend a program of study at a qualified institution of higher education in the absence of the total benefit for which they qualify, receive priority in receiving the authorized assistance. Those qualified applicants who are in financial need, as determined by BJA, will receive an amount of benefits to which they are entitled, and which allow them to attend the approved program of study. Those qualified applicants whose attendance at a program of study at an institution of higher education is not contingent on the award of benefits under this part, may receive a reduced amount of benefits in the event that funds appropriated under this program are not sufficient to award all qualified applicants the total amount of benefits to which they are otherwise entitled.

Dated: May 14, 1999.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 99–12855 Filed 5–24–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13–99–008]

RIN 2115–AE47

Drawbridge Operations Regulations; Willamette River, OR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the operating regulations for all the Multnomah County drawbridges and the Union Pacific drawbridge across the Willamette River at Portland, Oregon. The proposed amendment would extend by one half-hour each the morning and afternoon periods, Monday through Friday (except Federal or State holidays), that the draws need not open for the passage of vessels. These weekday draw-closure periods serve to relieve congestion at peak times for street traffic.

DATES: Comments must reach the Coast Guard on or before July 26, 1999.

ADDRESSES: You may mail comments to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington, 98174–1067, or deliver them to room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7272.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should identify this rulemaking (CGD 13–99–008) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed envelopes or postcards. The Coast Guard will consider all comments received during the comment period. It may change the proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Coast Guard include the reasons why a hearing would 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 later notice in the **Federal Register**.

Background and Purpose

The purpose of the proposed change to § 117.897 is to make the periods in which the draws need not open for the passage of vessels congruent with the periods of peak commuter street-traffic in Portland. The current closed periods are from 7 a.m. to 8:30 a.m. and 4 p.m. to 5:30 p.m., Monday through Friday, except for holidays. Traffic on highways and streets has increased in recent years in Portland. With the periods lengthened by a half-hour each, the closures coincide better with the actual periods of peak road travel. The lengthening of the periods by this modest amount should not unreasonably impede navigation. The Coast Guard has no record of complaints against the closed periods now in effect.

The bridges subject to this proposed change are the Broadway Bridge at mile

11.7, the Steel Bridge at mile 12.1, the Burnside Bridge at mile 12.4, the Morrison Bridge at mile 12.8, and the Hawthorne Bridge at mile 13.1. Multnomah County owns all of these bridges, except Steel Bridge, which the Union Pacific Railroad owns. The upper deck of this double-decked vertical-lift bridge is a roadway operated by the Oregon Department of Transportation.

Discussion of Proposed Rule

By lengthening the periods by one half-hour when the draw spans need not open for the passage of vessels, Monday through Friday, we should reduce traffic congestion. The revised closed periods will coincide more accurately with periods of peak commuter travel on arterial streets of Portland.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under 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 not been reviewed 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 proposed rule would improve commuter traffic flow without unreasonably hindering navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considers 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 less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that this rule, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule will have a significant impact on your business or organizations, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations does not have a significant effect on the environment. No written ''Categorical Exclusion Determination'' is required for this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.897(a)(1) introductory text to read as follows:

§ 117.897 Willamette River.

(a) * * *

(1) The draws shall open on signal except that from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday the draws of the Broadway, Steel (upper deck only), Burnside, Morrison, and Hawthorne Bridges need not open for the passage of vessels. These closed periods are not effective on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day or other holidays observed locally under State law. At least one hour's notice shall be given for openings of the Burnside Bridge and the Morrison Bridge, Monday through Friday, from 8 a.m. to 4:30 p.m. At all other times at least two hours' notice shall be given. Notice shall be given by marine radio, telephone, or other means to the drawtender at the Broadway Bridge for vessels bound upstream and to the drawtender at the Hawthorne Bridge for vessels bound downstream. During Rose Festival Week or when the water elevation reaches and remains above +12 feet, the draws will open on signal without advance notice, except during the normal closed periods identified in this paragraph (a)(1). Opening signals are as follows:

* * * * *

Dated: May 6, 1999.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 99–12957 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–010]

RIN 2115–AE47

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating rules governing the Rt-36 Bridge, at mile 1.8, across the Shrewsbury River at Highlands, New Jersey. This change is necessary to help alleviate vehicular traffic congestion caused by frequent bridge openings. This proposed rule is expected to help relieve the traffic congestion and still provide for the reasonable needs of navigation.

DATES: Comments must reach the Coast Guard on or before July 26, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–010) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons 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 later notice in the **Federal Register**.

Background

The Rt–36 Bridge, at mile 1.8, across the Shrewsbury River, has a vertical clearance of 35 feet at mean high water (MHW) and 39 feet at mean low water (MLW). The existing operating regulations for the RT–36 Bridge, at § 117.755, require the bridge to open on signal, except that, from Memorial Day through Labor Day on Saturdays, Sundays, and holidays, from 10 a.m. to 7 p.m., the draw need be opened only on the hour and half hour. The RT–36 Bridge log data from 1995, 1996 and 1997, May through October, indicates the following number of openings: May, 1239, 962, and 1490; June, 1601, 3216, and 2508; July, 2789, 2314, and 3093; August, 2215, 4947, and 3110; September, 1912, 2747, and 2011; October, 1225, 3096, and 1569, respectively. The number of openings is quite high during the summer months, resulting in frequent traffic congestion. The bridge owner, NJDOT, originally requested that the RT–36 Bridge shall open on signal on the hour and half hour, from 7 a.m. to 10 p.m., May 15th through October 15th. The vehicular traffic courts did not support the need to limit bridge openings until 10 p.m. daily. The traffic counts indicated the hours 7 a.m. to 8 p.m. were the hours each day that the most vehicles passed over the bridge. The Coast Guard, as a result of the data reviewed, is proposing that the bridge open on signal on the hour and half hour from 7 a.m. to 8 p.m., May 15th through October 15th. At all other times the draw shall open on signal.

Discussion of Proposal

The Coast Guard proposes to revise the operating rules at § 117.755(a), governing the RT–36 Bridge, mile 1.8, across the Shrewsbury River at Highlands, New Jersey. This proposal will require the bridge to open on signal, except that, from May 15th through October 15th, 7 a.m. to 8 p.m., the draw need only open on the hour and half hour.

This proposal is expected to help relieve the traffic congestion caused by frequent bridge openings during the summer months and still provide for the reasonable needs of navigation. Mariners can still pass through the bridge, except that they simply need to schedule their transits to occur on the hour and half hour during the summer months.

The Coast Guard believes this proposed rule provides a reasonable balance for the needs of both vehicular and navigational modes of transportation.

Regulatory Evaluation

This proposed 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 not been reviewed 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; Feb. 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. This conclusion is based on the fact that the bridge will still open each half hour and that the mariners will still be able to transit the waterway. The mariners will be required by this proposed rule to simply schedule their transits to adjust to the bridge opening schedule. The Coast Guard believes this rule will relieve the vehicular traffic congestion and also meet the needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers 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. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. 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

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039. Section 117.793 is revised to read as follows:

2. Section 117.755(a) is revised as follows:

§ 117.755 Shrewesbury River

(a) The Rt–36 Bridge, mile 1.8, at Highlands, New Jersey, shall open on signal, except that, from May 15th through October 15th, 7 a.m. to 8 p.m., the draw need open only on the hour and half hour. The owners of the bridge shall provide and keep in good legible condition, two boards gages painted white with black figures not less than eight inches high to indicate the clearance under the closed draw at all stages of the tide. The gages shall be placed on the bridge so that they are plainly visible to operators of vessels approaching the bridge from either up or down stream.

* * * * *

Dated: May 13, 1999.

R.M. Larrabee,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–13239 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–051]

RIN 2115–AA97

Safety Zone: Macy's Fourth of July Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the East River for the Macy's Fourth of July Fireworks. Display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the East River.

DATES: Comments must be received on or before June 15, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–051), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–051) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons 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 later notice in the **Federal Register**.

Background and Purpose

Macy's East, Inc. has submitted an Application for Approval of a Marine Event for a fireworks display in the East River. The proposed regulation establishes a temporary safety zone in all waters of the East River east of a line drawn from the Fireboat Station, at Battery Park, Manhattan, New York in approximate position 40°42′16″N 074°01′07″W (NAD 1983) to Governors Island Light (LLNR 35010), in approximate position 40°41′35″N 074°01′11″W (NAD 1983); north of a line drawn from the Brooklyn Battery Tunnel ventilator shaft at Governors Island, New York, in approximate position 40°41′35″N 074°01′11″W (NAD 1983) to the northwest corner of Pier 6, Brooklyn, New York; south of a line drawn from Lawrence Point (40°47′27″N 073°54′35″W (NAD 1983)) to Stony Point (40°47′48″N 073°54′42″W (NAD 1983)), and south of the Harlem River Foot Bridge, New York. This safety zone area also includes all waters of Newtown Creek west of the Pulaski Bascule Bridge. The proposed safety zone is effective from 7:30 p.m. until 11:30 p.m. on July 4th, 1999. There is no rain date for this event. The proposed safety zone prevents vessels from transiting this portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from 6 separate barges in the area. No vessel may enter the safety zone without permission of the Captain of the Port, New York.

In order to facilitate an orderly viewing of and departure after the event, vessels less than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in the following three areas: (1) All waters of the East River south of: (i) a line drawn from Lawrence Point (40°47′27″N 073°54′35″W (NAD 1983)) to Stony Point 40°47′48″N 073°54′42″W (NAD 1983)); (ii) the Harlem River Foot Bridge, and north of the southern end of Roosevelt Island; (2) in Newtown Creek, east of the Pulaski Bascule Bridge. (3) in Buttermilk Channel, south of a line drawn from the Brooklyn Battery Tunnel ventilator shaft at Governors Island, New York, in approximate position 40°41′35″N 074°01′11″W (NAD 1983) to the northwest corner of Pier 6, Brooklyn, New York;

Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and a line drawn from East 15th Street, Manhattan, to a point due east on the Brooklyn shore at the north corner of the Bushwick Inlet entrance.

Once in position within the zone, all vessels must remain in position until released by the Captain of the Port, New York. On-scene-patrol personnel will monitor the number of designated vessels taking position in the viewing areas of the zone. If it becomes apparent that any additional spectator vessels in

a specific viewing area will create a safety hazard, the patrol commander may prevent additional vessels from entering into that viewing area. All vessels must be in their respective viewing areas between 6:30 p.m. and 8 p.m. After the event has concluded and the fireworks barges have safely relocated outside of the main channel, vessels will be allowed to depart by separate viewing area as directed by the patrol commander.

The Staten Island Ferries may continue services to their ferry slip at Whitehall Street, The Battery, Manhattan, New York. Continuing ferry services in the southwestern portion of the safety zone will not create a hazard nor be threatened by the fireworks display because Vessel Traffic Services New York will monitor and control the transits of these ferries. Failure to allow these continued ferry services will have a negative impact on residents of Staten Island, New York, and those persons traveling to and from Manhattan at the end of the holiday weekend.

Vessels not complying with these viewing area restrictions have a significant potential to create a hazardous condition in this area of the East River, due in great part, to the extremely strong currents.

This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels and the fireworks handlers aboard the barges.

Public notifications will be made prior to the event via Local Notice to Mariners, marine information broadcasts, facsimile, and Macy's waterways telephone ''hotline'' at 212–494–5247, which is to be activated approximately June 1st, 1999. The Coast Guard is limiting the comment period for this NPRM to 21 days because the proposed safety zone is only for a four hour long annual event. Final plans were not made for this event until May 13, 1999. There is not sufficient time to publish a Temporary Final Rule 30 days before the event and provide a 60-day comment period.

Discussion of Proposed Rule

The proposed safety zone is for the Macy's Fourth of July Fireworks display held in the East River, Manhattan, New York. This event is held annually on July 4th. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed 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 not been reviewed 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. This safety zone temporarily closes a major portion of the East River to vessel traffic. There is a regular flow of traffic through this area; however, the impact of this regulation is expected to be minimal for the following reasons: the limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the event is taking place at a late hour on a national holiday; the event has been held for twenty-two years in succession and is therefore anticipated annually, small businesses may experience an increase in revenue due to the event; advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, facsimile, and the event sponsor establishes and advertises a telephone ''hotline'' at 212–494–5247 which waterways users may call prior to the event for details of the safety zone. This telephone number will be published via the Local Notice to Mariners and facsimile. The number is to be activated approximately June 1st, 1999.

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.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. 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

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of

private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

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

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

Part 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g) 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–051 to read as follows:

§ 165.T01–051 Safety Zone: Macy's Fourth of July Fireworks, East River, New York.

(a) *Location.* The following area is a safety zone: All waters of the East River east of a line drawn from the Fireboat Station, at Battery Park, Manhattan, New York in approximate position 40°42′16″N 074°01′07″W (NAD 1983) to Governors Island Light (LLNR 35010), in approximate position 40°41′35″N 074°01′11″W (NAD 1983); north of a line drawn from the Brooklyn Battery Tunnel ventilator shaft at Governors Island, New York, in approximate position 40°41′35″N 074°01′11″W (NAD 1983) to the northwest corner of Pier 6, Brooklyn, New York; south of a line drawn from Lawrence Point (40°47′27″N 073°54′35″W (NAD 1983)) to Stony Point (40°47′48″N 073°54′42″W (NAD 1983)), and south of the Harlem River Foot Bridge, New York. This safety zone also includes all waters of Newtown Creek west of the Pulaski Bascule Bridge.

(b) *Effective period.* This section is effective from 7:30 p.m. until 11:30 p.m. on July 4th, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, New York.

(3) Vessels may remain in the safety zone for the purpose of viewing the event in accordance with the following pre-established viewing areas:

(i) Vessels less than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in the northern area of the zone, north of the southern tip of Roosevelt Island, south of the safety zone's southern area in Buttermilk Channel, and in Newtown Creek, east of the Pulaski Bascule Bridge.

(ii) Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and a line drawn from East 15th Street, Manhattan, to a point due east on the Brooklyn shore at the north corner of the Bushwick Inlet entrance.

(iii) Vessels must be positioned in their respective viewing areas within the safety zone between 6:30 p.m. and 8 p.m.

(4) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

R. E. Bennis,

Captain, Coast Guard, Captain of the Port, New York.

[FR Doc. 99–13240 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 111

Packaging Material Standards for Flat-Size Periodicals and Standard Mail

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Postal Service is withdrawing its proposal to prohibit use of string and rubber bands to secure packages of flat-size Periodicals and Standard Mail when prepared on pallets.

FOR FURTHER INFORMATION CONTACT: Lynn M. Martin, (202) 268–6351.

SUPPLEMENTARY INFORMATION: In the **Federal Register** issue of March 9, 1999 (64 FR 11402) the Postal Service published a proposed rule to prohibit the use of string and rubber bands to secure packages of flat-size Periodicals mail and Standard Mail when prepared on pallets. This proposal also stated that the Postal Service planned, in the future, to extend this prohibition to flat-size Periodicals mail and Standard Mail prepared in sacks. Twenty-nine comments were received in response to the proposed rule.

In response to many of these comments, the Postal Service has decided to withdraw this proposal until additional research can be done as to why packages do not maintain their integrity during processing. When more specific data have been gathered, the Postal Service will publish for public comment a new proposed rule governing packaging standards for flat-size Periodicals and Standard Mail (A).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–13112 Filed 5–24–99; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 24, 26, 27, 73, 74, 80, 87, 90, 95, 97, and 101

[WT Docket No. 99–87, RM–9332, RM–9405; FCC 99–52]

Revised Competitive Bidding Authority; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects the heading to a *Notice of Proposed Rule Making* (''*NPRM*''), published in the **Federal Register** of May 3, 1999, regarding Revised Competitive Bidding Authority. This correction adds the Commission's file number, RM–9405, to the heading.

FOR FURTHER INFORMATION CONTACT: Gary D. Michaels, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660, or Scot Stone Public Safety & Private Wireless Division, Wireless

Telecommunications Bureau, at (202) 418–0680.

Correction

In the *Notice of Proposed Rule Making* (''*NPRM*'') published in the **Federal Register** of May 3, 1999, 64 FR 23571, make the following correction to the heading. On page 23571 in the first column, in the heading, add RM–9405.

SUPPLEMENTARY INFORMATION: On May 7, 1999, the Auctions and Industry Analysis Division of the Wireless Telecommunications Bureau released an Erratum to correct the caption of the Commission's *Notice of Proposed Rule Making* (''*NPRM*''), WT Docket No. 99–87, RM–9332, RM–9405, FCC 99–52. The caption was corrected to add RM No. 9405. The *NPRM* has not yet been published in the FCC Record. Accordingly, the corrected caption shall be incorporated into the *NPRM* prior to such publication. The complete text of the Erratum is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13101 Filed 5–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–155, RM–9606]

Radio Broadcasting Services; Elgin, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Gary Noel to allot Channel 290A to Elgin, Oregon, as the community's first local aural service. Channel 290A can be allotted to Elgin in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 45–33–54 NL; 117–55–00 WL.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary Noel, 71536 Levi Lane, Elgin, OR 97827 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–155, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–13166 Filed 5–24–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–156, RM–9613]

Radio Broadcasting Services; Pleasant Dale, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 256A to Pleasant Dale, NE, as the community's first local aural service. Petitioner is requested to provide further information demonstrating that Pleasant Dale is a ''community'' for allotment purposes. Channel 256A can be allotted to Pleasant Dale in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 kilometers (4.5 miles) north, at coordinates 40–51–25 NL; 96–55–37 WL, to avoid a short-spacing to Station KUTT, Channel 258C1, Fairbury, NE.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–156, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–13167 Filed 5–24–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–158, RM–9615]

Radio Broadcasting Services; Dexter, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 241C3 to Dexter, NM, as the community's first local aural service. Channel 241C3 can be allotted to Dexter without the imposition of a site restriction, at coordinates 33–11–42 NL; 104–22–18 WL. Mexican concurrence in the allotment is required since Dexter is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–158, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–13169 Filed 5–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–159, RM–9616]

Radio Broadcasting Services; Paxton, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 228C1 to Paxton, NE, as the community's first local aural service. Channel 228C1 can be allotted to Paxton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–06–48 NL; 101–21–12 WL.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–159, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–13170 Filed 5–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–160, RM–9617]

Radio Broadcasting Services; Overton, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 257C2 to Overton, NE, as the community's first local aural service. Channel 257C2 can be allotted to Overton in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.8 kilometers (8.6 miles) west, at coordinates 40–44–24 NL; 99–42–06 WL, to avoid a short-spacing to Station KKPR–FM, Channel 255C1, Kearney, NE.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–160, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–13171 Filed 5–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–167; RM–9391]

Radio Broadcasting Services; Mount Olive and Staunton, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Talley Broadcasting Corporation proposing the reallotment of Channel 287A from Mount Olive to Staunton, Illinois, and the modification of the Station WSTN–FM's construction permit accordingly. Channel 287A can be allotted to Staunton in compliance with the Commission's minimum distance separation requirements at petitioner's authorized construction permit site. The coordinates for Channel 287A at Staunton are 39–02–37 North Latitude and 98–44–56 West Longitude. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 287A at Staunton, Illinois.

DATES: Comments must be filed on or before July 6, 1999, reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John J. McVeigh, Esq., 12101 Blue Paper Trail, Columbia, Maryland 21044–2787 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–167, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the Public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–13172 Filed 5–24–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–157, RM–9614]

Radio Broadcasting Services; Warrenton, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 259A to Warrenton, OR, as the community's first local aural service. Channel 259A can be allotted to Warrenton in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.9 kilometers (8.6 miles) northwest, at coordinates 46–16–49 NL; 123–59–13 WL, to avoid a short-spacing to Station KWJJ-FM, Channel 258C1, Portland, OR. Canadian concurrence is required since Warrenton is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–157, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–13168 Filed 5–24–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 201 and 213

[DFARS Case 99–D002]

Defense Federal Acquisition Regulation Supplement; Overseas Use of the Purchase Card

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to permit use of the Governmentwide commercial purchase card for purchases valued at or below $25,000 that are made outside the United States for use outside the United States and are for commercial items. Use of the purchase card permits immediate receipt of supplies and services and, therefore, increases mission readiness and accomplishment.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before July 26, 1999 to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 99–D002.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 99–D002 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 99–D002 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0131. Please cite DFARS Case 99–D002.

SUPPLEMENTARY INFORMATION:

A. Background

Section 13.301 of the Federal Acquisition Regulation (FAR) permits use of the Governmentwide commercial purchase card to make purchases valued at or below the micro-purchase threshold of $2,500 ($2,000 for construction purchases). The FAR permits use of the card for purchases exceeding the micro-purchase threshold only as an ordering or payment method in conjunction with a contract. The proposed DFARS revisions would permit use of the card on a stand-alone basis for overseas purchases of commercial items valued at or below $25,000.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule applies only to purchases that are made outside the United States for use outside the United States.

An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D002 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 201 and 213

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 201 and 213 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 201 and 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.603–3 is amended by redesignating the existing text as paragraph (a), and by adding a new paragraph (b) to read as follows:

201.603–3 Appointment.

* * * * *

(b) Agency heads may delegate the purchase authority in 213.301 to DoD civilian employees and members of the U.S. Armed Forces.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

3. Section 213.301 is added to read as follows:

213.301 Governmentwide commercial purchase card.

(1) ''United States,'' as used in this section, means the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, Wake Island, Johnston Island, Canton Island, the outer Continental Shelf lands, and any other place subject to the jurisdiction of the United States (but not including leased bases).

(2) An individual appointed in accordance with 201.603–3(b) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed $25,000, if—

(i) The purchase—

(A) Is made outside the United States for use outside the United States; and

(B) Is for a commercial item; but

(C) Is not for work to be performed by employees recruited within the United States;

(D) Is not for supplies or services originating from, or transported from or through, sources identified in FAR Subpart 25.7;

(E) Is not for ball or roller bearings as end items; and

(F) Does not require access to classified or Privacy Act information; and

(ii) The individual making the purchase—

(A) Is authorized and trained in accordance with agency procedures;

(B) Complies with the requirements of FAR Part 8 in making the purchase; and

(C) Seeks maximum practicable competition for the purchase in accordance with FAR 13.104(b).

[FR Doc. 99–13041 Filed 5–24–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. RSPA–99–5137 (HM–208C)]

RIN 2137–AD17

Hazardous Materials Transportation; Registration and Fee Assessment Program; Extension of Comment Period and Announcement of Second Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rule; extension of time to file comments and public meeting announcement.

SUMMARY: On April 15, 1999, RSPA published a proposed rule to change the current registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. RSPA is extending until July 2, 1999, the period for filing comments to the notice of proposed rulemaking (NPRM). RSPA will conduct a second public meeting on June 22, 1999, in Des Moines, Iowa.

DATES: *Comment Date.* Comments must be received on or before July 2, 1999.

Public Meeting Date. A second public meeting will be held on June 22, 1999, from 9:00 a.m. to 1:30 p.m.

ADDRESSES: *Written Comments:* Address comments to the Dockets Management System, U.S. Department of Transportation, PL 401, 400 Seventh St., SW, Washington, DC 20590–0001. Comments should identify the docket number, RSPA 99–5137 (HM–208C), and should be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address. Public dockets may be reviewed between the hours of 10:00 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. In addition, comments can be reviewed by accessing the DOT Homepage (http://www.dot.gov). You may also submit comments to the docket electronically. To do so, log on the DMS Web at <<http://dms.dot.gov≤≤. Click on Help & Information to obtain instructions for filing a document electronically. In every case, the comment should refer to the Docket number set forth above.

Public Meeting: The public meeting will be held in Des Moines, Iowa, at 717 East Court Avenue, Des Moines, Iowa. For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Ms. Deborah Boothe at the address or phone number listed under ''**FOR FURTHER INFORMATION CONTACT**'' as soon as possible.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366–4484, or Ms. Deborah Boothe, Office of Hazardous Materials Standards, (202) 366–8553, RSPA, Department of Transportation, 400 Seventh Street SW, Washington, DC . Persons wishing to attend and/or speak at the public meeting should contact the persons listed above.

SUPPLEMENTARY INFORMATION: On April 15, 1999, RSPA published an NPRM in the **Federal Register** under Docket RSPA–99–5137 (HM–208C) (64 FR 18786). RSPA proposed in the NPRM to amend certain requirements in the current registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The proposed changes would increase (1) the number of persons required to register and (2) the annual registration fee for shippers and carriers who are not a small business under Small Business Administration criteria. The proposed changes are intended to raise additional funds to enhance support for the national Hazardous Materials Emergency Preparedness Grants Program. The NPRM also announced a public meeting on May 25, 1999, in Washington, DC, to discuss the proposed changes.

The Illinois Fertilizer and Chemical Association and the Michigan Agri-Business Association have asked RSPA to hold a second public meeting in the Midwest to discuss the proposals in the NPRM. These associations suggested five cities, including Des Moines, as possible locations for this meeting. RSPA agrees with their request and is scheduling a second public meeting for June 22, 1999, in Des Moines, Iowa. In order to allow sufficient time for interested parties to submit comments on the NPRM after this public meeting, RSPA is also extending the comment period to July 2, 1999.

RSPA invites all interested parties to submit comments on the proposals in the NPRM and on a suggestion by the Iowa Department of Transportation's (IDOT) Office of Motor Vehicle Enforcement to expand the registration requirement to apply to any person who offers or transports ''shipments that are required to be marked and/or placarded,'' including marine pollutants, class 9 materials and cryogenics. IDOT's letter, which also raises concerns about RSPA's proposal for two levels of registration fees, is set forth in Appendix A.

Issued in Washington DC on May 20, 1999.

Robert A. McGuire,

Deputy Associate Administrator for Hazardous Materials Safety.

Appendix A

May 6, 1999.

Dockets Unit, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001.

Dear Docket Clerk: The Iowa Department of Transportation's Office of Motor Vehicle Enforcement offers the following comments to Docket HM–208c:

We support expanding the base of persons required to register. However, we would like to see the registration program include shipments that are required to be marked and/or placarded. This would include marine pollutants, class 9 materials and cryogenics.

To simplify matters the applicability should read as follows:

The registration and fee requirements of this subpart apply to any person who offers for transportation, or transports in foreign, interstate or intrastate commerce.

A type or quantity of Hazardous Materials that requires placarding, marine pollutant marking or the display of identification numbers on placards, white square on point configurations or orange panels.

This section does not apply to those activities of a [farmer], as defined in section 171.8 of this chapter, that are [in direct] support of the farmers farming operations.

The concept of a tiered program may be more difficult to implement than expected. Basing it on gross revenue of a company's total operation is unfair to say the least. They may have a high gross revenue, but only a small percentage is derived from Hazardous Materials activities.

By lowering the registration threshold quantity, more offerors and carriers would be required to register. Keep it simple, if you offer or transport HM in quantities that require placarding, or the [marine] (sic) pollutant mark, or the display of identification numbers on placards, white square on point configurations or orange panels you must register.

Sincerely,

Michael L. Winfrey,

Director, Motor Vehicle Enforcement.

[FR Doc. 99–13163 Filed 5–20–99; 3:58 pm]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–107; Notice 2]

RIN 2137–AB50

Determining the Extent of Corrosion on Gas Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of availability of draft environmental assessment.

SUMMARY: Gas pipeline operators must examine buried metallic pipelines for corrosion when the pipeline is exposed. RSPA proposed to require that operators investigate further to determine the extent of any harmful corrosion that is found. A draft environmental assessment of this proposed rule is available in the docket.

DATES: Interested persons may submit written comments on the Draft Environmental Assessment until June 24, 1999.

ADDRESSES: Send comments in duplicate to Marvin Fell, Room 7428, Research and Special Programs Administration, U. S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 7428 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Marvin Fell at (202) 366–6205 or fellm@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: Whenever a gas pipeline operator learns that a buried metallic pipeline has been exposed, the operator is required to examine the exposed portion of the pipeline for evidence of external corrosion, if the pipeline is bare or has a deteriorated coating (49 CFR 192.459). In a notice of proposed rulemaking (54 FR 27041; June 27, 1989), RSPA proposed to amend this standard to require that when corrosion requiring remedial action is found, the operator investigate further to determine the extent of the corrosion.

We have analyzed the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Only in limited circumstances will operators marginally enlarge an area of exposed pipe to investigate the extent of corrosion, and less harmful investigative techniques will be used where necessary to safeguard people and the environment. Thus, we have determined that the proposed rule would not significantly affect the quality of the human environment. A draft environmental assessment document is available for review in the docket.

Issued in Washington, D.C. on May 19, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–13161 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–60–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF61

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Astragalus pycnostachyus var. lanosissimus (Ventura Marsh Milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose endangered species status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch). Historically known from a three-county region in coastal southern California, *Astragalus pycnostachyus* var. *lanosissimus* was believed extinct until its rediscovery in 1997. The newly discovered and only known extant population of this taxon occurs in Ventura County, California. This population occupies less than one acre and is located in degraded dune habitat previously used for disposal of petroleum wastes. The most significant current threats to *Astragalus pycnostachyus* var. *lanosissimus* are direct destruction of this population and alteration of its habitat from proposed soil remediation, residential development, and associated activities. Because of the small area occupied by this taxon, it is also threatened by catastrophic natural and human-caused events. Competition from nonnative invasive plant species and predation by nonnative snails are additional threats. This proposal, if made final, would extend the Act's protection to this plant. We seek additional data and invite comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by July 26, 1999. Public hearing requests must be received by July 9, 1999.

ADDRESSES: Send comments and materials concerning this proposal and public hearing requests to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California, 93003. Comments and materials received, as well as the supporting documentation used in preparing this rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Steeck, Botanist, at the address above (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Astragalus pycnostachyus var. *lanosissimus* (Ventura marsh milk-vetch) was first described by Per Axel Rydberg (1929) as *Phaca lanosissima* from an 1882 collection by S.B. and W.F. Parish made from ''La Bolsa,'' probably in what is now Orange County, California. The combination *Astragalus pycnostachyus* var. *lanosissimus* was assigned to this taxon by Philip Munz and Jean McBurney in 1932 (Munz 1932).

Astragalus pycnostachyus var. *lanosissimus* is an herbaceous perennial in the pea family (Fabaceae). It has a thick taproot and multiple erect, reddish stems, 40 to 90 centimeters (cm) (16 to 36 inches (in)) tall, that emerge from the root crown. The pinnately compound leaves are densely covered with silvery-white hairs. The 27–39 leaflets are 5 to 20 millimeters (mm) (0.2 to 0.8 in) long. The numerous yellowish-white to cream colored flowers are in dense clusters and are 7 to 10 mm (0.3 to 0.4 in) long. The calyx teeth are 1.2 to 1.5 mm (0.04 in) long. The nearly sessile, single-celled pod is 8 to 11 mm (0.31 to 0.43 in) long (Barneby 1964). The blooming time has been recorded as July to October (Barneby 1964); however, the one extant population was observed in flower in June 1997. This variety is distinguished from *Astragalus pycnostachyus* var. *pycnostachyus* by the length of calyx tube, calyx teeth and peduncles.

The type locality is ''La Bolsa,'' where the plant was collected in 1882 by S.B. and W.F. Parish (Barneby 1964). Based on the labeling of other specimens collected by the Parishes in 1881 and 1882, Barneby (1964) suggested that this collection may have come from the

Ballona marshes in Los Angeles County. However, Critchfield (1978) believed that ''La Bolsa'' could easily have referred to Bolsa Chica, a coastal marsh system located to the south in what is now Orange County. He noted that Orange County was not made a separate County from Los Angeles until 1889, seven years after the Parish's collection was made. In the five decades following its discovery, *Astragalus pycnostachyus* var. *lanosissimus* was collected only a few times, always from locations in coastal Los Angeles and Ventura counties. In Los Angeles County it was collected from near Santa Monica in 1882, the Ballona marshes just to the south in 1902, and ''Cienega'' in 1904, also likely near the Ballona wetlands. In Ventura County it was collected in 1901 and 1925 from Oxnard and in 1911 from ''Ventura, California,'' a city adjacent to Oxnard. By 1964, Barneby (1964) believed that it had certainly been extirpated from Santa Monica southward, noting that there was still the possibility it survived in Ventura County (although he knew of no locations at that time). The species was rediscovered in 1967 through the chance collection by R. Chase of a single specimen growing by a roadside between the cities of Ventura and Oxnard. Searches uncovered no other living plants at that location, although some mowed remains that were discovered on McGrath State Beach lands across the road from the collection site were believed to belong to this taxon (information on herbarium label from specimen collected by R.M. Chase, 1967). Floristic (plant) surveys and focused searches conducted in the 1970s and 1980s at historic collection locations did not locate any populations of *Astragalus pycnostachyus* var. *lanosissimus* and the plant was presumed extinct (Isley 1986, Spellenberg 1993, Skinner and Pavlik 1994). On June 12, 1997, a population of the plant was rediscovered by Service biologist Kate Symonds, in a degraded coastal dune system near Oxnard, California. This population is located about one mile from the site of Chase's 1967 discovery at McGrath State Beach.

Almost nothing is known of the habitat requirements of *Astragalus pycnostachyus* var. *lanosissimus*. Specimen labels from collections and original published descriptions contain virtually no habitat information. It is possible that some insight into its habitat may be inferred from the habitat of the related variety, *A. pycnostachyus* var. *pycnostachyus*, which is found in or at the high edge of coastal saltmarshes and seeps. However, any strict concordance in habitat requirements of these related taxa is conjectural. The newly discovered population of *Astragalus pycnostachyus* var. *lanosissimus* occurs in a sparsely vegetated low area, at an elevation of about 10 meters (30 feet), in a site previously used for disposal of petroleum waste products (Impact Sciences, Inc. 1997). Dominant shrub species at the site are *Baccharis pilularis* (coyote brush), *Baccharis salicifolia* (mule fat), *Salix lasiolepis* (arroyo willow), and the nonnative *Myoporum* laetum (myoporum) (Impact Sciences, Inc. 1997). The population itself occurs with patchy vegetative cover provided primarily by *Baccharis pilularis*, *Baccharis salicifolia*, a nonnative *Carpobrotus* sp. (seafig), a nonnative beardgrass, *Polypogon monspeliensis* (annual beard grass), and a nonnative annual grass, *Bromus madritensis* ssp. *rubens* (red brome). Soils are reported to be loam-silt loams (Impact Sciences, Inc. 1997). Soils may have been brought in from other locations as a cap for the disposal site once it was closed. We do not know the specific origin of the soil used to cap the waste disposal site, however because of the costs of transport, the soil source is likely from the immediate site or from a local source.

The population of *Astragalus pycnostachyus* var. *lanosissimus* consisted of about 374 plants total in 1997, of which 260 were small plants, thought to have germinated in the last year. Fewer than 65 plants in the population produced fruit in 1997 (Impact Sciences, Inc. 1997). In 1998, fewer than 200 plants were found on the site, although a greater number were reproducing than in the previous year (Impact Sciences, Inc. 1998). The plants are growing in an area of less than one acre, with one outlying plant located about 50 meters from the main group (Impact Sciences, Inc. 1998).

The land on which the only known population of *Astragalus pycnostachyus* var. *lanosissimus* grows is privately owned. A project to decontaminate the soils and construct a housing development on the site is proposed (Impact Sciences, Inc. 1998). The most significant current threats to *Astragalus pycnostachyus* var. *lanosissimus* are direct destruction of this population and alteration of habitat from proposed soil remediation (clean-up) and residential development activities. Due to its small population size and the very restricted area it occupies, this taxon is also threatened by catastrophic natural and human-caused disturbances. Competition from nonnative, invasive, plant species and predation from nonnative snail species are additional threats.

Previous Federal Action

Federal government actions involving *Astragalus pycnostachyus* var. *lanosissimus* began as a result of section 12, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. The Smithsonian Institute presented a report (House Document No. 94–51), to Congress on January 9, 1975, and included *Astragalus pycnostachyus* var. *lanosissimus* on List C, among those taxa believed possibly extinct in the wild. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4 (b)(3) of the Act) and expressed our intent to review the status of the plant taxa named therein.

On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to list approximately 1,700 vascular plant species pursuant to section 4 of the Act. We assembled a list, that included *Astragalus pycnostachyus* var. *lanosissimus*, from the comments and data received by the Smithsonian Institution and information collected in our own files in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. We summarized the general comments received in relation to the 1976 proposal in the April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796) we withdrew the portion of the June 16, 1976, proposal that had not been made final, which included *Astragalus pycnostachyus* var. *lanosissimus*.

On December 15, 1980, we published an updated candidate notice of review for plants in the **Federal Register** (45 FR 82480). This notice included *Astragalus pycnostachyus* var. *lanosissimus* in a list of category 1 candidate species that were possibly extinct in the wild. These category 1 candidates would have been given high priority for listing were extant populations to be confirmed. Category 1 comprised taxa for which sufficient information was on file to support proposals for endangered and threatened status.

We maintained *Astragalus pycnostachyus* var. *lanosissimus* as a category 1 candidate in subsequent

notices: November 28, 1983 (48 FR 53640), September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). On September 30, 1993, we published a **Federal Register** notice (58 FR 51144) informing the public that we were moving taxa whose existence in the wild was in doubt, including *Astragalus pycnostachyus* var. *lanosissimus*, to category 2. Category 2 comprised taxa for which there was available biological information in our possession indicating that listing was possibly appropriate, but the information was insufficient to support listing the species as endangered or threatened. In the February 28, 1996, notice of review (61 FR 7596), we informed the public that we were discontinuing the designation of multiple categories of candidates and that we would consider only taxa meeting the definition of former category 1 as candidates for listing. Thus *Astragalus pycnostachyus* var. *lanosissimus* was excluded from this and subsequent notices of review. In 1997, *A. pycnostachyus* var. *lanosissimus* was rediscovered and a review of the taxon's status indicated that a proposed rule was warranted.

The processing of this proposed rule conforms with our final listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). This guidance establishes a three-tiered approach that assigns relative priorities on a descending basis, to listing actions to be carried out under section 4 of the Act (16 U.S.C. 1531 *et seq.*). The guidance calls for giving highest priority to completion of emergency listings for species facing a significant risk to their well-being (Tier 1). The next highest priority is for processing final decisions on pending proposed listings, resolution of the conservation status of species identified as candidates, processing 90-day or 12-month administrative findings on petitions, and for a limited number of delisting/reclassification activities (Tier 2). Third priority is the processing of petitions for critical habitat designations and the preparation of proposed and final critical habitat designations (Tier 3). This proposed rule for *Astragalus pycnostachyus* var. *lanosissimus* falls under Tier 2.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

With the exception of the extant Ventura County population, *Astragalus pycnostachyus* var. *lanosissimus* is believed extirpated from all other areas from which it has been collected. In Los Angeles County, this taxon was collected in the late 1800s and early 1900s from Santa Monica, Ballona marsh, and ''Cienega'' (probably near Ballona marsh). These coastal areas are now urbanized within the expansive Los Angeles metropolitan area. About 90 percent of the Ballona wetlands, once encompassing almost 2000 acres, have been drained, dredged, and developed into the urban areas of Marina del Rey and Venice (Critchfield 1978; Friends of Ballona Wetlands 1998). Ballona Creek, the primary freshwater source for the wetland, had been straightened, dredged and channelized by 1940 (Friesen, *et al.* 1981). Despite periodic surveys of what remains at the Ballona wetlands, *Astragalus pycnostachyus* var. *lanosissimus* has not been collected there since the early 1900s (Gustafson 1981; herbarium labels from collections by H. P. Chandler and by E. Braunton, 1902, housed at University of California at Berkeley Herbaria). Barneby (1964) believed that *Astragalus pycnostachyus* var. *lanosissimus* was extirpated from all areas south of Santa Monica by the mid-1960s. In 1987, botanists searched specifically for *Astragalus pycnostachyus* var. *lanosissimus* at previous collection locations throughout its range, including Bolsa Chica in Orange County and on public lands around Oxnard in Ventura County, without success (F. Roberts, U.S. Fish and Wildlife Service, *in litt.* 1987; R. Burgess, California Native Plant Society, *in litt.* 1987; T. Thomas, USFWS, pers. comm. 1997). Point Muga Naval Air Weapons Station in Southern Ventura County may have habitat. Detailed surveys have not been conducted there, however *Astragalus pycnostachyus* var. *lanosissimus* was not found during cursory surveys of the base, nor has this taxon ever been collected there in the past.

The single known population of *Astragalus pycnostachyus* var. *lanosissimus* occurs in a degraded backdune community near the city of Oxnard. From 1955 to 1981 the land on which it occurs was used as a disposal site for oil field wastes (Impact Sciences, Inc. 1998). In August 1998, the City of Oxnard released a Draft Environmental Impact Report (DEIR) for development of this site (Impact Sciences, Inc. 1998). The project proposed for the site includes remediation of soils contaminated with hydrocarbons, followed by construction of 364 homes and a 6-acre lake on 91 acres of land, including that on which *Astragalus pycnostachyus* var. *lanosissimus* grows. The proposed soil remediation would involve excavation and stockpiling of the soils, followed by soil treatment and redistribution of the soils over the site (Impact Sciences, Inc. 1998). The proposed project, as described in the DEIR, would entirely eliminate the only known population of *Astragalus pycnostachyus* var. *lanosissimus* from this site, resulting in the extinction of this taxon in the wild. In March 1999, a Final Environmental Impact Report (FEIR) was released by the City of Oxnard. This FEIR includes an alternative to the proposed project in which the population of *Astragalus pycnostachyus* var. *lanosissimus* would not be directly eliminated, but excavation for soil remediation would occur to within 50 feet of the population. A 5-acre area would be left undeveloped around the population, to serve as a buffer from the residential development that would surround it.

B. Overuse for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a problem for *Astragalus pycnostachyus* var. *lanosissimus* at present. Soon after this taxon was discovered, the project proponent installed a fence around the population, which appears to have been effective in minimizing unauthorized visitation. However, some plants have been transplanted to an off-site greenhouse. Because of the population's small size, the removal of even modest numbers of plants from the population could increase the risk of extinction.

C. Disease or Predation.

A sooty fungus was found on the leaves of *Astragalus pycnostachyus* var. *lanosissimus* in late summer 1997, as leaves began to senesce (age) and the plants entered a period of dormancy (Impact Sciences, Inc. 1998; T. Yamashita, Sunburst Plant Disease Clinic, pers. comm. 1998). The effects of the fungus on the population are not known, but it is possible that the fungus attacks senescing leaves in great number only at the end of the growing season. The plants appeared robust when in flower in June 1997, matured seed by October 1997, and were regrowing in

spring 1998, after a period of dormancy, without obvious signs of the fungus (D. Steeck, USFWS, pers. obs. 1997, 1998).

In spring 1998, during abundant seasonal rains, a nonnative snail from the Mediterranean, *Otala lactea* (milk snail), was present in great numbers in the population, feeding on adult and seedling plants of *Astragalus pycnostachyus* var. *lanosissimus*. Manual removal of snails, the use of snail baits, and the eventual cessation of rains reduced snail numbers. However, in years of high rainfall they may again affect the population.

The seeds of *Astragalus pycnostachyus* var. *lanosissimus* in 1997 were heavily infested with seed beetles (Bruchidae: Coleoptera). Seed predation by seed beetles and weevils has been reported among other members of the genus *Astragalus* (Platt *et al.* 1974; Lesica 1995). In a seed collection made for conservation purposes, we found that most fruits in 1997 partially developed at least four seeds. However seed predation reduced the average number of undamaged seeds to only 1.8 per fruit (D. Steeck, USFWS, and M. Meyer, California Department of Fish and Game, unpublished data). The level of year to year variation in seed predation and its consequences for the population of *Astragalus pycnostachyus* var. *lanosissimus* are not known at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

Astragalus pycnostachyus var. *lanosissimus* currently receives no protection under Federal law, and it is not currently listed by the State of California. However, on February 4, 1999, the California Fish and Game Commission accepted a petition to list the species under the California Endangered Species Act, making it a candidate for State listing. California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from the California Department of Fish and Game (CDFG) to take a candidate species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all measures be capable of successful implementation. However, these requirements have not been tested and it will be several years before their effectiveness can be evaluated.

Remediation of the soils on the site and any proposed development must comply with the California Environmental Quality Act (CEQA) and the California Coastal Act. The CEQA requires a full public disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that can be shown to meet the criteria for State listing, such as *Astragalus pycnostachyus* var. *lanosissimus* are considered under CEQA (CEQA Section 15380). Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding social or economic considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agencies.

The Coastal Zone Management Act of 1972 is a Federal statute that allowed for the establishment of the California Coastal Act (CCA) of 1976. The CCA established a coastal zone. In Ventura County, the site of the only known extant population of *Astragalus pycnostachyus* var. *lanosissimus* occurs in the California Coastal Zone (Impact Sciences, Inc. 1998). As required by the CCA, Ventura County has developed a Coastal Land Use Plan. It currently designates the area occupied by *Astragalus pycnostachyus* var. *lanosissimus* as Open Space, thus amendments of the Coastal Land Use Plan will be required for approval of a residential development on this property. Land use decisions made by local agencies in the Coastal Zone are appealable to the California Coastal Commission. Although the Coastal Zone designation and CEQA require that unique biological resources, such as *Astragalus pycnostachyus* var. *lanosissimus*, are considered in the planning process, any protection offered by these regulatory mechanisms is ultimately at the discretion of the local and State agencies involved and is therefore inadequate to preclude the need to list this taxon.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Astragalus pycnostachyus var. *lanosissimus* is, by virtue of its small population size and the small area occupied, susceptible to extinction from natural and human-caused catastrophic events. An example of an uncertain but potentially catastrophic environmental effect is wildfire during the summer prior to seed maturation. There is also some potential for random events such as a plane crash (the taxon is under the extended center flight line of the Oxnard airport, and a crash occurred on the site in 1995 (Murphy *in litt.* 1997)) to cause extinction.

Small population size also increases the susceptibility of this taxon to extinction from competition with nonnative plant species. *Cortaderia selloana* (pampas grass), *Carpobrotus* sp., *Polypogon monspeliensis*, and *Bromus madritensis* ssp. *rubens* are invasive nonnative plant species that occur at the site of the single extant population (Impact Sciences, Inc. 1997). *Carpobrotus* sp. in particular, are competitive, succulent species with the potential to cover vast areas in dense clonal mats. *Polypogon monspeliensis* grew in high densities around some mature individuals of *Astragalus pycnostachyus* var. *lanosissimus* in 1998 and seedlings were germinating among patches of *Carpobrotus* and *Bromus* in 1998 (D. Steeck, pers. obs. 1998). Seedling survival rates in these areas have not yet been determined. These invasive, nonnative species are associated with wholesale conversion of native plant communities, leading to declines and local extirpation of native species. While population trend information is not available, the presence of these nonnative species on the site is cause for concern that this plant community is vulnerable to conversion and the *Astragalus pycnostachyus* var. *lanosissimus* population is at risk.

The small population risks described above in this section are increased by activities in the occupied habitat associated with planning for land use at the site. For example, at least two excavations were conducted in the population to examine the soils in which the plants occur (D. Steeck, pers. obs. 1997) and to examine the root structure of an adult plant (R. Smith, Impact Sciences 1998). In April 1998, four plants from the population were removed and transported to a greenhouse in a preliminary attempt at transplantation. In addition to the direct removal of reproducing individuals from the population, exploratory excavations within the population can potentially alter the hydrology of the micro-site where the plants are found, reduce seedling establishment by burying or removing seeds and seedlings from the soil, and injure plant roots.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Astragalus pycnostachyus* var. *lanosissimus* in determining to propose this rule. Residential and commercial development have resulted in the loss and alteration of this taxon's coastal habitat and are the most likely cause of population extirpation historically. Loss and alteration of habitat from soil remediation activities and proposed residential development threaten the only known extant population. Other threats include competition from nonnative plant species and catastrophic natural and human-caused events which could diminish or destroy the very small extant population. Existing regulatory mechanisms are inadequate to protect this taxon. Based on our evaluation, the preferred action is to list *Astragalus pycnostachyus* var. *lanosissimus* as endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the [Act], on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed * * * upon a determination * * * that such areas are essential for the conservation of the species.'' ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Critical habitat is not determinable when one or both of the following situations exist—(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)). Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. For the reasons discussed below we find that designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* is not prudent.

Critical habitat designation provides protection for listed species on Federal lands and on non-Federal lands or private lands where there is Federal involvement through authorization or funding of, or participation in, a project or activity (Federal nexus). If such a Federal nexus is found, then the Act provides protection through section 7 consultation procedures. *Astragalus pycnostachyus* var. *lanosissimus* occurs exclusively on privately owned land and the activities constituting threats to its existence (see ''Summary of Factors Affecting the Species'' section above) do not require Federal involvement and therefore are not subject to consultation under section 7 of the Act. Our analysis has not identified a Federal nexus which would trigger section 7 consultation on land where the species occurs. With no current or future Federal nexus there will be no benefit to the species as a result of the consultation requirements under section 7 of the Act.

This species occurs at a single locality, occupying less than an acre of property in a highly altered and rapidly urbanizing landscape. Due to its exclusive occurrence on private land, and with no Federal involvement in projects on those lands, the benefits of listing are limited, being restricted to the protective prohibitions provided under section 9 of the Act. As applied to plants, section 9 of the Act prohibits the importation and exportation of listed plant species into or from the United States. Further, under section 9 it is unlawful to remove and reduce to possession, or to maliciously damage or destroy, any listed plant species from areas under Federal jurisdiction. In addition, it is unlawful to remove, cut, dig up, or damage or destroy a listed plant species on any area in knowing violation of any State law or regulation or in violation of a State criminal trespass law. Finally, it is unlawful to deliver, receive, carry or transport, or sell or offer to sell the species in interstate or foreign commerce. As previously discussed, the residential development and soil remediation activities threatening this species occur wholly on private land. Any removal or destruction of this species on private land, if in compliance with State law, would not violate section 9. Designation of critical habitat would not make section 9 any more or less applicable to this plant species. As such, designation of critical habitat would provide no benefit to the species.

Section 10 allows the Secretary to permit otherwise prohibited activity. Under certain circumstances, the Secretary may issue permits to take wildlife and fish (but not plants) in conjunction with otherwise legal activities (section 10(a)(1)(B)), and for scientific purposes (section 10(a)(1)(A)). These permits extend authorization to the applicant to impact the species, as opposed to impacting critical habitat. Impacts to habitat may be permitted under section 10(a)(1)(B) when the number of individual animals to be taken can not be quantified. In the case of this plant species which occurs solely on private land, neither section 10(a)(1)(A) nor section 10(a)(1)(B) are applicable. Designation of critical habitat would result in no benefit to the species under section 10 of the Act.

Because this plant species occurs only on private land with no Federal nexus, section 7 of the act is not applicable. In addition, critical habitat designation will not invoke the protection afforded under section 9, and since, in this case, permitting is not applicable, there is no section 10 requirement to meet. Neither listing nor designation of critical habitat will require the private landowner to undertake active management or modify any of its activities on behalf of this species. Because all appropriate non-Federal regulating agencies are aware of this species and its location on private land, any additional notice to the general public and state and/or local government due to designation of critical habitat would not increase the protection afforded this species under the Act. Because the private landowner and the developer have been notified of the Federal status of this species, and because the survival and recovery of this species depends upon their participation and cooperation, we will continue to work with the property owner to further the conservation of the species. We conclude therefore that no benefit to the species would be realized through designation of critical habitat. For all of the above reasons we find it not prudent to designate critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages

public awareness and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition from willing sellers and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The single known extant population of *Astragalus pycnostachyus* var. *lanosissimus* occurs on privately owned land and our analysis has not identified a Federal nexus that will trigger consultation requirements under section 7 of the Act.

The listing of *Astragalus pycnostachyus* var. *lanosissimus* as endangered would provide for the development of a recovery plan for this taxon. Such a plan would bring together Federal, State, and local efforts for the conservation of this taxon. The plan would establish a framework for agencies to coordinate activities and to cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to achieve the conservation of this taxon.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to *Astragalus pycnostachyus* var. *lanosissimus*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply (16 U.S.C. 1538(a)(2)). These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to persons acting in an agency capacity for the Service and to State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant taxa under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063, facsimile 503/231–6243).

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not be likely to constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the taxon's range. *Astragalus pycnostachyus* var. *lanosissimus* is not located on areas currently under Federal jurisdiction. Collection, damage, or destruction of this species on Federal lands would be prohibited (although in appropriate cases a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes). Such activities on areas not under Federal jurisdiction would constitute a violation of section 9 if conducted in knowing violation of State law or regulations, or in violation of State criminal trespass law. Questions regarding whether specific activities would constitute a violation of section 9, should this species be listed, should be directed to the Field Supervisor of the Services's Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial, trade, or other relevant data concerning any threat (or lack thereof) to *Astragalus pycnostachyus* var. *lanosissimus;*

(2) The location of any additional populations of *Astragalus pycnostachyus* var. *lanosissimus* and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the essential habitat features (biotic and abiotic), range, distribution, and population size of this taxon; and

(4) Current or planned activities in the subject area and their possible impacts on this taxon.

Final promulgation of the regulations on *Astragalus pycnostachyus* var. *lanosissimus* will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that Environmental Assessments, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining the basis for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that

interferes with the clarity? (3) Does the format of the notice (grouping and order of the sections, use of headings, paragraphing, etc.) Aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Exsec@ios.doi.gov.

Required Determinations

We have examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this notice is Diane Steeck, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Astragalus pycnostachyus var. *lanosissimus*.	Ventura marsh milk-vetch.	U.S.A. (CA)	Fabaceae—Pea	E	.....	NA	NA
*	*	*	*	*	*	*	

Dated: April 28, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–12991 Filed 5–24–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Extension of Comment Period on the Proposed Rule to List the Alabama Sturgeon as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of comment period.

SUMMARY: We, the Fish and Wildlife Service, give notice that we are extending the comment period and holding a public hearing on the proposed rule to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered. We invite all interested parties to submit comments on this proposal.

DATES: We will hold the public hearing from 7 p.m. to 10 p.m. on Thursday, June 24, 1999, in Montgomery, Alabama. The comment period now closes on July 5, 1999. We will consider any comments received by the closing date in the final decision on this proposal.

ADDRESSES: We will hold the public hearing at the Montgomery Civic Center, 300 Bibb Street, Montgomery, Alabama 36104. You may submit written comments and materials concerning the proposal at the hearing or send them directly to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield (see **ADDRESSES** section), 601/965–4900, extension 25; facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

The Alabama sturgeon is a small freshwater sturgeon that was historically found only in the Mobile River Basin of Alabama and Mississippi. The Alabama sturgeon's historic range once included about 1,600 kilometers (km) (1,000 miles (mi)) of the Mobile River system in Alabama (Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba rivers) and Mississippi (Tombigbee River). Since 1985, all confirmed captures of this fish have been from a short, free-flowing reach of the Alabama River below Miller's Ferry and Claiborne locks and dams in Clarke, Monroe, and Wilcox counties, Alabama. The historic decline of the Alabama sturgeon is attributed to over-fishing, loss and fragmentation of habitat as a result of navigation-related development, and water quality degradation. Current threats primarily result from its small population numbers and its inability to offset mortality rates with reproduction and recruitment.

On March 26, 1999, we published a rule proposing endangered status for the Alabama sturgeon in the **Federal Register** (64 FR 14676). Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that we hold a public hearing if it is requested within 45 days of the publication of the proposed rule. Sheldon Morgan, Chairman, Alabama-

Tombigbee Rivers Coalition, requested a public hearing within the allotted time period. Public hearings are designed to gather relevant information that the public may have that we should consider in determining the status of and threats to this species. During the hearing, we will present information about the proposed action of listing the Alabama sturgeon as endangered. We invite the public to submit information and comments either at the hearing on June 24, 1999, or in writing.

The hearing will be at the Montgomery Civic Center in Montgomery, Alabama, on Thursday, June 24, 1999, from 7:00 p.m. to 10:00 p.m. We may have to limit the time allotted for oral statements, if the number of people who wish to comment necessitates such a limitation. We encourage persons wishing to comment at the hearing to provide a written copy of their statement at the start of the hearing. There is no limit on the length of written comments. Persons may also send written comments to our office in the **ADDRESSES** section at any time during the open comment period. We will give equal consideration to oral and written comments. We are publishing legal notices announcing the date, time, and location of the hearing in newspapers, concurrently with this **Federal Register** notice. The comment period on the proposal initially closed on May 26, 1999. To accommodate the hearing, we are extending the public comment period upon publication of this notice. The public comment period will close on July 5, 1999.

Author: The primary author of this notice is Paul Hartfield (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 18,1999.

H. Dale Hall,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 99–13143 Filed 5–24–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990430115–9115–01; I.D. 030299B]

RIN 0648–AL48

Fisheries Off West Coast States and in the Western Pacific; Northern Anchovy Fishery; Amendment 8

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 8 to the Northern Anchovy Fishery Management Plan (FMP), which has been submitted by the Pacific Fishery Management Council (Council) to NMFS for review and approval by the Secretary of Commerce. This proposed rule to implement Amendment 8 would: Change the name of the FMP to the Fishery Management Plan for Coastal Pelagic Species (CPS); remove jack mackerel north of 39° N. lat. from the Pacific Coast Groundfish FMP and add four species to the management unit of the CPS FMP; define a new fishery management area and divide it into a limited entry zone and two new subareas; establish a procedure for setting annual specifications including harvest guidelines and quotas; provide for closure of the directed fishery when the directed portion of a harvest guideline or quota is taken; identify fishing seasons for Pacific sardine and Pacific mackerel; establish catch restrictions in the limited entry zone and, when the directed fishery for a CPS is closed, limit harvest of that species to an incidental trip limit set by the Southwest Regional Administrator, NMFS (Regional Administrator); implement a limited entry program; authorize the Regional Administrator to issue exempted fishing permits for the harvest of CPS that otherwise would be prohibited; and establish a framework process by which management decisions could be made without amending the FMP.

As discussed here in the preamble to this proposed rule, Amendment 8 would also: Establish Maximum Sustainable Yield (MSY) control rules and define optimum yield (OY) and overfishing; and address requirements in the Magnuson-Stevens Fishery Conservation and Management Act regarding Essential Fish Habitat (EFH), bycatch, and fishing communities. No changes in the regulations implementing the FMP are required to implement these measures, if approved by NMFS.

DATES: Comments must be submitted in writing by July 9, 1999.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Copies of the FMP, which includes the final supplemental environmental impact statement (FSEIS)/regulatory impact review/initial regulatory flexibility analysis may be obtained from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, Oregon, 97201. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to Rodney. R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 00503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036 or Julie Walker, Pacific Fishery Management Council, at 503–326–6352.

SUPPLEMENTARY INFORMATION: On September 4, 1998 (63 FR 47288), a notice of availability of a Draft Environmental Impact Statement (DSEIS) on Amendment 8 to the FMP was published in the **Federal Register**. The Council held public hearings on the amendment from September 8 to 11 in Washington, Oregon, and California. On September 15, 1998, at its meeting in Sacramento, California, the Council reviewed public comments received on the amendment at the hearings, considered written comments, adopted preferred options and voted to submit Amendment 8 for Secretarial review. The Council submitted Amendment 8 for Secretarial review by a letter dated December 11, 1998. On March 12, 1999, a notice of availability of the FSEIS on Amendment 8 was published in the **Federal Register** (64 FR 12279).

The impetus for Amendment 8 and this proposed rule is the increasing abundance of Pacific sardine, which now extends from Mexico to Canada, and the recent high demand for squid. Pacific sardine was overfished in the

1930s, leading to the collapse of the fishery in the 1950s. Little is known about the abundance of squid. The high variability of coastal pelagic resources and the amount of fishing power that could be employed to their harvest require a comprehensive management approach.

Species in the FMP

Amendment 8 and this proposed rule would place Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), Jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*) in a management unit with northern anchovy (*Engraulis mordax).* All of these small CPS are harvested by a fleet of vessels using mainly roundhaul nets (e.g., purse seines). Managed species would be divided into two categories: ''Actively managed'' and ''monitored.'' Actively managed species would be subject to annual harvest limits based on estimated biomass. Monitored species would not be subject to mandatory harvest limits, although other management measures such as area closures could apply. Initially, Pacific sardine and Pacific mackerel would be actively managed, while jack mackerel, northern anchovy, and market squid would be monitored. This proposed rule would remove jack mackerel from the Pacific Coast Groundfish FMP.

Fishery Management Areas and Subareas

The fishery management area is the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico. The fishery management area is divided into subareas for the regulation of fishing for CPS, with the following boundaries: The CPS Limited Entry Zone means the EEZ between the northern boundary at 39°00′00″ N. lat. off California, and the southern boundary at the U.S. Mexico-International Boundary. Subarea A means the EEZ between the U.S.-Canada Provisional International Boundary and the southern boundary at Pt. Piedras Blancas, California. Subarea B means the EEZ between the northern boundary. at Pt. Piedras Blancas, California 35°40′00″ N. lat. and the southern boundary at the U.S.-Mexico International Boundary.

Limited Entry System

The limited entry system would be established in the commercial fishery for CPS finfish (squid is not included) south of 39° N. latitude (Pt. Arena, California). Open access would continue north of 39° N. latitude. Historically, 99 percent of the sardine resource has been harvested south of Pt. Arena. When abundance is high, fishermen in more northern areas would still be able to gain benefits from the high abundance through the open access fishery. When abundance declines, the resource tends to disappear from the north and move south.

To qualify for a limited entry permit, a vessel would have had to land at least 100 metric tons (mt) of CPS finfish during the period January 1, 1993, through November 5, 1997. The estimated number of vessels that would qualify for a limited entry permit is 70. These vessels are responsible for approximately 99 percent of the harvest of CPS.

The limited entry program would take effect on January 1, 2000. Permits would be issued to the owner of the qualifying vessel and could be transferred once only during the year 2000. This one-time transfer would afford the owner of a qualifying vessel the opportunity to upgrade his/her fishing vessel and would allow those who wish to enter the fishery a 1-year opportunity to buy a permit. After the year 2000, a permit could not be transferred to another person, but could be registered for use with another vessel only if the permitted vessel was lost, stolen, or was removed from all federally managed fisheries. Currently, there is no way to ensure that a vessel that is able to fish will not operate in another federally regulated fishery. Therefore, the only way a permit may be transferred to a different vessel after December 31, 2000, will be if the permitted vessel has been totally lost, stolen, or scrapped. NMFS will investigate whether there is another way to ensure a vessel may not be used in another fishery, such as through documentation restrictions.

Under the amendment, vessels fishing for CPS in the limited entry fishery could land no more than 125 mt tons of CPS from any fishing trip. This limit is designed to curtail increases in harvest capacity. Under the proposed system, vessel owners may make changes in fishing gear, engines, or refrigeration, to adapt to changing conditions in the fishery. Vessels harvesting CPS for live bait or in small amounts (as described below) would be exempt from permit requirements.

In an effort to focus public comment, NMFS is highlighting two aspects of Amendment 8: first, failing to include under-construction exceptions to the limited entry criteria and, second, allowing vessels to land small amounts of CPS in the Limited Entry Zone without a permit.

Amendment 8 and this proposed rule would not except vessels that were under construction or were contracted for construction during the limited entry qualifying period (January 1, 1993, through November 5, 1997). A vessel falling into this category would not qualify for a permit. NMFS is interested in receiving information from owners of vessels that would be affected by the lack of an exception.

Many vessels that would not qualify for a limited entry permit have landed small amounts of CPS for dead bait or for small speciality markets. Under the framework provisions of Amendment 8, the Council could recommend landings between 1 and 5 mt by vessels without a permit. Any change in the exempted trip limit would be implemented through rulemaking. The proposed regulations would initially set the exempted trip limit at 5 mt. NMFS request comments on the appropriate level for the exempted trip limit.

Framework Process

A framework process similar to that used in the Council's groundfish fishery would allow for management actions without amending the plan. This proposed rule would establish a framework process to set and adjust fishery specifications and management measures in accordance with procedures and standards described in section 2 of Amendment 8. The framework process consists of two procedural categories, the point-of-concern framework procedure and the socio-economic framework procedure, according to which the Council may recommend and NMFS approve the establishment and adjustment of management measures. The point-of-concern framework procedure would be used in response to resource conservation and ecological issues, while the socio-economic framework procedure would be used to address socio-economic issues in the fishery. Under both of these procedures, the Council and NMFS may carry out four types of actions: (1) Automatic actions for non-discretionary actions, which would become effective upon publication of a **Federal Register** notice without prior public notice and opportunity for comment, and without a prior Council meeting; (2) notice actions, which would be used for all

management actions, except automatic action, intended to have temporary affect that are either non-discretionary or have probable impacts that were previously analyzed and which would require at least one Council meeting and publication of one **Federal Register** notice; (3) abbreviated rulemaking actions; which would be used for all discretionary management actions intended to have permanent effect, the impacts of which have not been previously analyzed, and which would require at least one Council meeting and publication of one rule in the **Federal Register**; and (4) full rulemaking actions, which would require at least two Council meetings and publication of proposed and final rules in the **Federal Register** with an opportunity for public comment.

Under the framework system, many different types of actions could be taken to respond quickly to changes in the fishery. For example, actively managed and monitored species could be moved between categories as circumstances require. Other actions include trip frequency limits, area or subarea closures, seasons, size limits, gear limitations, and other appropriate measures. Amendment 8 and this proposed rule authorize the Council to designate certain management measures as ''routine management measures.'' This designation would enable the Council to modify the measure through the single meeting notice procedure described here.

Harvest Guidelines

Annually, the Regional Administrator would calculate the harvest guidelines for actively managed CPS based on the estimated biomass and the standards set in the FMP. This is the same process that has been used in the northern anchovy fishery and would be adapted for actively managed CPS. The formulas used to set harvest guidelines for CPS are straightforward and provide little latitude for judgement; therefore, there is little discretion involved in setting annual specifications for CPS.

Harvest guidelines for CPS would be calculated using the current biomass estimate multiplied by a fixed harvest rate. The portion of the resource in U.S. waters may change year to year; the harvest guidelines would be calculated using the best estimate available. The amount of the harvest guideline needed for incidental trip limits when the fishery is nearing closure will vary depending on when the harvest guideline is projected to be achieved, but the sum of the incidental amount and the amount harvested directly must equal the total harvest guideline.

Following the determination of the estimated biomass, a public meeting would be held, where the Coastal Pelagics Management Team and Advisory Subpanel would review the biomass estimate and resultant harvest guideline. Public comments and comments of the Advisory Subpanel would be reported to the Council. After hearing public comments at its meeting, the Council would either adopt the harvest guideline for the upcoming fishing season or recommend a different harvest guideline, accompanied by a justification for the recommendation. There is little flexibility in setting harvest guidelines, but errors in calculations and in the way the specific factors were used in determining the biomass are elements that could be examined.

The annual process for calculating harvest guidelines would include public review of the estimated biomass and harvest guidelines before the fishing season begins; however, the Regional Administrator is not precluded from announcing the harvest guideline in the **Federal Register** before the process is completed so that fishermen may plan their activities and begin harvesting when the fishing season begins.

Fishing Seasons

This proposed rule would set the Pacific sardine season at January 1 to December 31, unless closed earlier, and the Pacific mackerel season at July 1 to June 30, unless closed earlier.

Other Elements of Amendment 8

The SFA amended section 303(a) of the Magnuson-Stevens Act, which describes the required components of each FMP. The SFA established a 2-year deadline (ending October 11, 1998) by which each Regional Fishery Management Council was required to submit amendments to NMFS to bring all FMPs into compliance with the new provisions of section 303(a). Amendment 8 seeks to make the FMP consistent with the Magnuson-Stevens Act, as amended by the SFA, by defining, OY, overfishing, and levels at which managed stocks are considered overfished and by addressing EFH, bycatch in the fisheries for CPS, and social and economic data on fishing communities.

MSY, OY, and Overfishing Definitions

Harvest strategies for CPS would take into account uncontrolled harvests in the Mexican fishery, natural variability in the stocks, and the importance of coastal pelagics as forage for other fish, marine mammals, and birds. The harvest strategies are established through the definition of OY, MSY control rules, and levels at which species would be considered overfished. Amendment 8 contains a default CPS MSY control rule and default overfishing definitions for northern anchovy, jack mackerel, and market squid. It also contains specific MSY control rules and overfishing definitions for Pacific sardine and Pacific (chub) mackerel.

Bycatch

Bycatch, as defined in the Magnuson-Stevens Act, is minimal in the CPS fisheries. Any bycatch issues that might arise if a high volume fishery occurred in the northern portion of the management area are unknown. Amendment 8 authorizes the Council to set incidental catch allowances as a percentage of landed weight or as an allowable incidental trip limit.

EFH

Presence/absence data were used to determine EFH for CPS and are based on a thermal range bordered within the geographic area where a CPS species occurs at any life stage, where the CPS species has occurred historically during periods of similar environmental conditions, or where environmental conditions do not preclude colonization by the CPS species. The amendment discusses non-fishing and fishing impacts on CPS EFH, and conservation and enhancement measures. No new management measures are proposed to address fishing impacts on EFH.

Fishing Communities

Amendment 8 describes the commercial and recreational CPS fisheries. It also profiles several fishing communities.

Classification

At this time, NMFS has not determined that Amendment 8, which this rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared a DSEIS for Amendment 8; a notice of availability was published in the **Federal Register** on September 4, 1998 (63 FR 47288), inviting public comment. The comments are addressed in the FSEIS. The FSEIS for Amendment 8 was filed with the Environmental Protection Agency on March 19, 1999. A notice of availability of the FSEIS was published in the **Federal Register** on March 26, 1999 (64 FR 14720).

The environmental impacts of the various measures contained in Amendment 8 are expected to be neutral or positive. These impacts are summarized below by key management measures. *Limited entry*—The effects of limited entry and open access management are primarily socioeconomic although some positive environmental effects may arise if the tendency to overfish in open access fisheries is reduced by limited entry. Environmental effects in the open access fishery are expected to be neutral unless fishing effort increases and overfishing occurs. *OY, MSY, and Overfishing definitions*—Harvest of forage fish like sardine involves direct, indirect, and cumulative impacts on the environment. Species specific control rules are recommended for Pacific sardine and Pacific mackerel. Allowable harvest is based on MSY and the importance of each species as forage for other fish, marine mammals, and birds. This approach is expected to minimize environmental impacts. The default MSY control rules proposed for northern anchovy and jack mackerel (which are underutilized species with low levels of catch) are conservative and will have minimal environmental impacts. There is not enough information available to evaluate impacts of the default MSY control rule for market squid because there is little information available for this species. However, an aggressive research program is underway to define the status of the resource, develop a management program, and minimize any possible impacts resulting from the harvest of market squid. *Framework management*—Impacts of establishing a framework management procedure are procedural and not environmental. *EFH*—The identification and description of EFH for coastal pelagic species *per se* is expected to have no effect on the environment, because NMFS is making an administrative designation. However, given the fact that once EFH is designated, the effect of fishing and non-fishing activities on CPS EFH must be analyzed, there is a greater chance of habitat protection. *Bycatch and Incidental Catch*—There are no direct, indirect, or cumulative impacts from the recommended options for managing incidental catch. There are no recommended options for managing bycatch.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The National Marine Fisheries Service (NMFS) considers an impact to be ''significant'' if it results in a reduction in annual gross revenues by more than 5 percent, an increase in compliance costs at least 10 percent higher for smaller entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business. NMFS considers a ''substantial number'' of small entities to be more than 20 percent of those small entities affected by the regulation engaged in the fishery.

Coastwide, 811 vessels landed at least some CPS finfish or squid, or both, during the 1993–1997 window period. All vessels are small entities. Of these 811 vessels, 640 had CPS finfish landings south of 39° N. latitude. This is the population affected by limited entry. The other 171 vessels are expected to experience minimal or no economic impact as a result of this proposed rule. A total of 570 vessels would not qualify for a limited entry permit. Of these non-qualifying vessels, only 122 vessels depended on CPS finfish landings for at least 5 percent of their total exvessel revenues, which is 19 percent of the affected population. However, average aggregate CPS finfish landings for these 122 vessels was 10 mt for the 1993–1997 period, or 2 mt per year. Even at one trip per year at 2 mt per trip, the 122 non-qualifying vessels would be allowed to continue landing CPS finfish under the proposed 5 mt exempted landing limit. If the exempted landing limit were lowered to 1 mt, then up to 12 of the 122 vessels could be forced to reduce harvests south of 39° N. latitude and, depending on per trip costs, could be forced out of business, because with annual total exvessel revenues less than $2,000, they would not be able to afford the purchase of a limited entry permit. These vessels would comprise less than 2 percent of the affected population.

A total of 70 vessels accounted for 99 percent of all finfish landings during the qualifying period.

Because of this certification, an Initial Regulatory Flexibility Analysis was not required and one was not prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 30 minutes for a limited entry permit application, 30 minutes for requesting the transfer of a permit, 2 hours to prepare a request for the appeal of the decision to deny a permit, and 45 minutes to affix the official number of a vessel to its bow and weather deck. The additional permit qualification evidence and burden of proof is estimated to take 1 hour per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Southwest Region (see **ADDRESSES**), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

An informal consultation under the Endangered Species Act has been initiated with the U.S. Fish and Wildlife Service (FWS) with regard to the possible effects of the fishery on endangered and threatened seabirds under FWS jurisdiction that forage on coastal pelagic species. Consultation is also underway within NMFS with regard to the possible effects of the fishery on endangered or threatened marine mammals, Pacific salmon, and steelhead.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 18, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

§ 660.302 [Amended]

2. In § 660.302, under the definition of ''Groundfish'' and under the term ''Roundfish,'' remove the text ''jack mackerel (north of 39° N. lat.), *Trachurus symmetricus*''.

3. In § 660.337, paragraph (a)(1) is revised to read as follows:

§ 660.337 Limited entry permits—''designated species B'' endorsement.

(a) * * *

(1) *General. Designated species* means Pacific whiting and shortbelly rockfish. Bycatch allowances in fisheries for these species will be established using the procedures specified for incidental allowances in joint venture and foreign fisheries in the PCGFMP.

* * * * *

4. Revise Subpart I to read as follows:

Subpart I—Coastal Pelagics Fisheries

Subpart I—Coastal Pelagics Fisheries

§ 660.501 Purpose and scope.

This subpart implements the Fishery Management Plan for Coastal Pelagic Species (FMP). These regulations govern commercial fishing for CPS in the EEZ off the coasts of Washington, Oregon, and California.

§ 660.502 Definitions.

In addition to the definitions in the Magnuson-Stevens Act and in § 610.10 of this chapter, the terms used in this subpart have the following meanings:

Actively managed species (AMS) means those CPS for which the Secretary has determined that harvest guidelines or quotas are needed by Federal management according to the provisions of the FMP.

Advisory Subpanel (AP) means the Coastal Pelagic Species Advisory Subpanel that comprises members of the fishing industry and public appointed by the Council to review proposed actions for managing the coastal pelagic fisheries.

Biomass means the estimated amount, by weight, of a coastal pelagic species population. The term biomass means total biomass (age 1 and above) unless stated otherwise.

Coastal pelagic species (CPS) means northern anchovy (*Engraulis mordax*), Pacific mackerel (*Scomber japonicus*), Pacific sardine (*Sardinops sagax*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opelescens*).

Coastal Pelagic Species Management Team (CPSMT) means the individuals appointed by the Council to review, analyze, and develop management measures for the CPS fishery.

Council means the Pacific Fishery Management Council, including its CPSMT, AP, Scientific and Statistical Committee (SSC), and any other committee established by the Council.

Finfish means northern anchovy, Pacific mackerel, Pacific sardine, and jack mackerel.

Fishery Management Area means the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, bounded in the north by the Provisional International Boundary between the United States and Canada, and bounded in the south by the International Boundary between the United States and Mexico.

Fishing trip means a period of time between landings when fishing is conducted.

Harvest guideline means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require complete closure of a fishery.

Harvesting vessel means a vessel involved in the attempt or actual catching, taking or harvesting of fish, or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish.

Land or *Landing* means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

Limited entry fishery means the commercial fishery consisting of vessels fishing for CPS in the CPS Management Zone under limited entry permits issued under § 660.512.

Live bait fishery means fishing for CPS for use as live bait in other fisheries.

Monitored species (MS) means those CPS the Secretary has determined not to need management by harvest guidelines or quotas according to the provisions of the FMP.

Nonreduction fishery means fishing for CPS for use as dead bait or for processing for direct human consumption.

Owner, as used in this subpart, means a person who is identified as the current owner in the Certificate of Documentation (CG–1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

Person, as used in this subpart, means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a).

Processing or *to process* means preparing or packaging coastal pelagic species to render the fish suitable for human consumption, pet food, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless there is additional preparation.

Quota means a specified numerical harvest objective for a single species of CPS, the attainment (or expected attainment) of which causes the complete closure of the fishery for that species.

Reduction fishery means fishing for CPS for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or byproducts for purposes other than direct human consumption.

Regional Administrator means the Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, or a designee.

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the year for specific purposes, such as for individual harvesting groups to ensure equitable distribution of the resource or to allow for uncertainties in preseason estimates of DAP and JVP.

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for Sustainable Fisheries, Southwest Region, NMFS, or a designee.

Totally lost means that the vessel being replaced no longer exists *in specie,* or is absolutely and irretrievably

sunk or otherwise beyond the possible control of the owner, or the costs of repair (including recovery) would exceed the repaired value of the vessel.

Trip limit means the total allowable amount of a CPS species by weight or by percentage of weight of fish on board the vessel that may be taken and retained, possessed, or landed from a single fishing trip by a vessel that harvests CPS.

§ 660.503 Management subareas.

The fishery management area is divided into subareas for the regulation of fishing for CPS, with the following designations and boundaries:

(a) *CPS Limited Entry Zone* means the EEZ between:

(1) Northern boundary—at 39°00′00″ N. lat. off California; and

(2) Southern boundary—the United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35′22″ N. lat., 117°27′49″ W. long.
32°37′37″ N. lat., 117°49′31″ W. long.
31°07′58″ N. lat., 118°36′18″ W. long.
30°32′31″ N. lat., 121°51′58″ W. long.

(b) *Subarea A* means the EEZ between:

(1) Northern boundary—the United States-Canada Provisional International Boundary, which is a line connecting the following coordinates:

48°29′37.19″ N. lat., 124°43′33.19″ W. long.
48°30′11″ N. lat., 124°47′13″ W. long.
48°30′22″ N. lat., 124°50′21″ W. long.
48°30′14″ N. lat., 124°54′52″ W. long.
48°29′57″ N. lat., 124°59′14″ W. long.
48°29′44″ N. lat., 125°00′06″ W. long.
48°28′09″ N. lat., 125°05′47″ W. long.
48°27′10″ N. lat., 125°08′25″ W. long.
48°26′47″ N. lat., 125°09′12″ W. long.
48°20′16″ N. lat., 125°22′48″ W. long.
48°18′22″ N. lat., 125°29′58″ W. long.
48°11′05″ N. lat., 125°53′48″ W. long.
47°49′15″ N. lat., 126°40′57″ W. long.
47°36′47″ N. lat., 127°11′58″ W. long.
47°22′00″ N. lat., 127°41′23″ W. long.
46°42′05″ N. lat., 128°51′56″ W. long.
46°31′47″ N. lat., 129°07′39″ W. long.; and

(2) Southern boundary—at 35°40′00″ N. lat. (Pt. Piedras Blancas).

(c) *Subarea B* means the EEZ between:

(1) Northern boundary—35°40′00″ N. lat. (Pt. Piedras Blancas); and

(2) Southern boundary—the United States-Mexico International Boundary described in paragraph (a)(2) of this section.

§ 660.504 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) *Numerals.* The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at least 14 inches (35.56 cm) in height. Markings must be legible and of a color that contrasts with the background.

§ 660.505 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) In the CPS Limited Entry Zone, take and retain, possess or land more than 5 mt of CPS finfish, other than live bait, on a harvesting vessel without a limited entry permit.

(b) In the CPS Limited Entry Zone, take and retain, possess or land more than 125 mt of CPS finfish on a harvesting vessel.

(c) Sell CPS without an applicable commercial state fishery license.

(d) Fish in the reduction fishery for CPS in any closed area specified in § 660.507.

(e) Fish in the reduction fishery for northern anchovy using gear not authorized under § 660.506.

(f) When fishing for CPS, not to return a prohibited species to the sea as soon as practicable with a minimum of injury.

(g) Falsify or fail to affix and maintain vessel markings as required by § 660.504.

(h) Fish for CPS in violation of any terms or conditions attached to an exempted fishing permit issued under § 600.745 of this chapter.

(i) When a directed fishery has been closed, take and retain, possess or land more than the incidental trip limit announced in the **Federal Register**.

(j) Refuse to submit fishing gear or fish subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(k) Falsify or fail to make and/or file any and all reports of fishing, landing, or any other activity involving CPS, containing all data, and in the exact manner, required by the applicable State law, as specified in § 660.3.

(l) Fail to carry aboard a vessel that vessel's limited entry permit issued under § 660.512 or exempted fishing permit issued under § 660.516.

(m) Make a false statement on an application for issuing, renewing, transferring, or replacing a limited entry permit for the CPS fishery.

§ 660.506 Gear restrictions.

Only authorized fishing gear may be used in the reduction fishery for northern anchovy off California. Authorized fishing gear is round haul nets that have a minimum wet-stretch mesh size of 1$^{9}/_{16}$ of an inch (1.59 cm) excluding the bag portion of a purse seine. The bag portion must be constructed as a single unit and must not exceed a rectangular area, adjacent to 20 percent of the total corkline of the purse seine. Minimum mesh size requirements are met if a stainless steel wedge can be passed with only thumb pressure through 16 of 20 sets of 2 meshes each of wet mesh. The wedges used to measure trawl mesh size are made of 20 gauge stainless steel, and will be no wider than 1$^{9}/_{16}$ of an inch (1.59 cm) less one thickness of the metal at the widest part.

§ 660.507 Closed areas to reduction fishing.

The following areas are closed to reduction fishing:

(a) *Farallon Islands closure* (see Figure 1 to this subpart). The portion of Subarea A bounded by—

(1) A straight line joining Pigeon Point Light (37°10.9′ N. lat., 122°23.6′ W. long.) and the U.S. navigation light on Southeast Farallon Island (37°42.0′ N. lat., 123°00.1′ W. long.); and

(2) A straight line joining the U.S. navigation light on Southeast Farallon Island (37°42.0′ N. lat., 123°00.1′ W. long.) and the U.S. navigation light on Point Reyes (37°59.7′ N. lat., 123°01.3′ W. long.).

(b) *Subarea B closures.* Those portions of Subarea B described as—

(1) *Oxnard closure* (see Figure 1 to this subpart). The area that extends offshore 4 miles from the mainland shore between lines running 250° true from the steam plant stack at Manadalay Beach (34°12.4′ N. lat., 119°15.0′ W. long.) and 220° true from the steam plant stack at Ormond Beach (34°07.8′ N. lat., 119°10.0′ W. long.).

(2) *Santa Monica Bay closure* (see Figure 1 to this subpart). Santa Monica Bay shoreward of that line from Malibu Point (34°01.8′ N. lat., 188°40.8′ W. long.) to Rocky Point (Palos Verdes Point) (33°46.5′ N. lat., 118°25.7′ W. long.).

(3) *Los Angeles Harbor closure* (see Figure 1 to this subpart). The area outside Los Angeles Harbor described by a line extending 6 miles 180° true from Point Fermin (33°42.3′ N. lat., 118°17.6′ W. long.) and then to a point located 3 miles offshore on a line 225° true from Huntington Beach Pier (33°39.2′ N. lat., 118°00.3′ W. long.).

(4) *Oceanside to San Diego closure* (see Figure 1 to this subpart). The area 6 miles from the mainland shore south of a line running 225° true from the tip of the outer breakwater (33°12.4′ N. lat., 117°24.1′ W. long.) of Oceanside Harbor

to the United States-Mexico International Boundary.

§ 660.508 Annual specifications.

(a) The Regional Administrator will determine the harvest guidelines or quotas for all AMS from the estimated biomass and the formulas in the FMP.

(b) Harvest guidelines or quotas, including any apportionment between the directed fishery and set-aside for incidental harvest, will be published in the **Federal Register** before the beginning of the fishing season for each CPS.

(c) The announcement of each harvest guideline or quota will contain the following information:

(1) A summary of the status of AMS and MS;

(2) The estimated biomass on which the harvest guideline or quota was determined;

(3) The portion, if appropriate, of the harvest guideline or quota set aside to allow for incidental harvests after closure of the directed fishery;

(4) The estimated level of the incidental trip limit that will be allowed after the directed fishery is closed; and

(5) The allocation, if appropriate, between Subarea A and Subarea B.

(d) Harvest guidelines and quotas will receive a public review according to the following procedure:

(1) A meeting will be held between the Council's CPSMT and AP, where the estimated biomass and the harvest guideline or quota will be reviewed and public comments received. This meeting will be announced in the **Federal Register** before the date of the meeting.

(2) All materials relating to the biomass and harvest guideline or quota will be forwarded to the Council and its Scientific and Statistical Committee and will be available to the public from the Regional Administrator.

(3) At a regular meeting of the Council, the Council will review the estimated biomass and harvest guideline or quota and offer time for public comment. If the Council requests a revision, justification must be provided.

(4) The Regional Administrator will review the Council's recommendations, justification, and public comments and base his or her final decision on the requirements of the FMP.

§ 660.509 Closure of directed fishery.

When the directed fishery portion of the harvest guideline or quota is estimated to be taken, the Regional Administrator will announce in the **Federal Register** the date of closure of the directed fishery for CPS and the amount of the incidental trip limit that will be allowed.

§ 660.510 Fishing seasons.

(a) All seasons will begin at 0001 hours and terminate at 2400 hours local time. Fishing seasons for the following CPS species are:

(1) *Pacific sardine.* January 1 to December 31, or until closed under § 660.509.

(2) *Pacific mackerel.* July 1 to June 30, or until closed under § 660.509.

§ 660.511 Catch restrictions.

(a) All CPS harvested shoreward of the outer boundary of the EEZ (0–200 nautical miles off shore) will be counted toward the catch limitations specified in this section.

(b) The trip limit for harvesting vessels fishing in the CPS Limited Entry Zone for CPS other than live bait without a limited entry permit is 5 mt tons of all CPS finfish combined.

(c) The trip limit for vessels with a limited entry permit on a fishing trip in which the vessel fishes or lands fish in the Limited Entry Zone is 125 mt of all CPS finfish combined.

(d) After the directed fishery for a CPS is closed under § 660.509, no person may take and retain, possess or land more of that species than the incidental trip limit set by the Regional Administrator.

(e) While fishing for CPS, all species of trout and salmon (Salmonidae) and Pacific halibut (*Hippoglossus stenolepis*) are prohibited species and must be released immediately with a minimum of injury.

§ 660.512 Limited entry fishery.

(a) *General.* (1) This section applies to fishing for or landing CPS finfish in the limited entry fishery in the Limited Entry Zone.

(2) Effective January 1, 2000, the owner of a vessel with more than 5 mt of CPS finfish on board in the CPS Limited Entry Zone, other than live bait, must have a limited entry permit registered for use with that vessel.

(3) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or hold; by ownership or otherwise, a limited entry permit.

(b) *Initial qualification.* (1) SFD will issue a limited entry permit only for a vessel that landed 100 mt tons of CPS finfish from January 1, 1993, through November 5, 1997.

(2) A limited entry permit will be issued only to the current owner of the vessel, unless:

(i) The previous owner of a vessel qualifying for a permit, by the express terms of a written contract, reserved the right to the limited entry permit, in which case the limited entry permit will be issued to the previous owner based on the catch history of the qualifying vessel, or

(ii) A vessel that would have qualified for a limited entry permit was totally lost prior to issuance of a limited entry permit. In this case, the owner of the vessel at the time it was lost retains the right to a permit for a replacement vessel, unless the owner conveyed the right to another person by the express terms of a written contract. The lost vessel must be replaced within 2 years of the date that the qualifying vessel was lost, and the replaced vessel must be of equal or less net tonnage.

(c) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract as specified in paragraph (a)(2) of this section) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(1) A certified copy of the vessel's documentation as a fishing vessel of the United States (U.S. Coast Guard or state) is the best evidence of vessel ownership;

(2) A certified copy of a state fish landing receipt is the best evidence of a landing of a vessel;

(3) A copy of a written contract reserving or conveying limited entry rights is the best evidence of reserved or acquired rights; and

(4) Other relevant, credible evidence that the applicant may submit or that the SFD may request or require may also be considered.

(d) *Fees.* The Regional Administrator may charge fees to cover administrative expenses related to issuing limited entry permits, as well as renewing, transferring, and replacing permits. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Initial decisions.* (1) The SFD will make initial decisions regarding issuing, renewing, transferring, and registering limited entry permits.

(2) Adverse decisions shall be in writing and shall state the reasons for the adverse decision.

(3) The SFD may decline to act on an application for issuing, renewing, transferring, or registering a limited entry permit if the permit sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing

regulations at 15 CFR part 904, subpart D, apply.

(f) *Initial issuance.* (1) The SFD will issue limited entry permits.

(2) In order to receive a final decision on a limited entry permit application before January 1, 2000, an applicant must submit the application to the SFD on or before August 1, 1999.

(3) A separate, complete, and accurate application form, accompanied by any required supporting documentation and the appropriate fee, must be submitted for each vessel for which a limited entry permit is sought.

(4) Upon receipt of an incomplete or improperly executed application, the SFD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered void.

(5) The SFD may request further documentation before acting on an application.

(6) The SFD will not accept applications for a limited entry permit after July 1, 2000.

(g) *Appeals.* (1) Any applicant for an initial permit may appeal the initial issuance decision to the Regional Administrator. To be considered by the Regional Administrator, such appeal must be in writing and state the reasons for the appeal, and must be submitted within 30 days of the action by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal.

(3) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit eligibility criteria set forth in this section and in the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(4) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(5) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's decision will constitute the final administrative action by NMFS on the matter.

(6) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

§ 660.513 Permit conditions.

(a) A limited entry permit expires on failure to renew the limited entry permit as specified in § 660.515.

(b) A limited entry permit may not be used with a vessel unless it is registered for use with that vessel. Limited entry permits will be registered for use with a particular vessel at the time the permit is issued, renewed, or transferred.

(c) Limited entry permits issued or applied for under this subpart are subject to sanctions pursuant to the Magnuson-Stevens Act, 16 U.S.C. 1858(g), and 15 CFR part 904, subpart D.

§ 660.514 Transferability.

(a) Upon application by the permit holder, the SFD will process applications for transferring limited entry permits according to this section.

(b) Before January 1, 2001, a limited entry permit may be transferred only one time to a different owner and/or for use with a different vessel. No transfer is effective until the limited entry permit has been reissued and is in the possession of the new permit holder.

(c) After December 31, 2000, a permit may not be registered for use with a vessel other than the vessel for which it was registered on December 31, 2000, except as follows:

(1) The vessel to which the permit was registered on December 31, 2000 (the replaced vessel), is totally lost, stolen, or scrapped, such that it cannot be used in a Federally regulated commercial fishery, and

(2) The replacement vessel to which the permit will be registered is of equal or less net tonnage than the replaced vessel, and

(3) The replaced vessel is owned by the permit holder.

(d) After December 31, 2000, a limited entry permit may not be transferred to another permit holder.

§ 660.515 Renewal of limited entry permits.

(a) Each limited entry permit must be renewed by January 1 of even numbered years.

(b) The SFD will send notices to renew limited entry permits to the most recent address of the permit holder.

(c) The permit owner must provide SFD with notice of any address change within 15 days of the change.

(d) The permit holder must submit applications for renewal of a permit on forms available from the SFD.

(e) The permit owner is responsible for renewing a limited entry permit.

(f) An expired permit cannot be used to fish for CPS in the limited entry fishery.

§ 660.516 Exempted fishing.

(a) *General.* In the interest of developing an efficient and productive fishery for CPS, the Regional Administrator may issue exempted fishing permits (EFP) for the harvest of CPS that otherwise would be prohibited.

(b) No exempted fishing for CPS may be conducted unless authorized by an EFP issued for the participating vessel in accordance with the criteria and procedures specified in § 600.745 of this chapter.

§ 660.517 Framework for revising regulations.

(a) *General.* NMFS will establish and adjust specifications and management measures in accordance with procedures and standards in Amendment 8 to the FMP.

(b) *Annual actions.* Annual specifications are developed and implemented according to § 660.508.

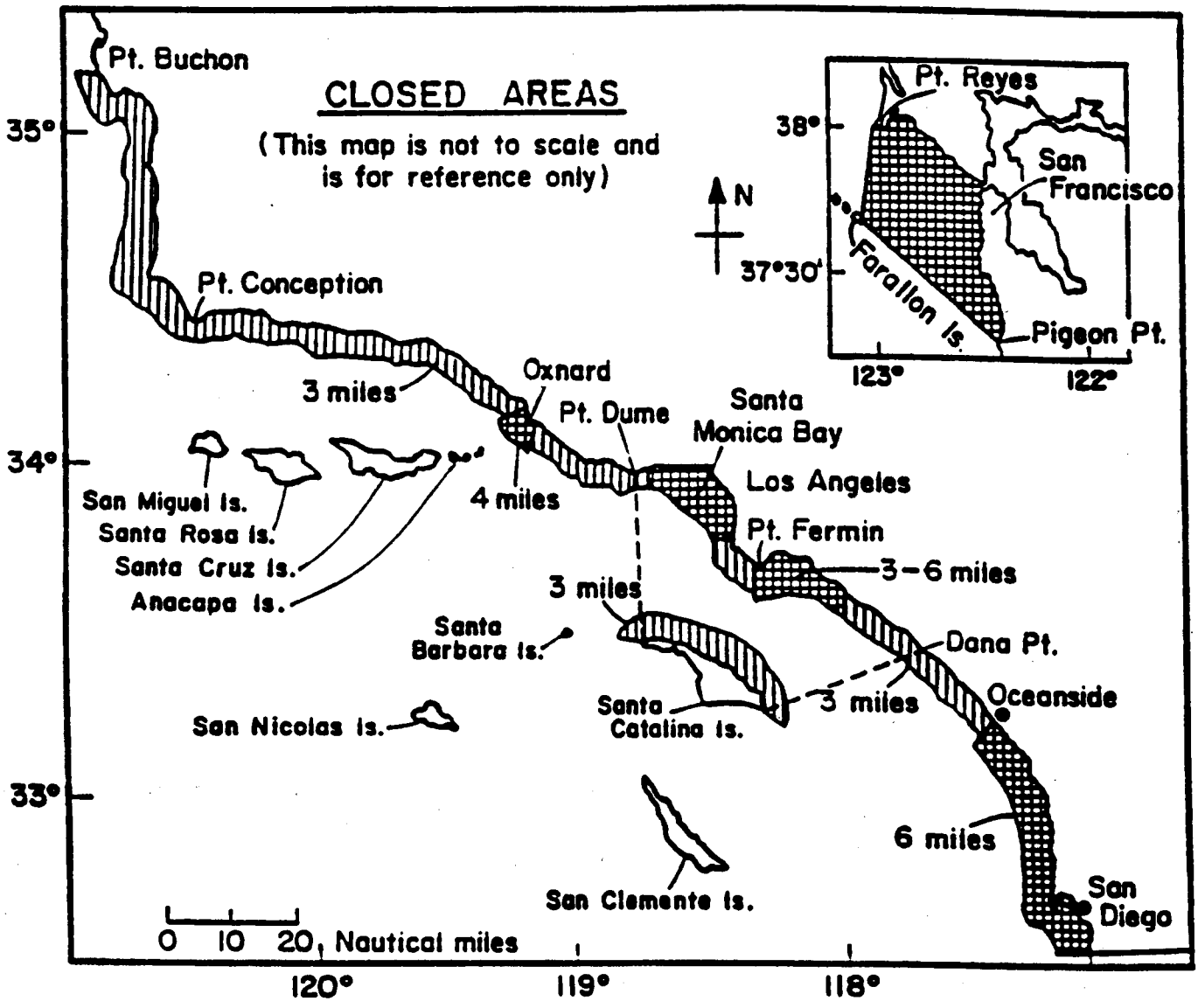
(c) *Routine management measures.* Consistent with sec. 2.1 of Amendment 8 to the FMP, management measures designated as routine may be adjusted during the year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

(d) *Changes to the regulations.* Regulations under this subpart may be

promulgated, removed, or revised. Any such action will be made according to the framework measures in section 2 of Amendment 8 to the FMP and will be published in the **Federal Register**.

Figure 1 to Subpart I of Part 660—Existing California Area Closures (hatched areas extend to 3 miles offshore; cross-hatched areas extend beyond 3 miles offshore) and optional Catalina Channel foreign vessel closure (outlined by dashed lines)

BILLING CODE 3510–22–P



[FR Doc. 99–13082 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 64, No. 100
Tuesday, May 25, 1999

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

Office of the Secretary

Designation of Rural Empowerment Zones and Rural Enterprise Communities

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the designation of five new rural empowerment zones and 20 new rural enterprise communities from the applications received in response to the Notice Inviting Applications published in the **Federal Register** on April 16, 1998. The Secretary of Agriculture (Secretary) will award newly authorized direct federal grants of $2,000,000 to each rural empowerment zone and $250,000 to each rural enterprise community. Notice is also given that rural empowerment zones and rural enterprise communities designated by the Secretary are expected to sign a memorandum of agreement substantially in the form attached to this notice.

DATES: The designation date for the five Round II rural empowerment zones and 20 Round IIS rural enterprise communities announced in this notice was December 24, 1998.

FOR FURTHER INFORMATION CONTACT: Deputy Administrator for Community Development, USDA Rural Development, Office of Community Development, Reporters Building, Room 701, STOP 3203, 300 7th Street, SW, Washington, DC 20024–3203, telephone 1–800–851–3403, or by sending an Internet e-mail message to ''info@www.ezec.gov''. For hearing- and speech-impaired persons, information concerning this program may be obtained by contacting USDA's TARGET Center at (202) 720–2600 (Voice and TDD).

SUPPLEMENTARY INFORMATION: Title IX of the Taxpayer Relief Act of 1997 authorized the Secretary to designate up to five rural empowerment zones (''Round II'') in addition to those rural empowerment zones and enterprise communities designated by the Secretary in December 1994 pursuant to title XIII of the Omnibus Budget Reconciliation Act of 1993 (''Round I''). A Notice Inviting Applications for Round II was published on April 16, 1998 (63 FR 19143). One hundred sixty eligible applications were received in response to this invitation in time to meet the October 9, 1998, deadline. On October 21, 1998, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, Appropriations Act, 1999 (Pub. L. 105–277) (Round IIS) was signed into law (1999 Appropriations Act). Section 766 of the 1999 Appropriations Act authorized 20 new rural enterprise communities and also appropriated new USDA grant funding for Round II rural empowerment zones and Round IIS rural enterprise communities. The statutory deadline for Round II rural empowerment zone designations was January 1, 1999. There is no statutory deadline for Round IIS rural enterprise community designations.

I. Designation of Five New Rural Empowerment Zones

On December 24, 1998, the Secretary designated the following nominated areas as rural empowerment zones pursuant to the Round II legislative authorization:

USDA RURAL EMPOWERMENT ZONES (ROUND II)

[Asterisked ''*'' counties have areas not included in the designated empowerment zone]

Name	State	Counties
Desert Communities EZ	CA	Riverside*
Southwest Georgia United EZ	GA	Crisp*, Dooly
Southernmost Illinois Delta EZ	IL	Alexander*, Johnson*, Pulaski
Griggs-Steele EZ	ND	Griggs*, Steele
Oglala Sioux Tribe EZ	SD	Bennett, Jackson*, Shannon

II. Designation of 20 New Rural Enterprise Communities

On December 24, 1998, the Secretary designated the following nominated areas as rural enterprise communities pursuant to the Round IIS legislative authorization:

USDA RURAL ENTERPRISE COMMUNITIES (ROUND IIS)

[Asterisked ''*'' counties have areas not included in the designated enterprise community]

Name	State	Counties
Metlakatla Indian EC	AK	Ketchikan Borough
Four Corners	AZ	Apache*, Coconino*, Navajo*, (AZ)
	NM	San Juan* (NM)
	UT	San Juan* (UT)
Central California EC	CA	Fresno*, Tulare
Empowerment Alliance of Southwest Florida EC	FL	Collier*, Hendry*
Molokai EC	HI	Maui*
Town of Austin EC	IN	Scott*

USDA Rural Enterprise Communities (Round IIS)—Continued

[Asterisked "*" counties have areas not included in the designated enterprise community]

Name	State	Counties
Wichita County EC	KS	Wichita
Bowling Green EC	KY	Warren*
City of Lewiston EC	ME	Androscoggin*
Clare County EC	MI	Clare*
Fort Peck Assiniboine and Sioux Tribe EC	MT	Roosevelt, Valley*
City of Deming EC	NM	Luna
Tri County Nations EC	OK	Coal, Johnston*, Pontotoc*
Fayette EC	PA	Fayette*
Allendale ALIVE EC	SC	Allendale
Clinch-Powell EC	TN	Claiborne*, Grainger*, Hancock, Hawkins*, Union*
Middle Rio Grande EC	TX	Dimmit*, Maverick*, Uvalde*, Zavala*
Tri County Rural EC	WA	Ferry*, Okanogan*, Pend Oreille*, Stevens*
Northwoods Niijii EC	WI	Forest*, Minominee, Vilas*
Upper Kanawha Valley EC	WV	Kanawha*, Fayette*

The Secretary selected the new rural enterprise communities from the pool of applicants for Round II rural empowerment zones. This notice satisfies the notice requirement of 7 C.F.R. 25.300(a) for purposes of Round IIS.

USDA's efforts to maximize participation of eligible communities in the second round of applications for designation included 16 workshops in 16 cities around the country. The 160 applications on hand for Round II reflect a cross section of 38 states; 23 or more applications include reservation land or were submitted by native American tribal communities. Nineteen Round I enterprise communities submitted applications for Round II empowerment zone designation.

Selection of Round IIS rural enterprise communities from the pool of Round II empowerment zone applicants facilitated more timely and efficient implementation of the financial benefits appropriated for the second round of designations. USDA is of the opinion that a quality strategic plan (required as part of the application process) takes at least six months to develop. Town meetings are held and cross sections of the community are brought together to decide how they wish to develop as a community and how best to achieve those goals. The outreach for Round II, as described above, was comprehensive and thorough. The cost to taxpayers of mounting another round of nationwide workshops is considerable. All of these factors taken together support a decision to take an expeditious approach to implementing Round IIS.

III. Amount of Grants

The Round IIS legislation authorized direct USDA grant funding of $10,000,000 for the five new rural empowerment zones and $5,000,000 for the 20 new rural enterprise communities (USDA EZ/EC grants). The Secretary will make equal USDA EZ/EC grant awards of $2,000,000 to the rural empowerment zones and $250,000 to the rural enterprise communities in accordance with a rulemaking to be published as soon as is practicable.

IV. Memorandum of Agreement

Applicants for Round II were advised that newly designated zones would be expected to sign a memorandum of agreement (MOA) substantially in the form of the MOA published as Appendix E to the April 16, 1998, Notice Inviting Applications at 63 FR 19150. This model MOA has been revised and is attached hereto as Appendix A. All Round II and Round IIS rural empowerment zones and enterprise communities will be expected to sign a MOA conforming in all material respects to the form of the model MOA provided in Appendix A to this notice.

Dated: May 14, 1999.

Dan Glickman,

Secretary.

Appendix A—Form of Memorandum of Agreement; Rural Empowerment Zones and Enterprise Communities

This Agreement among the United States Department of Agriculture (USDA), the State of _____ (State) and the [Empowerment Zone] [Enterprise Community] Lead Entity relating to the Rural [Empowerment Zone] [Enterprise Community] known as _____, is made pursuant to the Internal Revenue Code (title 26 of the United States Code) as amended by title IX of the Taxpayer Relief Act of 1997; title XIII, subchapter C, part I of the Omnibus Budget Reconciliation Act of 1993; and section 766 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277).

In reliance upon and in consideration of the mutual representations and obligations herein contained, the applicable statute and part 25 of 7 CFR, USDA, the State and the [Empowerment Zone][Enterprise Community] agree as follows:

The Rural [Empowerment Zone][Enterprise Community] boundaries are as follows: Census Tracts _____, _____, _____ [as such boundaries may be modified] in accordance with maps provided in the application for designation and inclusive of developable sites, as identified. The term of the designation as a rural [Empowerment Zone] [Enterprise Community is effective from December 24, 1998 to December 31, 2008, unless sooner revoked.

The State and the [Empowerment Zone] [Enterprise Community] agree as follows:

1. The State and the [Empowerment Zone] [Enterprise Community] will comply with the requirements title XIII, subchapter C, part I of the Omnibus Budget Reconciliation Act of 1993 as modified by the Taxpayer Relief Act of 1997, and the regulations appearing at 7 CFR part 25 and any future regulations.

2. The State and the [Empowerment Zone] [Enterprise Community] will comply with statutory, regulatory and contractual requirements, as amended, as may be applicable to the receipt and expenditure of Social Services Block Grant funds, pursuant to title XX of the Social Security Act.

3. The State and the [Empowerment Zone] [Enterprise Community] will comply with statutory, regulatory and contractual requirements, as amended, as are applicable to the receipt and expenditure of USDA Rural Development EZ/EC grant funds, pursuant to section 766 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999.

4. The State and the [Empowerment Zone] [Enterprise Community] will comply with all elements of the USDA approved application for designation, including the strategic plan, submitted to USDA pursuant to 7 CFR part 25 ("strategic plan") and all assurances, certifications, schedules or other submissions made in support of the strategic plan or of this Agreement, all of which are included herein and made a part hereof by reference.

5. The State and the [Empowerment Zone] [Enterprise Community] will annually submit with each 2-year workplan required under 7 CFR § 25.403 documentation, in form and

substance satisfactory to the Secretary, sufficient to identify baselines, benchmark goals, benchmark activities and timetables for the implementation of the strategic plan during the applicable 2 years of the workplan.

6. Pursuant to the strategic plan, the lead entity for the [Empowerment Zone] [Enterprise Community], _____ [name of lead entity] _____, located at _____ [address] _____, is responsible for the implementation of the strategic plan. The current director of the lead entity, who is duly authorized to execute this agreement, is _____ [name] _____.

7. The use of USDA Rural EZ/EC Grant funds will be directed by the lead entity, in accordance with the strategic plan. The USDA Rural Development State Office will distribute the funds according to the directives of the lead entity, provided that such actions are consistent with the USDA approved strategic plan and USDA grant procedures.

8. The lead entity agrees to timely comply with the reporting requirements contained in 7 CFR part 25, including reporting on progress made in carrying out actions necessary to implement the requirements of the strategic plan and any assurances, certifications, schedules or other submissions made in connection with the designation.

9. The lead entity agrees to submit to periodic performance reviews by USDA in accordance with the provisions of 7 CFR §§ 25.402 and 25.404. Upon request by USDA, the lead entity will permit representatives of USDA to inspect and make copies of any records pertaining to matters covered by this Agreement.

10. Each year after the execution of this Agreement, the lead entity will submit updated documentation sufficient to identify baselines, benchmark goals and activities and timetables for the implementation of the strategic plan during the following 2 years.

Upon written acceptance from USDA, such documentation shall become part of this Agreement and shall replace the documentation submitted previously, for purposes of operations during the following 2 years.

11. All benchmark goals, benchmark activities, baselines, and schedules approved by the [Empowerment Zone][Enterprise Community] after a full community participation process (which must be documented and which may be further amended or supplemented from time to time), will be incorporated as part of this Agreement. All references to the strategic plan in this memorandum of agreement shall be deemed to refer to the strategic plan as modified in accordance with this paragraph.

12. Amendments to the strategic plan may be made only with the approval of the [Empowerment Zone][Enterprise Community] and USDA. The lead entity must demonstrate to USDA that the local governments within the [Empowerment Zone][Enterprise Community] were involved in the amendment process.

13. All attachments and submissions in accordance herewith are incorporated as part of this Agreement.

This Agreement is dated_____.

State Government: State of_____

By:_____[official authorized to commit the state]_____

Title:

Address:

Empowerment Zone[Name of Empowerment Zone]

Enterprise Community [Name of Enterprise Community]

By: _____

Title:

Address:

Lead entity: [Name of Lead Entity]

By: _____

Title:

Address:

Federal Government: United States Department of Agriculture

By: _____

Title:

Address:

[FR Doc. 99–13222 Filed 5–24–99; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–99–06]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: June 25, 1999.

Time: 9:00 a.m.

Place: United States Department of Agriculture, (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: To establish submarketing areas, discuss selling schedules, recommend opening dates, and other related matters for the 1999 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by June 16, 1999, and inform us of your needs.

Dated: May 20, 1999.

William O. Coats,

Acting Deputy Administrator, Tobacco Programs.

[FR Doc. 99–13221 Filed 5–24–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–99–00–2]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: June 8, 1999, from 9:00 a.m. to 6:00 p.m.; June 9, 1999, from 9:00 a.m. to 6:00 p.m.; and, June 10, 1999, from 9:00 a.m. to 4:00 p.m. (EST).

PLACE: U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 3109–South Building, Washington, DC 20250. Phone: (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, Room 2945–South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, DC 20090–6456, Phone: (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, DC, in March 1992 and currently has seven committees working on various aspects of the program. The committees are: Crops Standards; Processing; Labeling and Packaging; Livestock Standards; Accreditation; Materials; and, International Issues.

In August 1994, NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture and since that time it has submitted 30 addenda to the recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited

Substances. The last meeting of the NOSB was held February 9–11, 1999, in Washington, DC.

The Department of Agriculture (USDA) published its proposed rule for the NOP in the **Federal Register** on December 16, 1997 (62 FR 65849). A notice extending the comment period on the proposed rule was published in the **Federal Register** on February 9, 1998 (63 FR 6498–6499). The comment period was extended until April 30, 1998. On October 28, 1998, three issue papers for which public comment was requested by USDA were published in the **Federal Register** (63 FR 57624–57626). These papers addressed certain issues raised during the NOP's proposed rule's comment period. The issue papers were: Issue Paper 1—Livestock Confinement in Organic Production Systems; Issue Paper 2—The Use of Antibiotics and Parasiticides in Organic Livestock Production; and Issue Paper 3—Termination of Certification by Private Certifiers. Comments received on these papers are being considered during the development of a revised NOP proposed rule. The comment period for the issue papers closed December 14, 1998.

PURPOSE AND AGENDA: The principal purpose of this meeting is to provide an opportunity for NOSB to receive committee reports from its standing and ad hoc committees and address issues that arose from the February 1999 NOSB meeting. These issues include, wild caught salmon, the NOP recommendations on manure use in vegetable production, a mock materials review, and enforcement criteria. At the meeting the Agency will give a status report on the proposed rule, report on the 27th Codex Committee meeting on Food Labeling, and report on other trade related issues. Copies of the NOSB meeting agenda can be requested from Karen Thomas, Room 2510-South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, DC 20090–6456, or by phone at (202) 690–3655, or by accessing the NOP website at http://www.ams.usda.gov/nop.

TYPE OF MEETING: All meetings will be open to the public. NOSB has scheduled time for public input on Tuesday, June 8, 1999, from 1:30 p.m. until 5:00 p.m. in Room 3109–S. Individuals and organizations wishing to make an oral presentation at the meeting should forward their request to Ms. Thomas at the above address, or by FAX to (202) 205–7808, by the close of business June 4, 1999. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during the allotted time period, and will help the NOSB to better manage the meeting and accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing, if possible. Written submissions may supplement any oral presentation that is made at the meeting. Attendees who do not wish to make an oral presentation are invited to submit written comments to the NOSB at the meeting, or to Ms. Thomas after the meeting at the above address. All persons submitting written comments should provide 20 copies.

Dated: May 21, 1999.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 99–13355 Filed 5–21–99; 1:08 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Idaho

AGENCY: Natural Resources Conservation Service (NRCS) in Idaho, U.S. Department of Agriculture.

ACTION: Notice of availability of a proposed change in Section IV of the FOTG of the NRCS in Idaho for review and comment.

SUMMARY: It is the intention of NRCS in Idaho to issue six revised conservation practices in Section IV of the FOTG that may be used in conservation systems that treat highly erodible land and one that may be used in any conservation system. The revised standards are Conservation Crop Rotation (Code 328); Residue Management No Till/Strip Till (Code 329A); Residue Management Mulch Till (Code 329B); Residue Management Ridge Till (Code 329C); Residue Management Seasonal (Code 344); Chiseling and Subsoiling (Code 324); Contour Farming (Code 330); and Nutrient Management (Code 590).

DATES: Comments will be received on or before June 24, 1999.

FOR FURTHER INFORMATION CONTACT: Copies of these standards will be made available upon written request to Lee E. Brooks, Assistant State Conservationist, Technology, Natural Resources Conservation Service (NRCS), 9173 W. Barnes Dr., Suite C, Boise, ID 83709–1574 (phone 208–378–5720). Electronic requests and comments can be submitted to *nrcs@id.usda.gov*, Attention Lee Brooks.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, NRCS in Idaho will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS in Idaho regarding disposition of these comments, and a final determination of changes will be made.

Dated: May 18, 1999.

Gary Pfiefle,

Assistant State Conservationist, Boise, Idaho.

[FR Doc. 99–13224 Filed 5–24–99; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

National Sheep Industry Improvement Center; Solicitation of Nominations of Board Members

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice: Invitation to submit nominations.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces that it is accepting nominations for the Board of Directors of the National Sheep Industry Improvement Center for three directors' positions whose terms are expiring on February 13, 2000. Two of the positions are for those that have expertise in finance and management and the other position is for active producers of sheep or goats. Board members manage and oversee the Center's activities. Nominations may only be submitted by National organizations that consist primarily of active sheep or goat producers in the United States and who have as their primary interest the production of sheep or goats in the United States. Nominating organizations should submit:

(1) Substantiation that the nominating organization is national in scope,

(2) The number and percent of members that are active sheep or goat producers,

(3) Substantiation of the primary interests of the organization, and

(4) An Advisory Committee Membership Background Information form (Form AD–755) for each nominee.

This action is taken to carry out section 759 of the Federal Agriculture Improvement and Reform Act of 1996 for the establishment of a National Sheep Industry Improvement Center.

DATES: The closing date for acceptance of nominations is September 22, 1999. Nominations must be received by, or postmarked, on or before, this date.

ADDRESSES: Submit nominations and statements on qualifications to Cooperative Services, RBS, USDA, 1400 Independence Ave., SW, Stop 3252, Room 4204, Washington, DC 20250–3252, Attn.: National Sheep Improvement Center, Nominations.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Cooperative Services, RBS, USDA, 1400 Independence Ave, SW, Stop 3252, Washington, DC 20250–3252, telephone (202) 690–0368, (This is not a toll free number.) FAX 202–690–2723, or e-mail thomas.stafford@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Agriculture Improvement and Reform Act of 1996, known as the 1996 Farm Bill, established a National Sheep Industry Improvement Center. The Center shall (1) promote strategic development activities and collaborative efforts by private and State entities to maximize the impact of Federal assistance to strengthen and enhance production and marketing of sheep or goat products in the United States; (2) optimize the use of available human capital and resources within the sheep or goat industries; (3) provide assistance to meet the needs of the sheep or goat industry for infrastructure development, business development, production, resource development, and market and environmental research; (4) advance activities that empower and build the capacity of the United States sheep or goat industry to design unique responses to special needs of the sheep or goat industries on both a regional and national basis; and (5) adopt flexible and innovative approaches to solving the long-term needs of the United States sheep or goat industry. The Center has a Revolving Fund established in the Treasury to carry out the purposes of the Center. Management of the Center is vested in a Board of Directors, which has hired an Executive Director and other staff to operate the Center.

The Board of Directors is composed of seven voting members of whom four are active producers of sheep or goats in the United States, two have expertise in finance and management, and one has expertise in lamb, wool, goat or goat product marketing. Two of the open positions are for the voting members who have expertise in finance and management. One of the open positions is for a producer seat. The Board also includes two non-voting members, the Under Secretary of Agriculture for Rural Development and the Under Secretary of Agriculture for Research, Education, and Economics. Board members will not receive compensation for serving on the Board of Directors, but shall be reimbursed for travel, subsistence, and other necessary expenses.

The Secretary of Agriculture shall appoint the voting members from the submitted nominations. Members term of office shall be three years. Voting members are limited to two terms. The three positions for which nominees are sought are currently held by members serving their first term, thus are eligible to be re-nominated. The Board shall meet not less than once each fiscal year, but are likely to meet at least quarterly.

The statement of qualifications of the individual nominees is being obtained by using Form AD–755, ''Advisory Committee Membership Background Information.'' The requirements of this form are incorporated under OMB number 0505–0001.

Dated: May 17, 1999.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–13119 Filed 5–24–99; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for the Housing Preservation Grant Program.

DATES: Comments on this notice must be received by July 26, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Tracee L. Lilly, Senior Loan Specialist, RHS, U.S. Department of Agriculture, Stop 0781, Washington, D.C. 20250, Telephone (202)720–1604.

SUPPLEMENTARY INFORMATION:

Title: RHS/Housing Preservation Grant Program.

OMB Number: 0575–0115.

Expiration Date of Approval: September 30, 1999.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary purpose of the Housing Preservation Grant Program is to repair or rehabilitate individual housing, rental properties, or co-ops owned or occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners, owners of rental properties and owners of co-ops with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation of dwellings to bring them up to code or minimum property standards. Where repair and rehabilitation assistance is not economically feasible or practical the replacement of existing, individual owner occupied housing is available.

These grants were established by Public Law 98–181, the Housing Urban-R ural Recovery Act of 1983, which amended the Housing Act of 1979 (Pub. L. 93–383) by adding section 533, 42 U.S.C. S 2490(m), Housing Preservation Grants (HPG). In addition, the Secretary of Agriculture has authority to prescribe rules and regulations to implement HPG and other programs under 42 U.S.C. S 1480(j).

Section 533(d) is prescriptive about the information applicants are to submit to RHS as part of their application and in the assessments and criteria RHS is to use in selecting grantees. An applicant is to submit a ''statement of activity'' describing its proposed program, including the specific activities it will undertake, and its schedule. RHS is required in turn to evaluate proposals on a set of prescribed criteria, for which the applicant will also have to provide information, such as: (1) very low- and low-income persons proposed to be served by the repair and rehabilitation activities; (2) participation by other public and private organizations to leverage funds and lower the cost to the HPG program; (3) the area to be served in terms of population and need: (4) cost data to assure greatest degree of assistance at lowest cost; (5) administrative capacity of the applicant to carry out the program. The information collected will be the minimum required by law and by necessity for RHS to assure that it funds responsible grantees proposing feasible projects in areas of greatest need. Most data are taken from a localized area, although some are derived from census

reports of city, county and Federal governments showing population and housing characteristics.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .96 hour per response.

Respondents: A public body or a public or private nonprofit corporation.

Estimated Number of Respondents: 1,850.

Estimated Number of Responses per Respondent: 6.5.

Estimated Total Annual Burden on Respondents: 11,614 hours.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Branch, at (202) 692–0045.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of [Agency], including whether the information will have practical utility; (b) the accuracy of [Agency's] estimate of the burden of the proposed collection of information 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 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. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 13, 1999.

Eileen Fitzgerald,

Acting Administrator, Rural Development.

[FR Doc. 99–13118 Filed 5–24–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 4/16/99–5/17/99

Firm name	Address	Date petition accepted	Product
Art-Craft Optical Co., Inc.	89 Allen Street, Rochester, NY 14608.	04/21/99	Eyeglass frames of metal and plastic.
Warner Jewelry Cast Co., Inc.	1002 Southwest Ard, Lawton, OK 73505.	04/21/99	Jewelry display cases.
Beehler Corporation	1401 Industrial Park Drive, Mountain Gr., MO 65711.	04/27/99	Luggage clasps, case brackets, hinges and tent stakes.
Nambe Mills, Inc.	2891 Cooks Road, Sante Fe, NM 87505.	04/27/99	Metal tableware and accessories.
North Alaska Fisheries, Inc.	1304 Laona Drive, Anchorage, AK 99509.	04/27/99	Salmon and halibut.
Braswell Precision, Inc.	2406 Peppermill Drive, Glen Bernie, MD 21061.	04/28/99	Machined parts used in radar and ground navigational systems.
Johnson Cheese Equipment, Inc.	6391 Lake Road, Windwor, WI 53598.	04/29/99	Cheese manufacturing equipment.
Warwood Tool Company	164 North 19th Street, Wheeling, WV 26003.	05/03/99	Carbon and alloy steel heavy handled hand tools.
Tuckaseigee Mills, Inc.	414 Black Hill Road, Bryson City, NC 28713.	05/03/99	Comforters, bedspreads, pillows, shams, dustruffles and drapes of man-made fiber.
Robus Leather Corporation	4201 Wilson Avenue, Madison, IN 47250.	05/03/99	Bonded leather in sheets or rolls.
South Bay Circuits, Inc.	210 Hillsdale, San Jose, CA 95136	05/04/99	Printed circuit boards.
Validyne Engineering Sales Corp.	8525 Wilbur Avenue, Northridge, CA 91324.	05/04/99	Pressure transducers and transmitters.
Measurement Systems Int'l.	14240 Interurban Ave. S., Seattle, WA 98168.	05/07/99	Scales and weighing devices, electric and battery operated.
Needleworks, Inc.	241 South Oak, Pecos, TX 79772	05/11/99	Ladies dresses and dress accessories.
Armstrong Acquisition Co., Inc., dba Armstrong Glass Co.	359 Hood Road, Jasper, GA 30143	05/11/99	Stained/colored art glass for the lighting and hobbyist/artist industries.
B&W Oilfield Manufacturing, Inc.	1333 S.E. 25th Street, Oklahoma City, OK 78129.	05/13/99	Flanges and flange support parts.
Weinschel Associates	42 Cessna Court, Gaithersburg, MD 20879.	05/18/99	Integrated passive microwave capacitors.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether

increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: May 18, 1999.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 99–13138 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Commerce Secretary's 2000 Census Advisory Committee. The Committee will review and discuss evaluations of Census 2000 Dress Rehearsal operations and procedures, as well as plans for Census 2000. Last minute changes to the schedule are possible, and they should prevent us from giving advance notice.

DATES: On Thursday, June 17, 1999, the meeting will begin at 9 a.m. and adjourn at approximately 5:15 p.m. On Friday, June 18, 1999, the meeting will begin at 9 a.m. and adjourn at approximately 12:15 p.m.

ADDRESSES: The meeting will take place at the Hilton Washington Embassy Row Hotel, 2015 Massachusetts Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington, DC 20233; telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Commerce Secretary's 2000 Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Committee considers the goals of Census 2000 and user needs for information provided by that census. The Committee provides an outside user perspective about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Committee provides a targeted review focused on the conduct of Census 2000.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer on 301–457–2308, TDD 301–457–2540.

Dated: May 18, 1999.

Robert J. Shapiro,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 99–13134 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on June 8, 1999, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Wassenaar Arrangement implementation regulations.
4. Update on Commerce Control List Category 6 (Sensors and Lasers) regulations changes.
5. Presentation on Infrared Technology Market Trends.
6. Discussion of current export control issues.

Executive Session

7. 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. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC. 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series 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 10(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, DC. 20230. For further information contact Lee Ann Carpenter on (202) 482–2583.

Dated: May 19, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–13150 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Applications for the Malcolm Baldrige National Quality Award

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before July 26, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Ave, NW, Washington, D.C. 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument(s) and instruction should be directed to Lanse Felker, Baldrige National Quality Program, Administration Building, Room 635, 100 Bureau Drive, Stop 1020, National Institute of Standards and Technology, Gaithersburg, MD 20899–1020, (301) 975–2715, (301)948–3716 fax, Llansing.felker@NIST.GOV e-mail.

SUPPLEMENTARY INFORMATION:

Abstract

Applicants for the Malcolm Baldrige National Quality Award must submit an eligibility application, and if declared eligible, an application package. NIST will use the eligibility application to determine if the applicant is eligible to apply and will use the application package to assess and provide feedback on the applicant's quality and performance practices.

Method of Collection

Applicants must comply in writing according to the *Application Forms & Instructions* booklet.

Data

OMB Number: 00693–0006.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Affected Public: Eligible U.S. organizations that choose to apply for the Malcolm Baldrige National Quality Award.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 100 hours.

Estimated Total Annual Burden Hours: 10,000 hours.

Estimated Total Annual Cost: $0—no capital expenditures required.

Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 19, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13144 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052099A]

Report of Whaling Operations

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

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 26, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kevin Chu, National Marine Fisheries Service, 166 Water St., Woods Hole, MA 02543, (508) 495–2367.

SUPPLEMENTARY INFORMATION:

I. Abstract

Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). In order to respond to obligations under the International Convention for the Regulation of Whaling, and the IWC, captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information.

The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA.

The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the International Whaling Commission, which uses it to monitor compliance with its requirements.

II. Method of Collection

Reports may be made by phone or fax. Information on equipment marks must be made in writing.

III. Data

OMB Number: 0648–0311

Form Number: None

Type of Review: Regular submission

Affected public: Individuals; State, Local, or Tribal government

Estimated Number of Respondents: 52

Estimated Time Per Response: 30 minutes for reports on whales struck or on recovery of dead whales, 5 minutes for providing the relevant Native

American whaling organization with information on the mark and self-identification information; 5 minutes for marking gear; and 5 hours for the relevant Native American whaling organization to consolidate and submit reports.

Estimated Total Annual Burden Hours: 57 hours

Estimated Total Annual Cost to Public: $50

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 18, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 99–13203 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051899E]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Habitat Committee, Law Enforcement Committee, Executive Committee, Information & Education Committee, Comprehensive Management Committee and Demersal Species Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, June 8, 1999 to Thursday, June 10, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Hilton Norfolk Airport, 1500 N. Military Highway @ Northampton Boulevard, Norfolk, VA; telephone: 757–466–8000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, June 8th, the Habitat Committee will meet from 1:00–5:00 p.m. The Law Enforcement Committee will meet from 1:00–3:00 p.m. On Wednesday, June 9th, the Executive Committee will meet from 8:00–9:00 a.m. The Information and Education Committee will meet from 9:00 a.m. until noon. The Comprehensive Management Committee will meet from 1:00–3:00 p.m. The Demersal Species Committee will meet from 3:00–5:00 p.m. On Thursday, June 10th, Council will meet from 8:00 a.m. until noon.

Agenda items for this meeting include: Review function of the Habitat Committee; review Magnuson-Stevens Act responsibilities and integrate Council actions into NMFS processes; review function of the Law Enforcement Committee; review NMFS notice process regarding opening and closing of fisheries; develop ideas on how to keep enforcement personnel current on regulations; formalize industry advisory panel process; discuss possible changes in meeting frequencies; view a presentation by the U.S. Coast Guard on vessel safety devices; review impacts of latest safety regulations on fishing industries; develop ideas for the June Newsletter; review sea sampling document; discuss disapproved portions of Amendment 12 and address status of Amendment 13 and 14 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan; review Atlantic States Marine Fisheries Commission Board meeting recommendations; possible adoption of management measures for summer flounder and scup; hear committee reports and other fishery management issues.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, such issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council at least 5 days prior to the meeting date.

Dated: May 20, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–13207 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051899F]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical, Personnel, Statement of Organizational Practices and Procedures (SOPPs) and joint Executive & Finance Committees, joint meetings of its Mackerel, Golden Crab, Spiny Lobster and Dolphin/Wahoo Advisory Panels (AP) and Committees; and a Council Session.

DATES: The meetings will be held from June 14-18, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Pier House, One Duval Street, Key West, FL 33040; telephone: (305) 296-4600.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Robert Mahood, Executive Director; telephone: (843) 571-4366; fax: (843) 769-4520; email: robert.mahood@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

June 14, 1999, 8:30 a.m. to 6:00 p.m.—Scientific and Statistical Committee;

The committee will review and comment on the spiny lobster, golden crab, dolphin/wahoo snapper grouper, and mackerel Stock Assessment and Fishery Evaluation (SAFE) reports, hear the mackerel stock assessment presentation, review and comment on the Council's draft marine reserves document and approach to developing the marine reserve concept in the south Atlantic, hear a report on the status of the experimental closed area off of Florida and discuss ecosystem management;

June 15, 1999, 8:30 a.m. to 12:00 noon—Joint Mackerel Committee and AP;

The committee and AP will review the mackerel SAFE report, develop recommendations for annual quotas and bag limits for the mackerel fishery, develop recommendations on other framework items as necessary, review draft Mackerel Amendment 12 and approve it for public hearing, and hear the status of bycatch data collection;

June 15, 1999, 1:30 p.m. to 5:30 p.m.—Joint Golden Crab Committee and AP;

The committee and AP will review the Golden Crab SAFE Report and develop recommendations on framework action and/or plan amendment for the golden crab fishery;

June 16, 1999, 8:30 a.m. to 12:00 noon—Joint Spiny Lobster Committee and AP;

The committee and AP will review the Spiny Lobster SAFE report, review Law Enforcement Committee recommendations for spiny lobster management, and develop recommendations on framework action and/or plan amendment for the spiny lobster fishery;

June 16, 1999, 1:30 p.m. to 5:30 p.m.—Joint Dolphin/Wahoo Committee and AP;

The committee and AP will hear an update on the Council's request for lead on dolphin and wahoo management in the Atantic, Gulf of Mexico and Caribbean, review the Dolphin/Wahoo SAFE Report, and develop recommendations on the draft management options paper for the dolphin and wahoo fisheries;

June 16, 1999, 5:45 p.m.—Public Comment

The Council will take public comment on whether any further action is warrented by the Council concerning the issue of qualified individuals who missed the deadline for applying for a snapper grouper permit as a result of a hurricane or tropical storm.

June 17, 1999, 8:30 a.m. to 9:30 a.m.—Personnel Committee (Closed Session)

The committee will meet in closed session to reveiw and discuss staff benefits and hear the Executive Director's recommendations on benefit changes;

June 17, 1999, 9:30 a.m. to 10:30 a.m.—SOPPs Committee

The committee will finalize recommendations to amend the Council's SOPPs manual;

June 17, 1999, 10:30 a.m. to 12:00 noon—Joint Executive and Finance Committees

The committees will review and revise as necessary the remaining scheduled activities for 1999, and review and revise as necessary the 1999 Council budget;

June 17, 1999, 1:30 p.m. to 6:30 p.m.—Council Session;

The Council will hear the following Committee reports: Mackerel, Golden Crab, Spiny Lobster, Dolphin/Wahoo, Marine Reserves, Personnel, SOPPs, and joint Executive and Finance.

At 2:00 p.m. the Council will take public comment on annual quotas, bag limits and other framework actions for mackerel and for framework actions on golden crab and spiny lobster;

At 3:00 p.m. the Council will set the annual quotas for mackerel and take action on other framework actions as necessary. The Council will also approve Mackerel Amendment 12 for public hearing;

At 3:30 p.m. the Council will take action on framework issues for the golden crab fishery as necessary;

At 3:45 p.m. the Council will take action on framework issues for the spiny lobster fishery as necessary;

At 4:00 p.m. the Council will approve the management options paper for dolphin and wahoo;

At 4:30 p.m. the Council will meet in closed session to take action relative to changes in staff benefits;

At 5:00 p.m. the Council will approve the SOPPs manual for submission to the Secretary;

At 5:15 p.m. the Council will revise the 1999 activities schedule and budget as necessary;

At 5:30 p.m. the Council will determine if further action is needed on the snapper grouper limited access permit issue relative to late applicants.

June 18, 1999, 8:30 a.m. to 1:00 p.m.—Council Session;

The Council will hear the Ad Hoc Magnuson Stevens Fishery Conservation Management Act Reauthorization Committee report and approve Council positions on reauthorization issues. The Council will also: hear a status report on the Atlantic Coastal Cooperative Statistics Program and the vessel identification sytem, hear the status of NMFS highly migratory species amendments, hear a report on the NOAA General Counsel history of litigation in the Southeast region, hear a report on live rock aquaculture, hear NMFS reports on the 1998 mackerel framework actions, Mackerel Amendment 9, the red porgy emergency rule, the greater amberjack trip limit resubmittal, the Council's Habitat Plan and Comprehensive Amendment, the Council's Calico Scallop and Sargassum FMPs, the Sustainable Fisheries Act Comprehensive Amendment, and receive updated landings for Atlantic king mackerel, eastern zone Gulf king mackerel, Atlantic Spanish mackerel, snowy grouper, golden tilefish, wreckfish, greater amberjack, and South Atlantic octocorals. The Council will hear agency and liaison reports before discussing any other business.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice.

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 June 7, 1999.

Dated: May 20, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–13208 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the ''Board'') will meet on Monday, June 7, 1999, from 2:30 p.m. to 3:30 p.m. The meeting will be closed to the public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The

Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to discuss a business recovery plan for NTIS. The meeting will be closed because premature disclosure of the information to be discussed would likely significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on June 7, 1999, at 2:30 p.m. and adjourn at 3:30 p.m.

ADDRESSES: The meeting will be held in Room 5838 of the Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 Telephone: (703) 605–6400; Fax (703) 605–6700.

Dated: May 19, 1999.

Ron Lawson,

Director.

[FR Doc. 99–13149 Filed 5–24–99; 8:45 am]

BILLING CODE 3510–04–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND PLACE: 2:00 p.m., Thursday, June 3, 1999.

PLACE: 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Discussion of proposed rules on ''Access to Automated Boards of Trade'', proposed rules 30.11 and 1.71.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–13389 Filed 5–21–99; 2:32 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, June 3, 1999 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Part Open to the Public; Part Closed.

MATTERS TO BE CONSIDERED:

Open to the Public

1. CPSC Vice Chairman

The Commission will elect a Vice Chairman.

Closed to the Public

2. Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4430 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 21, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–13429 Filed 5–21–99; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Implementation of Eligibility Requirements in the National Defense Authorization Act for FY 1999 (Pub. L. 105–261)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of Extended TRICARE/CHAMPUS Eligibility for Certain Individuals.

SUMMARY: This notice provides the period of extended TRICARE/CHAMPUS eligibility for certain individuals who are entitled to Medicare but who have not purchased Part B of Medicare.

EFFECTIVE DATE: The provisions of this notice are effective October 1, 1998.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, telephone (303) 676–3572.

SUPPLEMENTARY INFORMATION: Normally, when an individual becomes entitled to Medicare, he/she loses eligibility for TRICARE/CHAMPUS. Individuals who are entitled to Medicare due to disability or end-stage renal disease (ESRD) can continue their TRICARE/CHAMPUS eligibility if they: (1) Are under 65 years of age; and (2) are enrolled in Part B of Medicare. A number of individuals have not been aware of the requirement to enroll in Part B of Medicare and did not enroll. As a result, they ordinarily would not have been eligible for TRICARE/CHAMPUS. These individuals have been notified of this requirement by the Department of Defense, but in order to ensure TRICARE/CHAMPUS coverage until Medicare Part B coverage takes effect, TRICARE/CHAMPUS eligibility has been extended. The Emergency Supplemental Appropriations Act for FY 1998 (Pub. L. 105–174) extended TRICARE/CHAMPUS eligibility for health services provided from May 1, 1998, through September 30, 1998, For those beneficiaries who enrolled in Medicare Part B prior to March 31, 1998, TRICARE/CHAMPUS eligibility was extended to July 1, 1998. Section 704 of the National Defense Authorization Act for FY 1999 (Pub. L. 105–261) further extended TRICARE/CHAMPUS eligibility for those individuals not enrolled in Medicare Part B for health services provided until July 1, 1999.

We also want to reiterate previously published provisions regarding recoupment of erroneous payments to these beneficiaries, since it is closely related to these provisions. These recoupment provisions provide relief to beneficiaries who have received erroneous payments but who were not eligible for TRICARE/CHAMPUS under either Pub. L. 105–174 or Pub. L. 105–261. On May 20, 1998, we published a final rule (63 FR 27677) implementing Section 743 of the National Defense Authorization Act for FY 1996 (Pub. L. 104–106) that waives the collection of certain erroneous TRICARE/CHAMPUS payments made to these individuals. Specifically, it waives collection of TRICARE/CHAMPUS payments made to individuals entitled to Medicare due to disability or ESRD but who have not purchased Medicare Part B. This waiver authority was effective February 10, 1996, and covers the period beginning January 1, 1967, and ends on the later of July 1, 1996, or the termination date of any special Medicare enrollment period established by law for such individuals. We refer the reader to the above-cited **Federal Register** for more information regarding this provision.

Dated: May 19, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–13113 Filed 5–24–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement on the Disposal and Reuse of the Stratford Army Engine Plant, Stratford, CT

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Stratford Army Engine Plant.

The Final Environmental Impact Statement (FEIS) evaluates the environmental consequences of the disposal and subsequent reuse of the 75 acres.

Alternatives examined in the EIS include encumbered disposal of the property, unencumbered disposal of the property, and no action. Encumbered disposal refers to transfer of conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Unencumbered disposal refers to transfer or conveyance of property without encumbrances on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of property but would maintain it in caretaker status for an indefinite period. The impacts of reuse are evaluated in terms of land use intensities.

DATES: Review period for the FEIS will end 30 days after the publication of the Notice of Availability in the **Federal Register** by the Environmental Protection Agency.

ADDRESSES: A copy of the Final EIS may be obtained by writing to Mr. Joe Hand, Corps of Engineers, Mobile District (ATTN: PD–EC), P.O. Box 2288, Mobile AL 36628–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Hand at facsimile (334) 690–2721.

SUPPLEMENTARY INFORMATION: While disposal of Stratford Army Engine Plant is the Army's primary action, the FEIS also analyzes the impacts of reuse as a secondary action by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of Stratford Army Engine Plant property is encumbered disposal, with encumbrances pertaining to the possible presence of lead-based paint and asbestos-containing material, easements for aviation and public park, groundwater use prohibition, historical resource protection, floodplains obligations, wetlands, land use restrictions and remedial activities and the requirement for a right of reentry for environmental cleanup.

Therefore, based on the analysis found in the FEIS, which will be incorporated in the Record of Decision, it has been determined that no significant environmental or human effects are anticipated from the disposal of the Stratford Army Engine Plant, Stratford, Connecticut.

A public meeting was held at the Council Chambers at Stratford Town Hall on June 4, 1999. Public comments are addressed in the Final EIS.

The Final EIS is available for review at the Stratford Public Library, 2203 Main Street, Stratford, Connecticut 06497.

Dated: May 19, 1999.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 99–13216 Filed 5–24–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of an Environmental Impact Statement (EIS) for Enhanced Training and Operations at the National Guard Training Center (NGTC)—Fort Indiantown Gap (FTIG), Pennsylvania

AGENCY: National Guard Bureau (NGB), Department of the Army (DA), DoD.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent is for the preparation of a Draft EIS for proposed actions at the NGTC–FTIG. The proposal includes 11 actions, consisting of 42 component projects, identified in the Pennsylvania Army National Guard's (PAARNG's) Range and Training Land Program Plan (RTLPP) and in the Pennsylvania Air National Guard's (PAANG's) Master Plan (MP) for NGTC–FTIG. The proposed actions include: Tracked Vehicle Training Complex (TVTC) Projects (8 projects); Ammunition Supply Point (ASP) Projects (2 projects); Artillery Training Support Projects (2 projects); Multi-Purpose Range Complex (MPRC) Development Project (1 project); Garrison Improvement Projects (5 projects); Wastewater Treatment Plant (WWTP) and Collection System Project (1 project); Muir Army Airfield (MAAF) Complex Project (8 projects); Air-to-Ground range Projects (4 projects); Regional Equipment Operators Training School (REOTS) Projects (3 projects); Integrated Natural Resources Management Plan (INRMP) Implementation Project (1 project); and Air-Guard Station Projects (7 projects).

The proposed actions are necessary to maintain NGTC–FTIG as an important training asset within the Total Force structure, which includes active and reserve component forces. By implementing the proposed actions, NGTC–FTIG will be better able to meet the specific missions of current military organization users and non-military tenants. Through these actions, the Pennsylvania National Guard (PANG) which includes both the PAARNG and the PAANG, will ensure that NGTC–FTIG will continue to provide the training and support facilities necessary to ensure the installation's long-term viability, sustainability, and value as a major NGB installation. A summary of impact analysis of previously completed EAs will be incorporated into the DEIS.

ADDRESSES: Interested parties can furnish written comments or materials to Lieutenant Colonel (LTC) Richard Shertzer, NGTC–FTIG EIS Project Officer, Environmental Section, 1119 Utility Road, Annville, Pennsylvania 17003–5002. Commercial telephone number is (717) 861–2548; or to LTC Christopher Cleaver, NGTC–FTIG Public Affairs Officer, PADMVA Headquarters, Building 0–47, Annville, Pennsylvania 17003–5002. Commercial telephone number is (717) 861–8468.

SUPPLEMENTARY INFORMATION: Alternatives to the proposed actions to be analyzed are: Alternative 1, Preferred Project Alternative—under this alternative, the 11 proposed projects identified would be implemented, including a restricted maneuver TVTC, an east-to-west oriented MPRC, and a 6,000-foot military runway. On-going operations would continue, as modified by the proposed action. Alternative 2, Competing Build Alternative—under this alternative, the proposed actions are scaled down or modified versions of some or all of the proposed projects. Alternative 3, No Action Alternative—under this alternative, none of the proposed upgrade or facility construction actions called for in the PAARNG Range and Training Land Program Plan (RTLPP) and the PAANG Master Plan (MP) would be

implemented. On-going actions will be continued.

Scoping: The PAANG and NGB will conduct public scoping meetings to discuss public concerns and identify issues relating to the proposed actions. Resource categories that will be analyzed include: physical environment, water quality , groundwater, air quality, biological resources (protected species, habitat, plant communities, wetlands, other), land use, socioeconomic, noise, health and safety, airspace, and cultural resources. Public participation in the EIS process is essential to assist the decisionmakers in defining the scope of the analysis considered in the EIS. Participation by Native Americans, concerned interest groups, individuals, and Federal, State, and local resource agencies is sought and encouraged in the public scoping process.

Public scoping meetings will be held at two locations, one in Dauphin County and one in Lebanon County in the vicinity of NGTC–FTIG. Dates, times, and exact locations for these meetings will be announced through letters, public notices, display advertisements, and legal advertisements and will be released to newspapers of general circulation a minimum of 15 days prior to the meeting. Those wishing to provide information or data relevant to the environmental analysis of the proposed actions or alternatives are encouraged to do so at the public scoping meetings.

Dated: May 19, 1999.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 99–13215 Filed 5–24–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 25, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 26, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW,, Room 10235, New Executive Office Building, Washington, DC 20503. Comments regarding the regular clearance and requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: May 19, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Projects with Industry.

Abstract: Data collection for the Projects with Industry compliance indicators, Annual Evaluation Plan and Application Content Requirements.

Additional Information: This revised information collection request reflects changes to the current data collection form that are necessary to comply with section 611 of the Rehabilitation Act. The 1998 Amendments changed the reporting requirements for the annual review and evaluation of the operation of the program under section 611(a)(5). Section 611(a)(5) of the Act now requires that data and information collected for use in conducting the annual review and evaluation of the operation of the project be the same types as described in subparagraphs (A) through (C) of section 101(a)(10) of the Act governing the State VR Services program, as determined appropriate by the Commissioner. The Amendments also modify the data collection and reporting requirements in section 101(a)(10) to conform with annual reporting and data collection requirements under section 136(d)(2) of the Workforce Investment Act of 1998, to the extent determined by the Secretary to be relevant in assessing program performance.

Finally, we are also requesting approval to combine the reporting requirements for the Projects With Industry (PWI) program from OMB form 1820–0566 (Projects with Industry Compliance Indicators and Annual Evaluation Plan) and OMB form 1820–

0612 (Projects with Industry Application Content Requirements). The combined form will be numbered OMB 1820–0566.

Frequency: Annually.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 350.

Burden Hours: 14,000.

[FR Doc. 99–13132 Filed 5–24–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 26, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__*Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 19, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.

Title: Lender's Participation Questionnaire (LPQ) for New Lenders.

Frequency: Annually.

Affected Public: Business or other for-profit.

Reporting and Recordkeeping Burden:

Responses: 121.

Burden Hours: 20.

Abstract: The Lender's Participation Questionnaire is submitted by lenders who are eligible for reimbursement of interest and special allowance, as well as Federal Insured Student Loan (FISL) claims payment, under the Federal Family Education Loan Program. The information will be used by ED to update Lender Identification Numbers (LIDs), lender names, addresses with 9 digit zip codes and other pertinent information.

Office of Student Financial Assistance Programs

Type of Review: Extension.

Title: Lender's Request for Payment of Interest and Special Allowance.

Frequency: Annually.

Affected Public: Business or other for-profit.

Reporting and Recordkeeping Burden:

Responses: 10,544.

Burden Hours: 102,804.

Abstract: The Lender's Interest and Special Allowance Request and Report (Form 799) is used by approximately 10,544 lenders participating in the Title IV, Part B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans; and to capture quarterly data from a lender's loan portfolio for financial and budgetary projections.

[FR Doc. 99–13133 Filed 5–24–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[DE–PS36–99GO10426]

Golden Field Office; Solicitation for Financial Assistance Applications; Inventions and Innovation Program

AGENCY: Department of Energy.

ACTION: Notice of Solicitation for Financial Assistance Applications Number DE–PS36–99GO10426.

SUMMARY: The DOE's Office of Industrial Technologies (DOE) is funding a competitive grant program entitled the Inventions and Innovation (I&I) Program. The goal of the I&I Program is to improve energy efficiency through the promotion of innovative ideas and inventions that have a significant potential energy impact and a potential future commercial market.

DATES: DOE expects to issue the solicitation on or about May 13, 1999, with a closing date of July 30, 1999.

ADDRESSES: To obtain a copy of the solicitation, eligible parties may download the document from the I&I website at www.oit.doe.gov/inventions. If internet access is not available, information may be obtained by writing the U.S. Department of Energy Golden Field Office, Inventions and Innovation Program, 1617 Cole Boulevard, Golden, Colorado 80401. For convenience, requests may also be faxed to Jennifer Squire at 303–275–4788.

SUPPLEMENTARY INFORMATION: The I&I Program is a U.S. Department of Energy (DOE), Office of Industrial Technologies (OIT) grant program which provides financial and technical assistance to encourage the innovation and commercialization of energy-related inventions. Projects that have a significant potential energy savings and a future commercial market are chosen

for financial and technical support through this competitive solicitation process. Additionally, DOE will provide awardees with non-financial support by assisting them with business development and commercialization planning through a network of national and regional resource providers.

This grant program is managed by the DOE Golden Field Office in support of OIT. The following OIT focus industries, dominant energy users and waste generators in the U.S. manufacturing sector, are of particular interest to this program: Agriculture, Aluminum, Chemicals, Forest Products, Glass, Metalcasting, Mining, Petroleum, and Steel. Emphasis will be placed on funding inventions consistent with OIT focus industries' visions and roadmap documents. Please visit the OIT website at www.oit.doe.gov for the vision/roadmap of each focus industry. While emphasis will be given to industrial manufacturing technologies with a focus on the target sectors identified previously, applications that are within the overall Energy Efficiency and Renewable Energy (EERE) transportation, buildings and power missions and areas of concern will also be considered for award. Please refer to www.eren.doe.gov for additional information on each EERE sector.

DOE will provide financial assistance for two categories of projects. The first category (Category 1) will fund up to $40,000 per award for applications which fall within the first two stages of development (conceptual and technical feasibility). United States individual inventors, small businesses (profit or not-for-profit with less than 500 employees), universities, and not for profit research institutes may apply for Category 1 Applications. The second category (Category 2) will fund up to $200,000 per award for applications which fall within the last two stages of development (development and commercial validation or demonstration). U.S. individual inventors and small businesses (profit or not-for-profit with less than 500 employees) may apply for Category 2 Applications. A ''U.S. individual inventor'' is an inventor who retains U.S. citizenship. A ''U.S. business'' is either (i) a corporation that is incorporated in the U.S. and whose parent company (if applicable) is not of foreign origin; or (ii) a business entity, other than a corporation, that is owned substantially by U.S. citizens. Individual inventors and very small businesses (15 or fewer employees) are especially encouraged to participate. DOE laboratories are not eligible to receive DOE funding as an awardee or subawardee in this program.

The awards will be made through a competitive process. Each award may cover a project period of up to two (2) years for Category 1 Applications and three (3) years for Category 2 Applications. DOE reserves the right to fund, in whole or in part, any, all, or none of the proposals submitted in response to this notice.

Issued in Golden, Colorado, on May 14, 1999.

Beth H. Peterman,

Acting Chief, Procurement, Golden Field.

[FR Doc. 99–13200 Filed 5–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Technology Center; Notice of Intent To Issue a Federal Assistance Solicitation (PS)

AGENCY: Department of Energy (DOE), Federal Energy Technology Center (FETC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the intent to issue a PS No. DE-PS26–99FT40497 entitled ''Novel Methods for Natural Gas Upgrading.'' The PS will solicit the submission of innovative techniques, systems, and processes to assist industry in demonstration and implementation in order to develop economic natural gas upgrading technologies in order to raise low-quality raw natural gas to pipeline quality. Through this solicitation DOE is seeking to support projects that are demonstrating and implementing new and innovative techniques for natural gas upgrading. Specifically, the objective of the procurement is to target, but not be limited to, the removal of nitrogen, water, carbon dioxide, and hydrogen sulfide from on-shore and off-shore (continental United States) low quality natural gas and associated gas reservoirs, including coal beds and landfill locations. DOE realizes that considerable advances have been made with the application of membranes for natural gas upgrading, and plans to select projects that demonstrate and implement new processes to include, but not be limited to, chemical solvents, membranes, or complexing agents with membrane technology to be applied mainly to associated gas for recovery of natural gas liquids.

DATES: The solicitation will be available on DOE/FETC's Internet address at http://www.fetc.doe.gov/business. Prospective offerors who would like to be notified as soon as the solicitation is available should register at http://www.fetc.doe.gov/business/index.html. Provide your e-mail address and click on the ''Oil and Gas'' technology choice located under the heading ''Fossil Energy.'' Once you subscribe, you will receive an announcement by e-mail that the solicitation has been released to the public. Telephone requests, written requests, e-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. The actual solicitation document will allow for requests for explanation and/or interpretation.

ADDRESSES: Acquisition and Assistance Division, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Raymond R. Jarr, Contract Specialist, U.S. Department of Energy, Federal Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880; Telephone 304/285–4088.

SUPPLEMENTARY INFORMATION: DOE anticipates multiple cooperative agreement awards resulting from this solicitation and no fee or profit will be paid to a Recipient or subrecipient under the awards. Solicitations will not be distributed in paper form or on diskette. It is anticipated that the solicitation will be available on or about June 4, 1999. The exact date and time for the submission of proposals will be indicated in the solicitation. However, at least a thirty day response time is currently planned. It is DOE's desire to encourage the widest participation included the involvement of individuals, corporations, non-profit organizations, small and small disadvantaged businesses, educational institutions, and state or local governments or other entities. This particular program is covered by Section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost share commitment of 20 percent from non-Federal sources for research and development (Phase I of the project) and 50 percent from non-Federal sources for demonstration (Phase II of the project). The Government's obligation under this award is contingent upon the availability of appropriated funds from which payment for award purposes can be made.

Issued: May 18, 1999.

Raymond R. Jarr,

Contract Specialist, Acquisition and Assistance Division.

[FR Doc. 99–13201 Filed 5–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 99–26–NG]

Office of Fossil Energy; ProGas U.S.A., Inc. Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ProGas U.S.A., Inc. (ProGas U.S.A.) long-term authorization to import from Canada up to 65,000 thousand cubic feet per day of natural gas, plus gas required for transportation, for a 15-year period beginning on October 1, 2000, or such later date as Alliance Pipeline Limited Partnership and Alliance Pipeline L.P. commence service, pursuant to the terms of a natural gas purchase contract dated July 1, 1990, as amended July 2, 1990, between ProGas U.S.A. and ProGas Limited.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities docket room, 3E–042, FE–34, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., May 19, 1999.

John W. Glynn,

Manager, Natural Gas Regulations, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 99–13199 Filed 5–24–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–717–001, FERC–717]

Information Collection Submitted for Review and Request for Comments

May 19, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from one entity in response to an earlier **Federal Register** notice of December 7, 1998 (63 FR 67467) and has responded to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Office, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, CI–1, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC–717 ''Open Access Same Time Information Systems''.

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No. OMB No. 1902–0173.

The Commission is now requesting that OMB approve a three-year extension on the current expiration date, with no changes to the existing collection. There are no increases to the reporting burden. This is a mandatory information collection requirements and the Commission does not consider the information to be confidential.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of part 3, sections 309 and 311 of the Federal Power Act, 16 U.S.C. 825(h), and 825(j). Section 309 gives the Commission the authority to prescribe, issue, make and amend orders, rules and regulations to implement the provisions of the Federal Power Act. Section 311 gives the Commission authority to secure information necessary or appropriate for recommending legislation or to conduct investigations concerning generation, transmission, distribution and sale of electric energy regardless of whether they are jurisdictional or nonjurisdictional entities within the United States and its possessions. The Commission is also authorized to keep current information on the ownership, operation, management and control of all facilities for generation, transmission, distribution, sale, and capacity and output of these facilities and the relationship between the two. The information is also used for determining the cost(s) for generation, distribution, rates, charges, and contracts with respect to the sale of electric energy and the service to residential, rural, commercial and industrial consumers and other purchasers by private and public agencies. The information collected under FERC–717 is specifically used to monitor the networks to ensure that potential purchasers of transmission services obtain the services on a non-discriminatory basis. Failure to issue these requirements would mean the Commission is not meeting its statutorty obligations and permitting discrimination in interstate transmission services provided by public utilities.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 37.

5. Respondent Description: The respondent universe currently comprises on average 140 companies subject to the Commission's jurisdiction.

6. Estimated Burden: 198,520 total burden hours, 140 respondents, 1 response annually, 1,418 per response (average).

7. Estimated Cost Burden to Respondents: $20,807,535 (140 respondents x $148,625 (cost per respondent).

Statutory Authority: Sections 309 and 311 of the Federal Power Act (FPA), 16 U.S.C. 825(h), 825(j).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13173 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2609–000]

FirstEnergy Operating Companies; Notice of Filing

May 19, 1999.

Take notice that on May 10, 1999, the FirstEnergy Operating Companies tendered for filing an amendment to its April 26, 1999, filing in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 28, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13120 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–21–000]

Mississippi Canyon Gas Company, L.L.C.; Notice of Filing

May 19, 1999.

Take notice that on May 14, 1999, Mississippi Canyon Gas Company, L.L.C. (Mississippi Canyon) filed standards of conduct under Order Nos. 497 *et seq.*[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Mississippi Canyon states that it has served copies of this filing to each of its customers and interested state regulatory commissions.

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, NE, Washington, DC 20426, in accordance with rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 3, 1999. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13176 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994); FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2732–000]

New England Power Pool; Notice of Filing

May 19, 1999.

Take notice that on April 30, 1999, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by UAE Lowell Power LLC (UAE Lowell). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of UAE Lowell's signature page would permit NEPOOL to expand its membership to include UAE Lowell. NEPOOL further states that the filed signature page does not change the NEPOOL.

NEPOOL requests an effective date for the commencement of UAE Lowell's participation in NEPOOL as of the date of UAE Lowell's acquisition of the generating assets currently owned by L'Energie, Limited Partnership, which is anticipated to occur April 30, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 28, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13180 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–191–000]

Northern Natural Gas Company; Site Visit

May 19, 1999.

On June 1 and 2, 1999, the Office of Pipeline Regulation (OPR) staff will inspect Northern Natural Gas Company's (Northern) proposed route and potential alternative routes for the Elk River Loop '99 Project in Anoka and Sherburne Counties, Minnesota. The areas will be inspected by helicopter and automobile. Representatives of Northern will accompany the OPR staff. Anyone interested in participating in the site visits must provide their own transportation.

For additional information, contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13174 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–14–000]

Shenandoah Gas Company; Notice of Application

May 19, 1999.

Take notice that on May 7, 1999, Shenandoah Gas Company (Shenandoah), P.O. Box 2400, Winchester, Virginia 22604, filed a petition pursuant to section 284.224(e)(1) and 284.123)(e) of the Commission's Regulations for approval of a proposed rate and operating statement applicable to a firm interstate transportation service to be rendered by Shenandoah on behalf of Mountaineer Gas Company (Mountaineer) pursuant to its blanket certificate, all as more fully described in the petition and exhibits filed therewith which are on file with the Commission and open to public inspection.

Pursuant to a November 2, 1998 Asset Purchase and Sale Agreement (Agreement), Shenandoah will sell to Mountaineer all of its natural gas transmission and distribution facilities located in West Virginia. Mountaineer will use such facilities to continue gas service to Shenandoah's former customers in West Virginia, as well as to new customers in West Virginia. At the current time, the only source of gas supply to serve customers in Shenandoah's service territory in West Virginia is through Shenandoah's interconnections with Columbia Gas Transmission Corporation in Warren County, Virginia (Receipt Point).

Shenandoah and Mountaineer have entered into a Firm Interstate Transportation Service Agreement dated February 19, 1999, pursuant to which Shenandoah will provide a firm interstate transportation service to Mountaineer under authority of its blanket certificate issued in accordance with Section 284.224 of the Commission's Regulations, 44 FERC 61,108 (1988). Under the terms of the Firm Interstate Transportation Service Agreement, Shenandoah will provide a firm interstate transportation service on behalf of Mountaineer, receiving gas in Virginia and redelivering up to 16,000 Dekatherms per day to Mountaineer at the West Virginia border. Mountaineer may arrange for the transportation of its own system supplies, act as agent for any of its customers desiring such service, or release capacity to existing transportation customers in West Virginia, as requested by such customers, or to any others on an as available basis. The firm transportation service will be provided for an initial term of five years and may be canceled thereafter by either party after two years notice given after the expiration of the initial term.

Shenandoah states that the proposed rate was determined in accordance with the methodology described in section 284.123(b)(1)(i)(B) of the Commission's Regulations, Shenandoah proposes to charge (1) to a Demand Charge of $2.3125 per Dekatherm (Dth) per month applicable to the Maximum Daily Quantity of 16,000 Dths, and (2) a Volumetric Charge of $.0064 per Dth for all gas delivered at the Delivery Point at the West Virginia border. Shenandoah shall be compensated for lost and unaccounted-for volumes at the rate of 0.5% of all volumes received by Shenandoah at the Receipt Point for Mountaineer's account.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 8, 1999. 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 proceedings. 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 in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13177 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC97–56–000 and ER97–4669–000]

Western Resources, Inc. and Kansas City Power & Light Company; Notice of Settlement Conference

May 19, 1999.

Take notice that a settlement conference will be convened to discuss issues raised in Docket No. ER97–4669–000. The conference is scheduled for Tuesday, June 8, 1999, at 9:30 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring settlement of Docket No. ER97–4699–000.

Any party as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information contact Linda Lee at (202) 208–0673, Thomas J. Burgess at (202) 208–2058, Theresa J. Burns at (202) 208–2160, or Marcia C. Hooks (202) 208–0993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13179 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–142–000, et al.]

Rathdrum Power, LLC, et al.; Electric Rate and Corporate Regulation Filings

May 14, 1999.

Take notice that the following filings have been made with the Commission:

1. Rathdrum Power, LLC

Docket No. EG99–144–000

Take notice that on May 7, 1999, Rathdrum Power, LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935. The applicant is a limited liability company organized under the laws of the State of Delaware that is engaged directly and exclusively in constructing, owning, and operating a gas-fired 270 MW (nominal) combined-cycle power plant in Rathdrum, Idaho, which will be an eligible facility.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. FPL Energy Wyman IV LLC

Docket No. EG99–144–000

Take notice that on May 12, 1999, FPL Energy Wyman IV LLC of 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

FPL Energy Wyman IV LLC is a Delaware limited liability company and proposes to acquire a 2.6284 percentage interest in the W.F. Wyman Unit 4 generating facility located in Yarmouth, Maine. The interest is currently owned by Montaup Electric Company and Newport Electric Corporation.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Allegheny Energy Unit 1 and Unit 2, L.L.C.

Docket No. EG99–145–000

Take notice that on May 12, 1999 Allegheny Energy Unit 1 and Unit 2, L.L.C. filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. The Detroit Edison Company

Docket No. EG99–2872–000

Take notice that on May 7, 1999, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (the Service Agreement) for Short Term Firm and Non-Firm Point-to-Point Transmission Service under the Open Access Transmission Tariff of Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Western Resources dated as of October 15, 1998. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of May 21, 1999.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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 these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13122 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–262–000]

Tennessee Gas Pipeline Company, Notice of Intent To Prepare an Environmental Assessment for the Proposed Eastern Express Project 2000 and Request for Comments on Environmental Issues

May 19, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Tennessee Gas Pipeline Company's (Tennessee) proposed Eastern Express Project 2000. This project involves the modification of Tennessee's existing pipeline system in Massachusetts and Connecticut to allow the transportation of an additional 173,000 decatherms per day (Dth/d) to American National Power in Haverhill, Massachusetts, and El Paso Gas Services in Haverhill, Massachusetts and Dracut, Massachusetts. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as Appendix 1.[1]

Summary of the Proposed Project

In order to transport the additional volumes, Tennessee proposes to make the following system changes (see Appendix 2 for a map of the proposed project area):

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Install a 6,150 ISO-rated horsepower (hp) Solar Centaur compressor, associated piping and appurtenant equipment, and restage an existing compressor at the existing Agawam Compressor Station (CS–261) in Agawam, Massachusetts, to increase down stream capacity by 83,000 Dth/d;
- Install a 7,170 ISO-rated hp Solar Taurus compressor unit with associated building, minor piping and appurtenant equipment and relocate blowdown silencers at the existing Mendon Compressor Station (CS–226A) in Mendon, Massachusetts, to increase downstream capacity by 250,000 Dth/d;
- Install a larger flow control valve in place of an existing flow control valve at a delivery point to Algonquin on the Blackstone Lateral in Mendon, Massachusetts, to allow incremental volumes to be delivered to Algonquin;
- Install pressure regulation immediately downstream of CS–266A on the Blackstone Lateral in Mendon, Massachusetts, to enable efficient operational flexibility for deliveries;
- Install station piping at the existing Hopkinton Compressor Station (CS–267) in Westborough, Massachusetts, to provide a reverse flow capability that would enable natural gas received from Haverhill and Dracut, Massachusetts to flow westerly during periods when the market demand east of CS–267 is low;
- Install mainline regulation in East Granby, Connecticut, approximately 9 miles south of CS–261 on the 300-Line to allow for new deliveries in Connecticut south of CS–261 without having to install 7.8 miles of replacement piping or looping; and
- Modify the existing Southern Connecticut-Milford delivery point, Meter 2–245, on the 300 Line in Orange, Connecticut, by installing an additional connection to deliver additional natural gas to Southern Connecticut for the Milford Power Plant.

Land Requirements for Construction

The proposed activities would be performed within a 20.45 acre area of the existing right-of-way/fee property.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of the proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of activities associated with the proposed project under these general headings:

- Geology and Soils.
- Water Resources, Fisheries, and Wetlands.
- Vegetation and Wildlife.
- Endangered and Threatened Species.
- Public Safety.
- Land Use.
- Cultural Resources.
- Air Quality and Noise.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Tennessee. This preliminary list of issues may be changed based on your comments and our analysis.

- Air and noise impacts associated with installation of one new compressor unit at CS–261 and one new compressor unit at CS–266A.
- Approximately 1.0 acre of upland forest would be cleared.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2.
- Reference Docket No. CP99–262–000; and
- Mail your comments so that they will be received in Washington, DC on or before June 18, 1999,

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

You do not need intervenor status to have your environmental comments considered. Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders,

notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 99–13175 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission

May 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2071–013.

c. *Date filed:* May 5, 1999.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Yale Hydroelectric Project.

f. *Location:* On the North Fork Lewis River in Cowlitz, Clark, and Skamania Counties, Washington, about 45 miles northeast of Portland, Oregon. The project boundary includes about 84 acres of land managed by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David L. Leonhardt, Project Manager, PacifiCorp, 825 N.E. Multnomah Street, Suite 1500, Portland, Oregon 97232 (503) 813–6658.

i. *FERC Contact:* Vince Yearick at (202) 219–3073 or vince.yearick@ferc.fed.us.

j. *Alternative Process:* Consistent with our April 1, 1999, letter approving the use of an alternative licensing process on four Lewis River hydroelectric projects, including the Yale Project, we will conduct an initial adequacy review on the Yale application and will process it only so far as the acceptance notice which will not solicit interventions.

k. *Status of environmental analysis:* The environmental analysis for the Yale Project is being coordinated with the environmental analysis of the Swift No. 1 (FERC No. 2111), Swift No. 2 (FERC No. 2213), and Merwin (FERC No. 935) hydroelectric projects through an alternative licensing process. Applications on those projects are due in 2004. Studies for all four projects are currently being coordinated through a recently formed collaborative group. Therefore, we are not soliciting additional study requests on the Yale application. Persons interested in participating in the collaborative group should contact Kristi M. Wallis, the group facilitator, at (206) 726–1699.

l. *Brief Description of the Project:* The project consists of the following existing facilities: (1) a 1,305-foot-long, zoned embankment dam known as Yale Dam, and an adjacent 1,600-foot-long, earth-filed structure known as Saddle Dam; (2) a 10.5-mile-long reservoir known as Yale Lake; (3) a concrete, chute-type spillway; (4) a 1,530-foot-long diversion tunnel; (5) two penstocks; (6) a powerhouse located downstream of Yale Dam, containing two generating units with a combined capacity of 134 megawatts; (7) a 10.5-mile, 115-kilovolt transmission line; and (8) related facilities.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13178 Filed 5–24–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6349–2]

Safe Drinking Water Act 25th Anniversary—Futures Forum; ''Research 2025''; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on June 14th, 1999, beginning at 8:30 am. at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202 for the purpose of information exchange with stakeholders and the general public to discuss the research needs of the national drinking water program. The deliberations will be guided by four questions:

1. What science and research are necessary to achieve public health objectives, satisfy SDWA standards for sound science, and meet statutory requirements and deadlines in the areas of health effects, treatment and distribution systems, exposure, analytical methods and special issues (i.e., sensitive subpopulations, mixtures)?

2. What level of research investment is adequate to address near and long term needs?

3. What is the most efficient, effective and timely combination of public and private efforts to undertake, coordinate and manage the necessary drinking water research and data collections?

4. If there is a gap between programmatic research needs and available resources, what is the best way for EPA and interested stakeholders to decide on priorities?

EPA is inviting all interested members of the public to participate in the meeting. As with all previous meetings in this process, to the extent that is available, EPA is instituting an open door policy to allow any member of the public to attend any of the meetings for any length of time. Seats will be available on a first-come, first served basis.

DATES: The meeting will start at 8:30 AM on June 14th and will adjourn on June14 at 5:30 PM.

ADDRESSES: The meeting is being held at the Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202. For additional information about the meeting, please contact Joan Harrigan Farrelly of EPA's Office of Ground Water and Drinking Water at (202) 260–6672 or 202–260–7575 or by e-mail at Farrelly. Joan@epa.gov., Questions may also be sent to William R. Diamond, U.S. EPA (4607), Office of Ground Water and Drinking Water, 401 M Street, SW, Washington, D.C. 20460.

Dated: May 18, 1999.

William R. Diamond,

Director, Standards and Risk Management Division, Office of Ground Water and Drinking Water.

[FR Doc. 99–13195 Filed 5–24–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6349–4]

National Drinking Water Contaminant Occurrence Database

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of a stakeholders meeting on the National Drinking Water Contaminant Occurrence Data Base.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has scheduled a two-day public meeting on EPA's National Drinking Water Contaminant Occurrence Data Base (NCOD). At the upcoming meeting, EPA is seeking input from stakeholders, including national and state representatives, environmental organizations, industry, the public, and other interested parties. The purpose of the meeting is to demonstrate and obtain input from stakeholders on the alpha version of the National Drinking Water Contaminant Occurrence data base (NCOD). The demonstration and discussion will include database access, use, retrieval, and reporting. During this meeting EPA is also seeking input from stakeholders on the revised database development strategy and data quality documents and issues such as the analytical plan and quality assurance documents. EPA encourages the full participation of stakeholders throughout this process. This will not be a decision-making meeting but an opportunity for stakeholders to provide input to EPA. Such input will assist EPA in developing an effective and efficient database to support the EPA drinking water program.

DATES: The stakeholder meeting on the NCOD will be June 7, 1999 from 10:30 a.m.–5:00 p.m. EST and June 8, 1999 from 9:00 a.m.–3:00 p.m. EST.

ADDRESSES: Resolve, Inc. (an EPA contractor) will provide logistical support for the stakeholders meeting. The meeting will be held at Resolve, Inc., 1255 23rd Street, NW, Suite 275, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics or for members of the public wishing to attend the meeting, please contact Sheri Jobe at RESOLVE, Inc., 1255 23rd Street, NW,. Suite 275, Washington, DC 20037, Phone: 202/965–6382, Fax: 202/338–1264, Email: sjobe@resolv.org. Those registered for the meeting by May 24, 1999 will receive an agenda, logistics sheet, and other information prior to the meeting. A limited number of teleconference lines will be available for those who would like to participate by phone. You may request the teleconference number when you call to register. If you cannot attend the meeting but would like to be on the mailing list to receive further information about the meeting (including agenda and meeting summary), please provide your name, organization, address, phone, fax, and email address.

For other information on the NCOD, please contact Charles Job at the U.S. Environmental Protection Agency, Phone: 202–260–7084, Fax: 202–260–3762, or e-mail at job.charles@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Background on the National Drinking Water Contaminant Occurrence Data Base (NCOD)

The Safe Drinking Water Act, SDWA, as amended in 1996, states that: Not later than three years after the date of enactment of the Safe Drinking Water Act Amendments of 1996, the Administrator shall assemble and maintain a national drinking water contaminant occurrence data base using information on the occurrence of both regulated and unregulated contaminants in public water systems obtained under section 1445 (a)(1)(A) or section 1445 (a)(2) and reliable information from other public and private sources. The NCOD is required to be developed by August 6, 1999.

B. Request for Stakeholder Involvement

EPA has convened this public meeting to demonstrate the alpha release of the database and to hear the views of stakeholders on the revised database development strategy, the analytical plan, and the quality assurance documents for the NCOD. The public is invited to provide comments on the issues listed above or other issues related to the NCOD during this meeting.

Dated: May 17, 1999.

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–13196 Filed 5–24–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6349–5]

Announcement of Public Meeting on the Development of New Waste Leaching Procedures under the RCRA Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Environmental Protection Agency (EPA), will hold a public meeting during July 22 through 23, 1999, on our ongoing reviews of the Toxicity Characteristic Leaching Procedure (TCLP), and the development of revisions or supplements to the TCLP or new waste leaching procedures under the RCRA Program. The purpose of the meeting is to discuss current and alternative approaches to waste leachate characterization testing and use of leach testing data, and to solicit public input on this topic. Both scientific and policy aspects of leach testing will be addressed. The meeting is open to the public on a space available basis. In order to best accommodate interested parties, we are offering pre-registration. The topics of the meeting agenda will be presented and discussed by invited speakers. However, we will provide ample time for accommodate questions or comments by public attendees during the meeting. We have also opened a public docket to accept written comments up to 60 days after the date of the meeting. Meeting dates and times are provided below under **DATES.** All times noted are Eastern Daylight Time.

DATES: We will hold the public meeting on waste leaching procedures on July 22 through July 23, 1999. On July 22, the meeting will begin at 8:00 a.m. and adjourn at 5:00 p.m. On July 23, the meeting will begin at 8:00 a.m. and adjourn at 3:00 p.m.

ADDRESSES: We will hold the public meeting at the Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. To reserve a guest room, call the hotel at (703) 920–3230 or (800) 228–9290 by June 30, 1999. In order to get a special rate of $115 plus tax per night, state that you will be attending the public meeting on leaching. A limited number of rooms are available at this rate, and they are offered on a first-call basis. The hotel fax number is (703) 271–5212.

Members of the public wishing to attend the meeting may register by filling in and faxing the registration form to the attention of Lisa Enderle, SAIC, at (703) 698–6101; or mailing the form to Lisa Enderle, SAIC, 2222 Gallows Road, Suite 300, Dunn Loring, VA 22027. A copy of the form is available below under **SUPPLEMENTARY INFORMATION.** Soon after publication of this notice you may also register via the Internet site of the Methods Team, U.S. EPA Office of Solid Waste. The Methods Team Internet site address is: http://www.epa.gov/SW–846.

Submit an original and two copies of written comments, referencing docket number F–1999–WLPA–FFFFF to: The RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. You may hand deliver comments to the Arlington, VA, address listed below. You may also submit comments electronically to: rcra-docket@epamail.epa.gov. Please also identify comments in electronic format

by the docket number F–1999–WLPA–FFFFF. Submit all electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. We will also accept electronic comments in WordPerfect 6/7/8.0.

You should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460. You may claim comment information as confidential by marking any part or all of the information as CBI. All comments which contain information claimed as CBI must be clearly marked as such. The CBI claim must be made at the time of submission to EPA. We will not disclose information marked CBI except in accordance with procedures set forth in 40 CFR part 2. You should also submit an edited copy of the comment that does not contain the CBI material. We will include any information not marked confidential in the public docket.

You can view public comments and any supporting material at the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: Meeting arrangements are being handled by Science Applications International Corporation (SAIC) of McLean, VA. For information on registration, hotel rates, transportation, and registration, please contact the SAIC coordinator, Lisa Enderle, by e-mail at *lisa.e.enderle@cpmx.saic.com* or via the SAIC conference information line at (703) 645–6946. You may also obtain logistical information regarding the meeting by sending an e-mail to: *mice@cpmx.saic.com*. If you have technical questions regarding the meeting agenda and topics, please contact the EPA coordinator, Gail Hansen, Office of Solid Waste (5307W), U. S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–8855, e-mail address *hansen.gail@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Holding This Public Meeting?

The laboratory leaching of wastes can be a valuable tool for making waste management decisions under the RCRA Program. In particular, such procedures can be used to predict the leaching potential of constituents of concern into the Nation's valuable ground water resources. For example, we have relied on leaching procedures for the classification of a waste as hazardous based on the characteristic of toxicity. For this and other regulatory purposes under RCRA, we have used the Extraction Procedure (EP), SW–846 Method 1310, and the Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311. These leaching procedures model the release of contaminants into the ground water from the co-disposal of municipal and industrial wastes at a landfill for non-hazardous solid wastes under a specified set of conditions.

Leaching tests and resulting data can also serve as the source terms for, or inputs to, subsurface (groundwater) fate and transport modeling. This type of modeling is key to the risk assessments upon which many waste remediation management decisions (such as listing and de-listing) are based. The results are also the basis for assessing the effectiveness of waste stabilization processes and for assessing the long term impact of treatment residues on the groundwater environment.

Current EPA leaching test methods (e.g., the EP and the TCLP) were scientifically validated for limited applications (i.e., hazardous waste characterization and the prohibition against placing hazardous waste on the land without prior treatment, or ''land ban'') they have also not been validated for site-specific conditions. In addition, even for the waste characterization and land ban applications, the current test procedures can be improved. We believe new leach testing protocols will offer better tools for estimating the leaching potential of different wastes more accurately under a range of different management conditions. We initiated a review of current leach testing last year (Land Disposal Restrictions Phase IV Final Rule, 63FR28579) because of concerns about applying the TCLP under certain conditions. Also, we recently received a commentary letter from our Science Advisory Board, SAB, (*http://www.epa.gov/science1/eecm9902.pdf*) urging reviews and revisions of the TCLP and its use in implementing RCRA programs.

Therefore, as part of this review, we are holding a public meeting to initiate broad discussion regarding the development of new revised waste leaching procedures under the RCRA Program. We hope to obtain public input on all aspects of waste leaching, including the science relevant to waste leaching, approaches to leach testing, and policy considerations in leaching test development and use in regulatory programs and other scenarios.

II. What Will Be Presented at the Public Meeting?

The current agenda of presentations for the public meeting on development of new laboratory waste leaching procedures follows. As indicated in the agenda, an opportunity for public comment attendee discussion and questions will occur after each presentation. In addition, Session V (the last session on Friday) will include an opportunity for a discussion of public perspectives and other comments. This agenda, and any subsequent revisions, may also be found on the Internet site of the Methods Team, U.S. EPA Office of Solid Waste, soon after publication of this notice. The Methods Team Internet site address is: http://www.epa.gov/SW–846.

Agenda For EPA Public Meeting on Development of New Waste Leaching Procedures

Session I—Introduction and Overview

Thursday, July 22; 8:00 a.m.–10:00 a.m.

8:00 a.m.–8:20 a.m. Organization of Meeting, Overview of Problem, Importance of this Meeting, Where OSW Is Going with this Effort
8:20 a.m.–8:30 a.m. Discussion/Questions
8:30 a.m.–8:50 a.m. Original Purpose of EPA/TCLP
8:50 a.m.–9:00 a.m. Discussion/Questions
9:00 a.m.–9:20 a.m. Science Advisory Board (SAB) Commentary
9:20 a.m.–9:30 a.m. Discussion/Questions
9:30 a.m.–9:50 a.m. Stakeholder Perspectives on Leaching Problem
9:50 a.m.–10:00 a.m. Discussion/Questions
10:00 a.m.–10:30 a.m. Break

Session II—Modeling and Risk Assessment

Thursday, July 22; 10:30 a.m.–12:00 p.m.

10:30 a.m.–10:50 a.m. Role Leachate Testing and Data Serves in Risk Assessment Process
10:50 a.m.–11:00 a.m. Discussion/Questions
11:00 a.m.–11:20 a.m. Modeling Overview

11:20 a.m.–11:30 a.m. Discussion/ Questions
11:30 a.m.–11:50 a.m. Modeling Issues and Problems
11:50 a.m.–12:00 p.m. Discussion/ Questions
12:00 p.m.–1:30 p.m.
LUNCH

Session III—Leaching Science

Thursday, July 22; 1:30 p.m.–5:00 p.m.

1:30 p.m.–1:50 p.m. Inorganic Leaching Science
1:50 p.m.–2:00 p.m. Discussion/ Questions
2:00 p.m.–2:20 p.m. International Perspective of Leaching Science
2:20 p.m.–2:30 p.m. Discussion/ Questions
2:30 p.m.–2:50 p.m. Organic Leaching Science
2:50 p.m.–3:00 p.m. Discussion/ Questions
3:00 p.m.–3:30 p.m. BREAK
3:30 p.m.–3:50 p.m. Overview of Current Testing Approaches
3:50 p.m.–4:00 p.m. Discussion/ Questions
4:00 p.m.–4:20 p.m. Overview of California EPA Approach
4:20 p.m.–4:30 p.m. Discussion/ Questions
4:30 p.m.–4:50 p.m. Overview of Rutgers Research Supported by EPA
4:50 p.m.–5:00 p.m. Discussion/ Questions

Session IV—Leaching Policy and Applications

Friday, July 23: 8:00 a.m.–12:00 p.m.

8:00 a.m.–9:00 a.m. Test Design and Implications: Waste Characterization
9:00 a.m.–10:00 a.m. Discussion/ Questions
10:00 a.m.–10:30 a.m. BREAK
10:30 a.m.–11:30 a.m. Test Design and Implications: Site Characterization
11:30 a.m.–12:00 p.m. Discussion/ Questions
12:00 p.m.–1:00 p.m. LUNCH

Session V—Leaching Policy and Applications and Wrap-Up

Friday, July 23; 1:00 p.m.–3:15 p.m.

1:00 p.m.–2:00 p.m. Test Design and Implications: Treatment Effectiveness
2:00 p.m.–2:30 p.m. Discussion/ Questions
2:30 p.m.–3:00 p.m. Summary of Meeting Results
3:00 p.m.–3:15 p.m. Next Steps

III. How Should I Submit Comments on the Topics of the Public Meeting?

We established a public docket under docket control number F–1999-WLPA-FFFFF for the submission of comments. We will accept comments in written or electronic format at the addresses indicated above under **ADDRESSES.** Please submit comments to those addresses before the meeting so that panel speakers have time to review and consider the information.

We welcome your views on all aspects of the meeting's topic. For example, we invite you to provide different views on waste characterization by leaching procedures, new or alternative leaching methods, current leaching methods used within the RCRA Program, potential effects of the development and implementation of new leaching procedures, and any other relevant information.

IV. Special Accommodations

If you require special accommodations at this meeting, including wheelchair access, please contact Lisa Enderle of SAIC at the address listed above under **ADDRESSES.** Please contact Ms. Enderle at least five business days prior to the meeting so that appropriate arrangements can be made.

V. Registration Form

To register for the public meeting on the development of new waste leaching procedures, please complete the attached registration form and send it to Lisa Enderle via fax at: (703) 698–6101 or by mail to: Lisa Enderle, SAIC, 2222 Gallows Road, Suite 300, Dunn Loring, VA 22027. (As with any public meeting, there is no charge for attendance.)

Registration Form for EPA Public Meeting on the Development of New Waste Leaching Procedures

Send completed form to Lisa Enderle via fax at: (703) 698–6101 or by mail to: Lisa Enderle, SAIC, 2222 Gallows Road, Suite 300, Dunn Loring, VA 22027.

Name: _____
Affiliation: _____
Street Address: _____
City: _____
State: _____
Zipcode: _____
Telephone: _____
Fax: _____
E-mail address: _____

Dated: May 11, 1999.

James R. Berlow,

Acting Director, Office of Solid Waste.

[FR Doc. 99–13197 Filed 5–24–99; 8:45 am]

BILLING CODE 6560–50–U

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Advance notice with request for comments; publication of systems of records; publication of proposed system notice for new systems of records.

SUMMARY: Under the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Farm Credit Administration (FCA) is:

- Amending its Privacy Act systems of records;
- Establishing new systems of records;
- Deleting some existing systems of records; and
- Publishing a complete notice of its inventory of systems of records.

The new and amended systems of records will help us collect, maintain, use, and disclose information about individuals.

We filed a New Systems Report with Congress and the Office of Management and Budget (OMB) on May 14, 1999.

DATES: You should forward written comments by June 24, 1999. We will adopt this notice without further publication on July 24, 1999, unless we change it to incorporate public comments and publish another notice.

ADDRESSES: You may mail written comments (in triplicate) to Debra Buccolo, Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all comments we receive will be available for review by interested parties at FCA headquarters.

FOR FURTHER INFORMATION CONTACT:

Debra Buccolo, Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4022, TDD (703) 883–4444
or
Jane M. Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia, 22102–5090, (703) 883–4071, TDD (703) 883–4444

SUPPLEMENTARY INFORMATION: We have reviewed all FCA systems of records and have identified eight new systems and nine existing systems requiring substantive modification. We have deleted six systems.

We have revised each system description. We have changed the designated points of contact for inquiring about the systems, accessing the records, and requesting amendments to the records. We also have changed the categories of records maintained and

storage methods. We have clarified the wording of several of the routine uses and added new uses compatible with the purpose for which the information is collected. We have reviewed and amended, as appropriate, all retention periods. Finally, we have made minor administrative and editorial changes.

We are deleting six systems (FCA–3, Upward Mobility Skills Survey; FCA–4, Group Accident Insurance Records; FCA–5, Employee Reports of Financial Interests and Employment; FCA–6, Farm Credit Bank Personnel Records; FCA–16, Federal Land Bank Loans; and FCA–17, Production Credit Association Loans) because we no longer maintain the records or the records are now covered by a Government-wide system notice. (By way of background information, we deleted FCA–1 and FCA–2 on December 27, 1993.) We have modified and assigned new system numbers, as indicated below.

FCA–7, Employee Attendance, Leave, and Payroll Records, has been revised to reflect the use of machine-readable records, as well as paper records and some computer-output microfiche. The new system number is FCA–1, Employee Attendance, Leave, and Payroll Records.

FCA–8, Employee Travel and Vendor Voucher Files, FCA–9, Financial Management Records, and FCA–11, Procurement Records, have been combined into one system of records. Also, the systems notice has been revised to reflect the use of machine-readable records, as well as paper records. The resulting new system of records is FCA–2, Financial Management Records.

FCA–10, Property Accountability Records, is now maintained both on paper and on a computerized database. The new system number is FCA–3, Property Accountability Records.

FCA–12, Biographical Files, has been amended to reflect the 1985 restructuring of FCA, which eliminated the Federal Farm Credit Board and created the FCA Board. FCA no longer maintains Farm Credit System director biographies. The new system number is FCA–4, Biographical Files.

FCA–13, Public Information Requests File, and FCA–15, Congressional Correspondence File, have been combined into one system of records. The new system tracks employee assignments. The resulting new system is FCA–5, Assignments and Correspondence Tracking System.

FCA–14, Freedom of Information Requests, has been revised to reflect the computerized database for the files and that we file Privacy Act requests in this system. The new system number is FCA–6, Freedom of Information and Privacy Act Requests.

FCA–18, Inspector General Investigative Files, is unchanged. The new system number is FCA–7.

FCA–19, FCA Internet Access System, is unchanged. The new system number is FCA–8.

Finally, we have created the following eight new systems: FCA–9, Personnel Security Files; FCA–10, Farm Credit System Institution Criminal Referrals; FCA–11, Litigation and Administrative Adjudication Files; FCA–12, Health and Life Insurance Records; FCA–13, Correspondence Files; FCA–14, Employee Travel Records; FCA–15, Employee Training; and FCA–16, Examiner Training and Education Records.

Having made these changes, FCA's systems categories now are: FCA–1, Employee Attendance, Leave, and Payroll Records; FCA–2, Financial Management Records; FCA–3, Property Accountability Records; FCA–4, Biographical Files; FCA–5, Assignments and Correspondence Tracking System; FCA–6, Freedom of Information and Privacy Act Requests; FCA–7, Inspector General Investigative Files; FCA–8, FCA Internet Access System; FCA–9, Personnel Security Files; FCA–10, Farm Credit System Institution Criminal Referrals; FCA–11, Litigation and Administrative Litigation Files; FCA–12, Health and Life Insurance Records; FCA–13, Correspondence Files; FCA–14, Employee Travel Records; FCA–15, Employee Training; and FCA–16, Examiner Training and Education Records.

As required by 5 U.S.C. 552a(r) of the Privacy Act, we have notified OMB, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate of the amended and proposed systems of records. The notices are published in their entirety below.

Systems of Records

Table of Contents

General Statement of Routine Uses

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), we may disclose these records or information in them under 5 U.S.C. 552a(b)(3) as provided below. The following routine uses apply to and are incorporated by reference into each system of records set forth below unless otherwise indicated.

(1) We may disclose a record or information in the record system when it indicates a violation or potential violation of law, whether civil, criminal, or regulatory, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, to the appropriate Federal, State, local, or foreign agency or authority charged with the responsibility for investigating or prosecuting such violation or charged with enforcing compliance with the law.

(2) We may disclose a record or information in the record system to a responsible licensing authority if the records are relevant and necessary in the particular licensing decision.

(3) We may disclose a record or information in the record system to an agency, office, or establishment of the executive, legislative, or judicial branch of the Federal or State Government, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, reporting on an investigation of an employee, letting a contract, or issuing a license, grant, or other benefit to the subject of the record.

(4) We may disclose a record or information in the record system to a Federal congressional office in response to an inquiry from that office made at the request of the person who is the subject of the record.

(5) We may disclose a record or information in the record system in a proceeding before a court or adjudicative body where FCA is authorized to appear or to the Department of Justice for use in litigation, when

(i) FCA, or

(ii) Any FCA employee in his or her official capacity, or

(iii) Any FCA employee in his or her individual capacity where the Department of Justice or the Agency has agreed to represent the employee, or

(iv) The United States, where FCA determines that litigation is likely to affect the Agency,

is a party or has an interest in the litigation or proceeding and FCA deems the use of such records to be relevant and necessary.

(6) We may disclose a record or information in the record system to a court, magistrate, or administrative tribunal in presenting evidence, including disclosures to counsel or witnesses during civil discovery, litigation, administrative proceedings, settlement negotiations, or in connection with criminal proceedings, when FCA is a party to the litigation or proceeding.

(7) We may disclose a record or information in the record system to a court or other adjudicative body before which FCA is authorized to appear when,

(i) FCA, or

(ii) Any FCA employee in his or her official capacity, or

(iii) Any FCA employee in his or her individual capacity,

is a party or has an interest in the litigation or proceeding and FCA deems the use of such records to be relevant and necessary.

(8) We may disclose a record or information in the record system to the National Archives and Records Administration (NARA) for records management inspections conducted under 44 U.S.C. 2904 and 2906.

FCA–1

SYSTEM NAME:

Employee Attendance, Leave, and Payroll Records—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 and field offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains paper, electronic, and microfiche files containing payroll-related information for FCA employees reported on a biweekly, year-to-date, and, in some cases, annual basis. It includes the ''Agency Time Tracking System,'' payroll and leave data for each employee including rate and amount of pay, hours worked, tax and retirement deductions, leave bank records, life insurance and health insurance deductions, savings allotments, savings bond and charity deductions, other financial deductions, mailing addresses, and home addresses. The National Finance Center's U.S. Department of Agriculture Personnel Payroll System provides agency payroll services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We may use information in this record system to prepare payroll, to meet Government payroll recordkeeping and reporting requirements, and to retrieve and supply payroll and leave information as required for Agency needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We may disclose information in this system of records to other Government agencies, commercial or credit organizations, or to prospective employers to verify employment.

We may disclose information in this system of records to Federal, State, and local taxing authorities concerning compensation to employees or to contractors; to the Office of Personnel Management, Department of the Treasury, Department of Labor, and other Federal agencies concerning pay, benefits, and retirement of employees; to Federal employees' health benefits carriers concerning health insurance of employees; to financial organizations concerning employee savings account allotments and net pay to checking accounts; to State human resource offices administering unemployment compensation programs; to educational and training organizations concerning employee qualifications and identity for specific courses; and to heirs, executors, and legal representatives of beneficiaries.

We may disclose information in this system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, Federal Parent Locator System (FPLS), and Federal Tax Offset System for use in locating individuals and identifying their income sources, to establish paternity, establish and modify orders of support, and for enforcement actions.

We may disclose information in this system of records to the Office of Child Support Enforcement for release to the Social Security Administration for verifying Social Security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

We may disclose information in this system of records to the Office of Child Support Enforcement for release to the Department of Treasury to administer the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986) and to verify a claim with respect to employment in a tax return.

Additional routine uses are listed in the ''General Statement of Routine Uses.''

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

We may disclose information from this system, under 5

U.S.C. 552a(b)(12), to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3701(a)(3), in accordance with 31 U.S.C. 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders or on a computerized database.

RETRIEVABILITY:

We retrieve paper records by name and electronic records by social security number.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

In accordance with NARA General Records Schedule requirements for payroll-related records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human and Administrative Resources Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

FCA employee on whom the record is maintained. FCA employees who approve the records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–2

SYSTEM NAME:

Financial Management Records—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 and field offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees and persons that provide or may provide supplies or services to FCA by contract or purchase order.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains paper files and a computerized database supporting the FCA financial management system, including employee travel advance records, travel vouchers, vendor vouchers and purchase orders, requisitions, FCA administrative expenses, collections, Agency-issued telephone credit cards, and other pertinent written information related to financial records and purchase transactions. Also included are bids, offers, and lease agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252; 40 U.S.C. 471 et seq.

PURPOSE(S):

We use information in this system of records to provide records of reimbursement to and collections from employees for expenses incurred while in official travel status, to provide payments to vendors and other Government agencies, to maintain control over the collection and disbursement of Agency funds and to limit the opportunity for fraud, to prepare reports for management and other Government agencies, and to assist in any audits of purchases of supplies and services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders or on a computerized database.

RETRIEVABILITY:

We arrange file folders by: (1) SF 1166a (Voucher and Schedule of Payments) voucher number within each year, (2) employee name, (3) purchase order number or contract number, or (4) name of the vendor. We retrieve information on the computerized database by employee name, vendor number, or social security number, as applicable.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

In accordance with NARA General Records Schedule requirements for financial records and procurement records.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Resources Management, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

Persons, corporations, or governmental entities that make bids or offers to FCA or enter into leases or other agreements with FCA. FCA employees who prepare or audit contractual actions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–3

SYSTEM NAME:

Property Accountability Records—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 and field offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records identifying accountable property issued to FCA employees for official use. It includes the manufacturer's model and serial number of the accountable property, record number, unique bar code number, acquisition document identifier (purchase order or contract number), vendor's name, acquisition cost, in-service date, classification (by type of accountable property) number, employee to whom assigned, and employee's location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252; 40 U.S.C. 471 *et seq.*

PURPOSE(S):

We use information in this system of records to maintain control over accountable property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records on a computerized database.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

We maintain the data in accordance with NARA General Records Schedule requirements for storing accounting files.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Resources Management, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

FCA employee to whom property is issued.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–4

SYSTEM NAME:

Biographical Files—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees (primarily managers) and FCA Board members.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains biographical sketches and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records to inform the public about the background of FCA officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We may disclose information in this system of records to Farm Credit System institutions and, on request, to the public in connection with public appearances and conferences.

Additional routine uses are listed in the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours.

RETENTION AND DISPOSAL:

Transferred to the National Archives for permanent retention as part of the Agency's published materials.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Congressional and Public Affairs, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

FCA employee on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–5

SYSTEM NAME:

Assignments and Correspondence Tracking System—FCA.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former FCA employees assigned to a particular project or who have drafted or signed outgoing correspondence. Also, U.S. Congressmen or members of the public who submit a request for information or make a general inquiry.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains incoming letters, outgoing correspondence, memoranda, documents pertaining to FCA's operations, and automated log (e.g., correspondence tracking system) to track the processing of correspondence and the mail.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records for reference, to track employee assignments, and to track mail.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain incoming letters or inquiries and their responses in file folders, on computer disks, and on computers. We store the automated log on a computer.

RETRIEVABILITY:

We file incoming letters or inquiries and their responses by Farm Credit District or alphabetically by requester's name. The automated log can sort and retrieve entries by Farm Credit District, subject, name of the member of Congress, and name of the FCA employee/author of the letter.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computers, computer disks, and the automated log.

RETENTION AND DISPOSAL:

We destroy data in the automated system as well as the file folders after 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Executive Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments of a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

Persons making general inquiries or requests for information, FCA employees, Farm Credit System institutions, and other sources necessary to prepare a reply to the incoming correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–6

SYSTEM NAME:

Freedom of Information and Privacy Act Requests—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons that request records under the Freedom of Information or Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains letter requests, copies of replies and responsive records, and computerized database.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252; 5 U.S.C. 552 and 552a.

PURPOSE(S):

We use information in this system of records for reference.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders and on a computerized database.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

In accordance with NARA General Records Schedule requirements for Freedom of Information and Privacy Act request files. We destroy data in the automated system after 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information and Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Freedom of Information and Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

Persons making Freedom of Information and Privacy Act requests and FCA employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–7

SYSTEM NAME:

Inspector General Investigative Files—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of OIG investigations relating to FCA's programs and operations. Subjects include, but are not limited to, current and former FCA employees; current and former agents or employees of contractors and subcontractors in their personal capacity, where applicable; and other persons whose actions affect the FCA, its programs or operations. Businesses, proprietorships, and corporations are not covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation, and accompanying exhibits; documents, records, or copies obtained during the investigation, interview notes, investigative notes, staff working papers, draft materials, and other documents or records relating to the investigation; opening reports, progress reports, and closing reports; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act Amendments of 1988, Pub. L. 100–504, amending the Inspector General Act of 1978, Pub. L. 95–452, 5 U.S.C. app. 3.

PURPOSES:

We use information in this system: to document the conduct and outcome of investigations; to report results of investigations to other components of the FCA and other agencies and authorities for their use in evaluating programs and imposition of criminal, civil, or administrative sanctions; to report the results of investigations to other agencies or other regulatory bodies for an action deemed appropriate, and for retaining sufficient information to fulfill reporting requirements; and to maintain records related to the OIG's activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We may disclose information in this system of records to any source when the FCA OIG is conducting an investigation or audit, but only to the extent necessary to get information from that source relevant to and sought in furtherance of the investigation or audit.

We may disclose the record or information in the record system to agencies, offices, or establishments of the executive, legislative, or judicial branch of the Federal or State government when we have a request and where the records or information is relevant and necessary to a decision on an employee's discipline or other administrative action (excluding a decision on hiring). We will take reasonable steps to ensure that the records are timely, relevant, accurate, and complete enough to assure fairness to the employee affected by the disciplinary or administrative action.

We may disclose the record or information in the record system to independent auditors or other private firms that OIG has contracted with to carry out an independent audit or investigation or to analyze, collate, aggregate, or otherwise refine data collected in the system of records. Such contractors shall maintain Privacy Act safeguards with respect to such records.

We may disclose the record or information in the record system to an FCA contractor when a contractor-operated program has been subject to OIG investigation that has uncovered personnel problems so that the contractor can correct those problems.

We may disclose the record or information in the record to debt collection contractors to collect debts owed to the Government, as authorized under the Debt Collection Act of 1982, 31 U.S.C. 3718, and subject to applicable Privacy Act safeguards.

Additional routine uses are listed in the ''General Statement of Routine Uses.''

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

We may disclose information from this system, pursuant to 5 U.S.C. 552a(b)(12), to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3701(a)(3), in accordance with section 3711(f) of title 31.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of paper records maintained in file folders, cassette tapes of interviews, and data maintained on computer diskettes. We store the folders, diskettes, and cassette tapes in file cabinets in the OIG.

RETRIEVABILITY:

We retrieve the records by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

We maintain the records in lockable file cabinets in lockable rooms. Only authorized employees have access to the records. We lock file cabinets and rooms during non-duty hours.

RETENTION AND DISPOSAL:

We destroy OIG Investigative Files 10 years after a case is closed. We offer cases that are unusually significant for documenting major violations of criminal law or ethical standards to the National Archives for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Address all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD SOURCE CATEGORIES:

Employees or other persons on whom the record is maintained, non-target witnesses, FCA and non-FCA records, to the extent necessary to carry out OIG investigations authorized by 5 U.S.C. app. 3.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and corresponding sections of 12 CFR 603.355, to the extent a record in the system of records was compiled for criminal law enforcement purposes.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), and the corresponding provisions of 12 CFR 603.355, to the extent the system of records consists of investigatory material compiled for law enforcement purposes. Material within the scope of the exemption at 5 U.S.C. 552a(j)(2) is also exempt. *See* 12 CFR 603.355.

FCA–8

SYSTEM NAME:

FCA Internet Access System—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information pertaining to an employee's access to the Internet, including the employee's name, Web sites visited, dates, and times.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records to monitor an employee's access to the Internet.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records on a computerized database.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

Only authorized personnel have access.

RETENTION AND DISPOSAL:

In accordance with NARA General Records schedule requirements.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Resources Management, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

NOTIFICATION PROCEDURE:

Address all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR 603.310.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments of a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22101–5090, as provided in 12 CFR Part 603.

RECORD SOURCE CATEGORIES:

FCA employee to whom record applies or Agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–9

SYSTEM NAME:

Personnel Security Files—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains case files compiled during background investigations of employees in sensitive positions. It may include: (a) Security forms (e.g., SF 86, ''Security Investigation Data for Sensitive Position'' and OPM Form 329-B, ''Authority for Release of Information and Redisclosure''); (b) investigative reports that may include a credit check, a check of police records, and interviews with neighbors, former supervisors, and coworkers; (c) a determination of suitability for a security clearance by FCA's security officer; and (d) issuance of clearance statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252; Executive Orders 10450 and 10577.

PURPOSE(S):

We use information in this system of records to determine suitability for holding a sensitive position within FCA and to issue a security clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain records in a locked safe in an area that is secured after business hours. Only the Personnel Security Officer and Alternate Personnel Security Officer have access to the records.

RETENTION AND DISPOSAL:

Files are retained in accordance with the NARA General Records Schedule requirements for personnel security records.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Officer, Human and Administrative Resources Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

FCA employees requesting a security clearance and individuals or organizations that provide information to FCA concerning an employee's suitability for a security clearance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Information in this system of records about a confidential source's identity is subject to a specific exemption, 5 U.S.C. 552a(k)(5), to ensure accurate information on employment suitability.

FCA–10

SYSTEM NAME:

Farm Credit System Institution Criminal Referrals—FCA.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who participate or have participated in the conduct of, or who are or were connected with, Farm Credit System institutions, such as directors, officers, employees, borrowers, shareholders, and agents, who have been named in criminal referrals, investigatory records or administrative enforcement orders or agreements.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may contain: Inter-agency or intra-agency correspondence or memoranda; criminal referral reports; newspaper clippings; Federal, State, or local criminal law enforcement agency investigatory reports, indictments, and/or arrest or conviction information; and administrative enforcement orders or agreements.

Records contained in this system (e.g., criminal law investigation reports prepared by the Federal Bureau of Investigation, Secret Service, and other Federal law enforcement agencies) may be the property of other agencies. Upon receipt of a request for such records, FCA will immediately notify the proprietary agency of the request and ask how to process the request for access. FCA may forward the request to the proprietary agency for processing in accordance with that agency's regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records to track the progress of criminal

referrals through the justice system, to notify FCA examiners and Farm Credit System institutions of criminal referrals, and to issue notices/orders of prohibition.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We may disclose information in this system of records to any financial institution, agency, authority, or other entity affected by the enforcement activities that reported the criminal activities or that regulates or supervises the financial institution.

Additional routine uses are listed in the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders and on a computerized database.

RETRIEVABILITY:

We retrieve records by name or by chronological number assigned in order of receipt.

SAFEGUARDS:

We maintain records in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

Records are destroyed 20 years after action is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel, Legal Counsel Division, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURES:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

Farm Credit System institutions; Federal financial regulatory agencies; newspapers; and criminal law enforcement investigatory and prosecutorial authorities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is subject to a specific exemption, 5 U.S.C. 552a(k)(2), to the extent investigatory material is compiled for law enforcement purposes. Federal criminal law enforcement investigatory reports maintained as part of this system may be subject to exemptions imposed by the originating agency under 5 U.S.C. 552a(j)(2).

FCA–11

SYSTEM NAME:

Litigation and Administrative Adjudication Files—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties involved in litigation or administrative adjudication with the FCA or litigation in which the FCA has an interest, including: (a) Administrative proceedings before the FCA (e.g., personnel actions, whistleblower cases), (b) Federal court cases when FCA is a party, (c) litigation when FCA is participating as an amicus curiae, (d) a claim and/or subsequent litigation under the Federal Tort Claims Act, and (e) other cases involving issues of concern to FCA, including those brought by other law enforcement agencies, Federal financial regulatory agencies, and private parties.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may contain: Papers comprising or included in the case record, such as briefs, affidavits, reports of investigation; other correspondence related to the action; internal memoranda and other documents pertaining to the action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252; 44 U.S.C. 3101.

PURPOSE(S):

We use information in this system of records to track litigation matters and to draft legal opinions and litigation reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders and on a computerized database.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

In accordance with retention schedules approved by NARA.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Address all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit System Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Address requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

Person to whom the record applies, FCA employees, witnesses, U.S. Attorneys, U.S. District Courts, parties to the proceedings, or other Federal, State, or local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–12

SYSTEM NAME:

Health and Life Insurance Records—FCA

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees and their dependents who are enrolled in the Agency-sponsored health and/or life insurance.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains enrollment information for health and/or life insurance, including information on earnings, number and name of dependents, sex, birth date, home address, and social security number. It may also contain information pertaining to claims for benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records to track premium payments and to pay claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records may be disclosed:

(1) To the health or life insurance carrier in support of a claim for insurance benefits, (2) to vendors, carriers, or other appropriate third parties to verify, confirm, or substantiate audits or investigations, and (3) to vendors, carriers, or other appropriate third parties to obtain competitive bids.

Additional routine uses are listed in the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours.

RETENTION AND DISPOSAL:

In accordance with NARA General Records Schedule requirements.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human and Administrative Resources Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit System Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

FCA employee enrolled in the Agency-sponsored health and/or life insurance or the insurance company.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–13

SYSTEM NAME:

Correspondence files—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090 and field offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees and correspondents.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains incoming and outgoing correspondence and internal reports and memoranda, which are part of a general correspondence file maintained by the office involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records to track incoming and outgoing correspondence and to draft correspondence and other memoranda.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See ''General Statement of Routine Uses.''

DISCLOSURE TO COMSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders and on a computerized database.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

In accordance with NARA General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Executive Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090

NOTIFICATION PROCEDURES:

Direct inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORDS PROCEDURES:

Direct requests for amendments to a records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR Part 603.

RECORD SOURCE CATEGORIES:

Persons corresponding with FCA and correspondence and memoranda prepared by FCA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA–14

SYSTEM NAME:

Employee Travel Records—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FCA employees who travel on official FCA business.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the employee's name, address, destination, itinerary, mode and purpose of travel. It includes travel authorizations, travel vouchers, receipts, dates, expenses, amounts advanced, amounts claimed, amounts reimbursed, and other records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records to ensure the proper payment of travel claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See ''General Statement of Routine Uses.''

DISCLOSURE TO COMSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders and on a computerized database.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

In accordance with NARA General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Executive Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090

NOTIFICATION PROCEDURES:

Direct inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORDS PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

FCA employee that is the subject of the record and service providers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA—15

SYSTEM NAME:

Employee Training—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former FCA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the educational history and progression of FCA employees while employed by FCA, including employee's schools of attendance, courses completed or enrolled in, dates of attendance, tuition fees and expenses, and per diem and travel expenses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records to track an employee's professional training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders and on a computerized database.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

In accordance with NARA General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Executive Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURES:

Address all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORDS PROCEDURES:

Direct requests for amendments to a records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

FCA employee that is the subject of the record and the training institution where the employee enrolled.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FCA—16

SYSTEM NAME:

Examiner Training and Education Records—FCA

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former FCA precommissioned and commissioned examiners.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the educational history and progression of FCA precommissioned examiners, including the skills inventory form, training program record, formal training record, and results of commissioning test.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSE(S):

We use information in this system of records to track precommissioned examiners' training and progression.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We maintain records in file folders and on a computerized database.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain file folders in a cabinet in an area that is secured after business hours. Only authorized personnel have access to the computerized database.

RETENTION AND DISPOSAL:

In accordance with NARA records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Executive Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURES:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORDS PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

FCA examiner that is the subject of the record, the examiner's supervisor, and members of the examiner's supervision panel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix A—Farm Credit Administration Field Offices

McLean Field Office, 1501 Farm Credit Drive, McLean, VA 22102–5090
Dallas Field Office, 511 East Carpenter Freeway, Suite 650, Irving, TX 75062–3930
Denver Field Office, 3131 South Vaughn Way, Suite 250, Aurora, CO 80014–3507
Sacramento Field Office, 2180 Harvard Street, Suite 300, Sacramento, CA 95815
Bloomington Field Office, 2850 Metro Drive, Suite 729, Bloomington, MN 55425–1415

Dated: May 19, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–12995 Filed 5–24–99; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

May 14, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 26, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0890.

Title: Wireless Telecommunications Bureau Waives Limitations on Payments in Settlement Agreements Among Parties in Contested Licensing Cases, Public Notice, DA 99–745, released April 16, 1999.

Form Number: N/A.

Type of Review: New collection.

Respondents: Individuals and Households, Business or other for-profit.

Number of Respondents: 1,024.

Estimated Time per Response: 1 hour.

Frequency of Responses: On occasion, reporting requirements.

Total Annual Burden: 1,024 hours.

Total Annual Costs: $95,260.

Needs and Uses: The information will be used to determine whether settlement agreements are properly administered and to ensure that the grant or denial of these agreements are completed in accordance with the Commission's rules and are in the public interest. Any information provided by parties under this collection will be made available to the public for inspection. The public notice allows parties to redact certain business confidential information, such as the amount of consideration, promised, paid or received.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–13100 Filed 5–24–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

May 20, 1999.

FCC To Hold Open Commission Meeting Thursday, May 27, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 27, 1999, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	COMMON CARRIER ..	TITLE: Federal-State Joint Board on Universal Service (CC Docket No. 96–45). SUMMARY: The Commission will consider a Twelfth Order on Reconsideration and Sixth Report and Order concerning the funding level for year two of the schools and libraries and rural health care support mechanisms.
2	COMMON CARRIER ..	TITLE: Federal-State Joint Board on Universal Service (CC Docket No. 96–45); and Access Charge Reform (CC Docket No. 96–262). SUMMARY: The Commission will consider a Seventh Report and Order and Thirteenth Order on Reconsideration (CC Docket No. 96–45); Fourth Report and Order (CC Docket No. 96–262); and a Further Notice of Proposed Rulemaking to implement recommendations of the Federal-State Joint Board on Universal Service relating to high-cost support for non-rural carriers.
3	COMMON CARRIER ..	TITLE: Federal-State Joint Board on Universal Service (CC Docket No. 96–45); and Forward-Looking Mechanism for High Cost Support for Non-Rural LECs (CC Docket No. 97–160). SUMMARY: The Commission will consider a Further Notice of Proposed Rulemaking concerning input values for the forward-looking economic cost model that will be used to determine high cost support for non-rural LECs.
4	COMMON CARRIER ..	TITLE: Numbering Resource Optimization; Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission's Rule Prohibiting Technology-Specific or Service-Specific Area Code Overlays (RM–9258); Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology Specific Overlay in the 508, 617, 781, and 978 Area Codes (NSD File No. L–99–17); and California Public Utilities Commission and the People of the State of California Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code (NSD File No. L–99–36). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking to increase the efficiency with which telecommunications carriers use telephone numbering resources.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 99–13428 Filed 5–21–99; 3:42 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Certified Statement for Semiannual Deposit Insurance Assessment.''

DATES: Comments must be submitted on or before July 26, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to ''Certified Statement for Semiannual Deposit Insurance Assessment.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Certified Statement for Semiannual Deposit Insurance Assessment.

OMB Number: 3064–0057.

Frequency of Response: Semiannual.

Affected Public: All insured institutions that file certified statements with the FDIC.

Estimated Number of Respondents: 21,000.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden: 5,250 hours.

General Description of Collection: Certified statements are prepared and submitted semiannually to report and certify deposit liabilities and to compute

the assessment payment due for deposit insurance protection.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the 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 the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 20th day of May 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary,

[FR Doc. 99–13148 Filed 5–24–99; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Friday, August 6, 1999 at 9:00 a.m. Saturday, August 7, 1999 a.m.

PLACE: The Westin Hotel, 909 North Michigan Avenue, Chicago, IL 60611.

NAME: Federal Election Commission Election Administration Advisory Panel.

STATUS: The Advisory Panel Meeting is Open to the public, dependent on available space.

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I) and Office of Management and Budget Circular A–63, as revised, the Federal Election Commission announces the 1999 Advisory Panel meeting.

ITEMS TO BE DISCUSSED: The FEC's 1999 Report to Congress on the NVRA, U.S. Motor Voter Law vs. Canadian National Register of Elections, Accessibility in the Voting Process, Biometrics and its Relationship to Voting on the Internet, The Year 2000 Census Report, Election Case Law Update, Recent Developments in Contested Elections, the FEC Voting Systems Standards Project.

PURPOSE OF THE MEETING: The Panel will present their views on problems in the administration of Federal elections, and formulate recommendations to the Federal Election Commission Office of Election Administration for its future program development.

Any member of the public may file a written statement with the Panel before, during, or after the meeting. To the extent that time permits, Panel Chair may allow public presentation or oral statements at the meeting.

PERSON TO CONTACT FOR INFORMATION: Ms. Penelope Bonsall, Director, Office of Election Administration, Telephone: (202) 694–1095.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–13343 Filed 5–21–99; 1:07 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Forum on Successful Mortgage Lending Practices in Indian Country

AGENCY: Federal Housing Finance Board.

ACTION: Notice of forum.

SUMMARY: The Federal Housing Finance Board (Finance Board) is hereby announcing a Forum on Successful Mortgage Lending Practices in Indian Country.

DATES: The forum will be held on May 27, 1999 beginning at 9:30 a.m.

ADDRESSES: The forum will be held at the Office of Thrift Supervision Amphitheater, 1700 G Street, N.W., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Roberta Youmans, Program Analyst, Community Investment Division, at (202) 408–2581, or Naomi Salus, Director, Office of Public Affairs at (202) 408–2957, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: There is a well-established need for housing and particularly homeownership among Native Americans. Between 1992 and 1996, only 91 conventional loans were closed on trust lands, and 80 of those were made to the members of two tribes. The absence of a private lending and real estate market has taken a toll on many Indian communities. Forty percent of housing in tribal areas lacks basic amenities like indoor plumbing and bathrooms. Twenty-one percent of reservation housing is overcrowded—a rate nearly ten times larger than that for the United States generally.

The forum will focus on success stories: solutions to critical problems that have prevented homeownership. Tribal housing directors, tribal families and bankers will share information on how to join together to achieve homeownership.

One outcome is for tribes to begin using funds more creatively and lenders to start to recognize the market potential of lending in Indian country.

The Native American Housing and Self-Determination Act of 1996 represented a watershed by replacing traditional government housing programs with block grants. But to move Indian Country's housing into the 21st century, policy makers and industry professionals must encourage and help replicate successful initiatives.

The Finance Board is co-sponsoring the forum with the National American Indian Housing Council (NAIHC). Through research, training and technical assistance, NAIHC encourages the development of greater housing and homeownership opportunities for Native Americans. Through its Mortgage Partnership Program it also assists financial institutions in providing greater lending on reservations through educational forums and direct means.

Forum moderators are: Bruce Morrison, Chairman, Federal Housing Finance Board; J. Timothy O'Neill, Director, Federal Housing Finance Board; Chester Carl, Chairman, National American Indian Housing Council and Executive Director, Navajo Housing Authority; John Williamson, Vice Chairman, National American Indian Housing Council and Executive Director, Lower Elwha Housing Authority; Jacqueline Johnson, Deputy Assistant Secretary, Office of Native American Programs, United States Department of Housing and Urban Development; and Christopher D. Boesen, Executive Director, National American Indian Housing Council.

By the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–13147 Filed 5–24–99; 8:45 am]

BILLING CODE 6725–01–U

FEDERAL RESERVE SYSTEM

Notice of Proposal to Organize an Edge Corporation

An application has been submitted for the Board's approval of the organization

of a corporation to do business under Section 25A of the Federal Reserve Act (Edge Corporation) 12 U.S.C. 611 et seq. The factors to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.4).

The application may be inspected at the Federal Reserve Bank of Chicago or at the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Comments regarding the application must be receive by the Reserve Bank indicated or at the offices of the Board of Governors no later than June 18, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. European American Bank, Uniondale, New York; to establish EAB International, Inc., Uniondale, New York, which will acquire EAB Interim Proprietary Investment Company, Chicago, Illinois, and establish EAB Proprietary Investment Company II, Chicago, Illinois, EAB Proprietary Investment Company III, Chicago, Illinois, DIMP I C.V., Chicago, Illinois, and DIMP II C.V., Chicago, Illinois, and thereby engage in managing and investing the investment portfolio of European American Bank, pursuant to section 25A of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, May 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13242 Filed 5-24-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, June 1, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–13430 Filed 5–21–99; 3:46 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99094]

Community Coalition Development Projects for African American Communities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds to support African American community coalitions to plan and develop linked networks of HIV, STD, TB, substance abuse and primary care services within their respective communities. This program addresses the ''Healthy People 2000'' priority area(s) of Educational and Community-Based Programs, HIV Infection, and Sexually Transmitted Diseases. The purpose of this program is to improve the health status of African American communities disproportionately affected by HIV, STDs, TB, and substance abuse. Specific goals of the program are to increase access to health services by: (1) Using community coalitions to develop linked networks of HIV, STD, TB, and substance abuse prevention, treatment, and care services for African American communities disproportionately affected by HIV/AIDS for which gaps in services and funding exist; and (2) strengthening existing linkages among local prevention, treatment, and care providers to better serve these communities. (Please refer to Appendix A for background information relevant to this program announcement. Also, refer to Section J, Where to Obtain Additional Information, for dates and times of audio-conferences.)

B. Eligible Applicants

Eligible applicants (identified here as lead organizations) are non-profit organizations that develop coalitions to design plans for building and strengthening linkages among HIV, STD, TB, and substance abuse prevention, treatment, care services and other health and social service programs in specifically defined African American communities at high risk for these conditions. For the purposes of this announcement, the term ''community'' refers to a specific area within which the lead organization and its partners will focus their efforts. This area must be defined as one or more contiguous neighborhoods, school districts, zip codes, or census tracts.

Lead organizations must meet the following criteria:

1. Must be a local, nonprofit health, social service, or voluntary organization that has been granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code, as evidenced by an Internal Revenue Service (IRS) determination letter. Examples of these organizations include, but are not limited to, neighborhood or community health centers, community-based organizations, reproductive health centers, and substance abuse treatment programs.

2. Must have or develop a board, governing body, or advisory group in which greater than 50% of the members are of the African American population(s) to be served. This body must also include, or demonstrate ability to obtain input and representation from, community members at high risk for HIV, STDs, TB, and substance abuse. (Examples of persons at high risk include, men who have sex with men, youth at risk, women at risk, transgender populations, injecting and other drug users).

3. Must have greater than 50% of key staff positions, including management, supervisory, administrative, and service positions, filled by African Americans.

4. Must have an established record of providing services to African Americans. An established record is defined as a minimum of three years serving the target community. Acceptable documentation includes letters of support, client satisfaction surveys, and memoranda of agreement.

5. Applications under this announcement will be categorized into two mutually exclusive groups: (a) Organizations that must be located and provide services in the following high AIDS prevalence metropolitan statistical areas (MSAs) [1] with more than 1000 estimated African Americans living with AIDS at the end of 1997 [2] or (b) organizations that are located or provide services in the following areas, with high rates of syphilis in 1997.

a. Lead organizations in category (a) must be located and provide services in one of the following high AIDS prevalence MSAs: Atlanta, GA; Baltimore, MD; Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH; Chicago, IL; Dallas, TX; Detroit, MI; Fort Lauderdale, FL; Houston, TX; Jacksonville, FL; Los Angeles-Long Beach, CA; Miami, FL; Newark, NJ; New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT; New Orleans, LA; New York City, NY; Oakland, CA; Philadelphia, PA–NJ; San Francisco, CA; Washington, DC–MD–VA–WV; and West Palm Beach-Boca Raton, FL. (Please see Appendix B for a complete listing of counties included in each MSA.)

b. Lead organizations in category (b) must be located or provide services in the following high syphilis areas: Cumberland, NC; Cuyahoga, OH; Davidson, TN; Forsyth, NC; Franklin, OH; Fresno, CA; Guilford, NC; Hinds, MS; Jefferson, AL; Jefferson, KY; Maricopa, AZ; Marion, IN; Milwaukee, WI; Oklahoma, OK; Shelby, TN; and Tuscaloosa, AL. The independent city is St. Louis, MO.

Only organizations located in the aforementioned list of high HIV prevalence MSAs or located or providing services in the high syphilis areas are eligible to apply.

6. Local affiliates, chapters, or programs of national and regional organizations are eligible to apply. The local affiliate, chapter, or program applying must meet criteria one through five above.

7. Governmental or municipal agencies or their affiliate organizations (for example, health departments, school boards, public hospitals) are not eligible for funding as a lead organization. However, local health departments must be part of the coalition.

[1] OMB Bulletin 98–06 available at http://www.census.gov/population/www/estimates/metrodef.html.

[2] HIV/AIDS Surveillance Supplemental Reports: Characteristics of Persons Living with AIDS at the End of 1997. Volume 5, Number 1 available at http://www.cdc.gov/nchstp/hiv_aids/stats/hasrsupp.htm.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

The program will be conducted in two phases: During Phase 1 (years 1 and 2), approximately 20 lead organizations will be funded to develop, coordinate, and participate in coalitions to plan and design linked networks of services in their respective communities. During Phase 2 (years 3 through 5) three to five of the Phase 1 grantees may receive continuation awards to fully implement their plans.

1. Phase 1 (Years 1 and 2): Approximately $3.6 million is available in FY 1999 to fund approximately 20 projects for Phase 1 activities. Phase 1 awards will be made for a 12-month budget period within a project period of two years and will begin on or about September 30, 1999.

a. Approximately $2.8 million will be available to fund approximately 15 projects in the high prevalence MSAs listed above. It is estimated that the average award will be $186,667, ranging from $80,000 to $300,000.

b. Approximately $800,000 will be available in FY 1999 to fund approximately five projects in the high syphilis counties and city listed above. It is estimated that the average award will be $160,000, ranging from $50,000 to $200,000.

For Phase 1, applications for more than $400,000 (including indirect costs) in the high AIDS prevalence MSAs or more than $200,000 (including indirect costs) in the high syphilis areas will be deemed ineligible and will not be accepted by CDC.

Continuation awards within an approved project period will be made on the basis of availability of funds and the applicant's satisfactory progress toward achieving objectives. Satisfactory progress toward achieving objectives will be determined by progress reports and site visits conducted by CDC representatives. Proof of continued eligibility is required with noncompeting continuation applications.

2. Phase 2 (Years 3 through 5): Approximately $3.6 million is expected to be available to fund three to five of the Phase 1 grantees for Phase 2. Phase 2 awards will be made for a 12-month budget period within a project period of up to three years. Selection of Phase 2 grantees will be competitive and based on the extent and quality of progress in the planning and development phase, including breadth of inclusion of the target population and the soundness of the plan and proposed mechanisms for implementation.

Funding estimates may change based on the availability of funds.

Note: Funds to support CBOs to provide HIV prevention services to African American communities are also available under three other CDC program announcements: Program Announcement 99091—Community-Based HIV Prevention Services and Capacity-Building Assistance to Organizations Serving Gay Men of Color at Risk for HIV Infection, Program Announcement 99092—Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects for African Americans, and Program Announcement 99096—HIV Prevention Projects for African-American Faith-Based Organizations.

Use of Funds

Funds available under this announcement must support activities directly related to primary HIV prevention and prevention of other STDs, TB, and substance abuse. No funds will be provided for direct patient medical care (including substance abuse treatment, medical treatment, or medications or research).

These funds may not be used to supplant or duplicate existing funding. In the absence of an indirect rate agreement, a maximum of 5% will be awarded for the salary of the Executive Director. If the organization has an indirect rate that includes the Executive Director's salary, no additional funds will be provided. Funds will not be provided for the salary of an Executive Director that is also a member of the Organization's Board of Directors.

Note: If indirect costs are requested, you must provide a copy of your organization's current negotiated Federal indirect cost rate agreement.

Although applicants may contract with other organizations to conduct activities under these cooperative agreements, applicants must perform a substantial portion of the activities for which funds are requested. Applications requesting funds to support only administrative and managerial functions will not be accepted.

Funding Preferences

In making awards for Phase 1, priority will be given to assuring:

Geographic distribution across the eligible areas, consistent with AIDS morbidity in African Americans.

Interested persons are invited to comment on the proposed funding priority. All comments received within 30 days after publication in the **Federal Register** will be considered before the

final funding priority is established. If the funding priority changes because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Address comments to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for activities listed under 2. (CDC Activities).

1. Recipient Activities:

a. During Phase 1, the recipient (the lead organization) must:

(1) Commit to this project a full-time position with the responsibility, authority, professional training, and experience needed to lead and coordinate program activities of the coalition;

(2) Develop a coalition including representatives from local service providers and affected community members to design and develop a plan for a linked network of services. The coalition must include at least four organizations and agencies and must include local health departments that serve the target community;

(3) Identify key community leaders and opinion leaders and engage them as part of the coalition process;

(4) Establish and clearly document linkages with local HIV prevention community planning groups, Ryan White CARE Act planning councils and the State and local health departments;

(5) Establish linkages with existing local and community-based organizations that provide services to prevent and treat HIV/AIDS, STDs, TB, and substance abuse. This must include close linkages with local health departments. The applicant should also consider including public hospitals, neighborhood health clinics, mental health clinics, managed care entities that provide services to Medicaid beneficiaries, WIC programs, maternal and child health programs, prenatal care providers, family planning clinics and social service agencies;

(6) Develop a community needs assessment for the target area. This should include (a) reviewing epidemiological and other data, (b) reviewing the relevant State and local HIV prevention comprehensive plans and other relevant planning documents, and (c) conducting an analysis of community assets and service gaps;

(7) Develop a detailed plan for creating and maintaining a linked network of services for the targeted community, based on the community needs assessment. This network should include, but not be limited to, HIV, STD, TB, and substance abuse prevention, treatment, and care services; mental health services; primary care services; social services; and family planning services. The plan must describe in detail all linkages that will exist within the network. These linkages should include development of formal memoranda of agreement, referral tracking mechanisms, and mechanisms to ensure appropriate routine sharing of data and programmatic information. The mechanisms must specify the role and resources that each coalition member will bring to the project, state the terms of the agreement, and state the duration of the agreement as confirmed by agreements signed by the applicant and each coalition member. The documents must be signed by individuals with the authority to represent the organization (for example, president, chief executive officer, or executive director). The strengthened linkages should result in increasing and assuring access to and quality of services for the targeted community; and

(8) Begin to implement the plan for the linked network of services.

b. During Phase 2, the recipient must:

(1) Coordinate and participate in full implementation of the plan;

(2) Serve as liaison among members of the coalition to provide management oversight, facilitate program implementation and operations, and maintain effective working relationships; and

(3) Conduct an evaluation of system outcomes using both quantitative and qualitative data, for example, an assessment of changes in access to care as a result of the coalition.

c. During both Phase 1 and Phase 2, the recipient must:

(1) Coordinate program activities with relevant national, regional, State, and local HIV prevention programs in the target community to prevent duplication of efforts;

(2) Participate in the HIV prevention community planning process. Participation may include involvement in workshops; attending meetings; if nominated and selected, serving as a member of the group; reporting on program activities; or reviewing and commenting on the comprehensive HIV prevention plan;

(3) Participate with CDC in monitoring and evaluating all activities supported with CDC HIV prevention funds under this cooperative agreement;

(4) Compile and facilitate the dissemination of lessons learned from the project to share with other organizations, communities, and CDC;

(5) Develop a plan for obtaining additional resources from non-Federal sources to supplement the project conducted through this cooperative agreement and to enhance the likelihood of its continuation after the end of the project period;

(6) Participate in at least one CDC sponsored meeting of funded agencies;

(7) Adhere to CDC policies for securing approval for CDC sponsorship of conferences; and

(8) Before using funds awarded through this cooperative agreement to develop HIV prevention materials, recipients must check with the CDC National Prevention Information Network (NPIN) to determine if suitable materials are already available. Also, materials developed by recipients must be made available for dissemination through the CDC NPIN.

NPIN maintains a collection of HIV, STD and TB resources for use by organizations and the public. Successful applicants may be contacted by NPIN to obtain information on program resources for use in referrals and resource directories. Also, grantees should send three copies of all educational materials and resources developed under this grant for inclusion in NPIN's databases.

NPIN also makes available information and technical assistance services for use in program planning and evaluation. For further information on NPIN services and resources, contact NPIN at 1–800–458–5231 (TTY users: 1–800–243–7012). NPIN's web site is www.cdcnpin.org; the fax number is 1–888–282–7681.

2. CDC Activities:

CDC will conduct the following activities:

(1) Coordinate a national capacity building and technology transfer network;

(2) Provide the recipients with consultation and technical assistance in planning, developing, operating and evaluating activities required by community coalitions to develop linked networks of services. CDC may provide consultation and technical assistance both directly from CDC and indirectly through prevention partners, such as health departments, national and regional minority partners (NRMOs), contractors, and other national or international organizations;

(3) Provide up-to-date scientific information on the risk factors for HIV infection, prevention measures, and

program strategies for prevention of HIV infection;

(4) Assist recipients in collaborating with State and local health departments, HIV prevention community planning groups, community based organizations (CBOs) that receive direct funding from CDC, and other federally-supported HIV/AIDS, STD, TB, and substance abuse prevention, treatment and care recipients;

(5) Assist recipients in design and implementation of program activities, including provision of evaluation forms, if appropriate;

(6) Monitor recipient performance of program activities, protection of client confidentiality, and compliance with other requirements;

(7) Facilitate the transfer of successful prevention interventions, program models, and ''lessons learned'' through convening meetings of grantees, workshops, conferences, newsletters, use of the Internet, and communications with project officers. Also facilitate exchange of program information and technical assistance among community organizations, health departments, and national and regional organizations; and

(8) Conduct an overall evaluation of the program to determine the effectiveness of the collaborations in developing linked service networks.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation criteria sections to develop the application content. Your application will be evaluated on the criteria listed in Section G, ''Application Evaluation Criteria,'' so it is important to follow the format provided below in laying out your program proposal. The narrative should be no more than 40 pages single-spaced pages (excluding budget and attachments), printed on one side and no less than 12 point font. Applications that fail to completely address Abstract requirements 1 a-c as listed in the instructions below or applications exceeding 40 pages will not be reviewed.

Number each page clearly, and provide a complete index to the application and its appendices. Please begin each separate section of the application on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All material must be typewritten, single spaced, with unreduced type on 8½'' by 11'' paper, with at least 1'' margins, headings and footers, and printed on one side only. Materials which should be part of the basic application format will not be accepted if placed in the appendices.

In developing the application, follow the format and instructions below.

Format

1. Abstract.
2. Assessment of Need and Justification for Proposed Activities.
3. Long-term Goals.
4. Existing Collaboration Activities of the Organization.
5. Organizational History and Capacity.
6. Program Proposal.
a. Objectives.
b. Plan of Operation.
c. Timeline.
d. Evaluation Plan.
7. Program Management and Staffing Plan.
8. Communications/Dissemination Plan.
9. Evidence of Support from the Target Community.
10. Plan for Acquiring Additional Resources.
11. Budget Breakdown and Justification.
12. Training and Technical Assistance Plan.
13. Attachments.

Instructions

1. Abstract (not to exceed 3 pages).

Summarize your proposed program activities. Each item must be included as follows:

a. Brief, clear, concise summary that establishes the eligibility of your organization as the ''lead'' organization by responding to each criterion in the Eligible Applicant section;

b. A summary of the following:

(1) The proposed composition of the coalition;

(2) The applicant's capabilities;

(3) Characteristics of the target community and why the community was selected;

(4) The HIV, STD, TB and substance abuse problems and gaps in existing services;

(5) The preliminary goals and objectives of your project;

(6) Proposed roles and responsibilities of partner organizations; and

(7) Proposed total cost of the program during the first year. Include any other funding sources which will support this project.

c. Estimate the amount of time needed for the planning and designing phase and include a brief summary of proposed future years.

2. Assessment of Need and Justification for Proposed Activities (not to exceed 3 pages).

Describe the following:

a. The target community to be served including geographic boundaries (for example, contiguous neighborhoods, zip codes, school districts, census tracts, etc.) and the criteria and approach used in identifying geographic boundaries. The description should also include the social, economic, and demographic characteristics of the target community;

b. Describe environmental, social, cultural, or linguistic characteristics of the community that you have targeted;

c. Describe the impact of HIV, STD, TB and substance abuse in the community;

d. Describe the HIV, STD, TB and substance abuse prevention, treatment, and care services currently available in your community; and

e. Clearly identify how community members are being disproportionately affected, the gap between the identified needs and the resources available, and how needs will be addressed by your proposed program.

3. Long-term Goals (not to exceed 1 page). Describe the goals your proposed program plans to achieve over the 5-year project period.

4. Existing Collaboration Activities of the Organization (not to exceed 3 pages).

a. Describe at least one existing coalition or collaborative activity, not limited to HIV, in which your agency has led or participated. Include a summary of the collaboration, its purpose, activities and accomplishments. Attach memoranda of agreement from current coalition members and/or collaborators that describe existing relationships and specifies the length of their involvement and contributions.

If there are no memoranda of agreement, list and describe the organizations and entities that have participated in the coalition and/or collaborative activities. Include a description of existing relationships, length of involvement and contributions.

b. Describe your experience in collaborating with governmental and non-governmental organizations, including national agencies or organizations, State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV, TB, STD or substance abuse prevention, treatment and care services.

5. Organizational History and Capacity (not to exceed 3 pages).

a. Organizational Structure: Describe your existing organizational structure, including constituent or affiliate organizations or networks, how the organizational structure will support the proposed program activities, and your ability to provide services for the targeted community.

b. Cultural Competence: Describe your capacity to provide culturally competent and appropriate services that respond effectively to the cultural, gender, environmental, social, and multilingual character of the target populations, including any history of providing such services.

6. Program Proposal (not to exceed 15 pages). Based on the ''Recipient Activities'' listed in Section D, ''Program Requirements,'' describe the following:

a. Objectives: Describe Phase 1 objectives that are specific, measurable, time phased, realistic, and related to the proposed goals. The objectives should cover the length of time necessary to plan and design a linked network of services (up to 2 years). Describe how these objectives relate to the program's goals. Describe possible barriers to or facilitators for reaching these objectives. The Recipient Activities should be the basis for the objectives;

b. Plan of Operation: Describe in detail the methods (that is, strategies and activities) you will use to achieve the proposed goals and objectives and to meet the required recipient activities. Make certain that your proposal addresses all required recipient activities. If some activities will be done by subcontractors or collaborating institutions or organizations (governmental or non-governmental), describe the respective roles and responsibilities of your organization and those of each collaborating entity in performing the proposed activities. Describe how you will market and promote your program in the community. Include, as attachments, memoranda of understanding or agreement as evidence of these established or agreed-upon collaborative relationships. Describe the respective roles and responsibilities of each collaborating entity in developing and implementing the program. Specify any and all organizations and agencies with which you will establish linkages and coordinate activities, and describe the activities that will be coordinated with each listed organization. These may include, as appropriate, the following:

(1) Community groups and organizations, including churches and religious groups;

(2) HIV/AIDS service organizations;

(3) Ryan White CARE Title I and Title II planning bodies;

(4) Schools, boards of education, and other State or local education agencies;

(5) State and local substance abuse agencies, community-based and other drug treatment or detoxification programs;

(6) Federally funded community projects, such as those funded by the Substance Abuse and Mental Health Services Administrations' (SAMSHA) Center for Substance Abuse Treatment (CSAT) and Center for Substance Abuse Prevention (CSAP), the Health and Human Services' Health Resource Services Administration (HRSA), Office of Minority Health (OMH), and other Federal entities;

(7) Providers of services to youth in high risk situations (e.g., youth in shelters);

(8) State or local departments of mental health;

(9) Juvenile and adult criminal justice, correctional, or parole systems and programs;

(10) Family planning and women's health agencies;

(11) STD and TB clinics and programs; and

(12) Medicaid managed care providers.

c. Timeline: Provide a time line that indicates the approximate dates by which activities will be accomplished.

d. Evaluation Plan: Provide an evaluation plan which describes how progress in meeting objectives will be monitored.

7. Program Management and Staffing Plan (not to exceed 5 pages).

a. Describe how the proposed program will be managed and staffed, including the location of the program within your organization. Describe in detail each existing or proposed position by job title, function, general duties, and activities. Include the level of effort and allocation of time for each project activity by staff position, job title, function, general duties and activities, and annual salary/rate of pay.

b. If the identity of any key personnel who will fill a position is known, provide their curriculum vitae (not to exceed two pages per person) as an attachment. Note experience and training related to the proposed project.

c. Provide an organizational chart that identifies lines of communication, accountability, reporting, and authority.

8. Communication and Dissemination Plan: (not to exceed 1 page).

Describe how you will share successful approaches and ''lessons learned'' with other organizations.

9. Evidence of Support from the Target Community (not to exceed 2 pages).

List and describe the organizations with which you propose to collaborate and provide any other evidence of support for the proposed coalition. Include as attachments, letters of support from community members and agencies, including the county, city, and State health departments that serve the targeted community. Form letters will not be accepted as evidence of support.

10. Plan for Acquiring Additional Resources: (not to exceed 1 page). Describe your plan for obtaining additional resources from other (non-Federal) sources to supplement the program conducted through this cooperative agreement and to increase the likelihood of its continuation after the end of the project period.

11. Budget Breakdown and Justification: Provide a detailed budget with accompanying justification of all operating expenses that is consistent with the stated objectives and activities. Be precise about the program purpose of each budget item and itemize calculations where possible.

In the personnel section, specify the job title, annual salary/rate of pay, and percentage of time spent on this program.

For contracts, applicants should name the contractor, if known; describe the services to be performed which justifies the use of a contractor; provide a breakdown of and justification for the estimated costs of the contract; the period of performance; the method of selection; and method of monitoring the contract.

12. Training and Technical Assistance Plan: (not to exceed 2 pages). Describe areas in which you anticipate needing technical assistance in designing, implementing, and evaluating your program and how you will obtain this technical assistance. Describe anticipated staff training needs related to the proposed program and how these needs will be met. Describe areas in which you anticipate needing CDC's technical assistance in your program.

13. Attachments:

a. Proof of Eligibility.

Each applicant must provide documentation that they comply with all eligibility requirements specified under the ''Eligible Applicants'' section of this program announcement. Applicants should provide a separate section within this Attachments section that is entitled Proof of Eligibility to include the documents listed below. Failure to provide the required documentation will result in disqualification.

(1) A reference to your organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501 (c) (3) of the IRS Code, i.e., IRS determination letter.

(2) A list of the members of your organization's governing body along with their positions on the board, their expertise in working with or providing

services to the proposed target population, and their racial/ethnic backgrounds. (Submission of information regarding the HIV status or other confidential information regarding the board is optional, and must not be linked to a specific individual.)

(3) Documentation that your organization is located and provides services in one of the 20 eligible MSAs or is located or provides services in one of the eligible counties or independent city. This documentation could include letters of support, news articles, brochures or flyers, annual reports, memoranda of agreement, or client surveys.

(4) A Table of Organization of existing and proposed staff, including the board of directors, governing or advisory groups, volunteer staff, and their racial/ethnic backgrounds.

(5) Documentation that your organization has an established record of providing services to the target population for at least three years, and a description of the specific services that have been provided.

(6) Affiliates of national organizations must include with the application an original, signed letter from the chief executive officer of the national organization assuring their understanding of the intent of this program announcement and the responsibilities of recipients.

b. Other Attachments.

(1) Description of collaborating organizations or institutions and original, signed letters from the chief executive officers of each such organization or institution assuring their understanding of the intent of this program announcement, the proposed program, their role in the proposed program, and the responsibilities of recipients.

(2) A description of funds received from any source to conduct HIV/AIDS programs and other similar programs targeting the population proposed in the program plan. This summary must include: (a) The name of the sponsoring organization/source of income, amount of funding, a description of how the funds have been used, and the budget period; (b) a summary of the objectives and activities of the funded program(s); and (c) an assurance that the funds being requested will not duplicate or supplant funds received from any other Federal or non-Federal source. CDC awarded funds can be used to expand or enhance services supported with other Federal or non-Federal funds. In addition, identify proposed personnel devoted to this project who are supported by other funding sources and the activities they are supporting.

(3) Independent audit statements from a certified public accountant for the previous 2 years.

(4) A copy of your organization's current negotiated Federal indirect cost rate agreement, if applicable.

(5) Evidence of collaboration, or intent to collaborate, with State and local chapters, affiliates, organizations, or venues.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/. . . Forms, or in the application kit. On or before July 26, 1999, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Application Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Each organization may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all proposals will be deemed ineligible and returned without comment.

Evaluation Criteria

1. Abstract not scored. If abstract is missing, the application will be deemed ineligible and returned without comment.

2. Assessment of Need and Justification for Proposed Activities (Total: 20 Points). The extent to which the applicant soundly and convincingly documents the needs of the target community including the rationale for the criteria and approach used for identifying the target community.

3. Long-term Goals (Total 5 points). The quality of the applicant's stated long-term goals and the extent to which the goals are consistent with the purpose of the cooperative agreement, as described in this program announcement.

4. Existing Collaborative Activities of the Organization (Total 15 points).

a. Applicant's leadership capability as evidenced by history of building and participating in coalitions or collaborations.

b. The extent that the agency has experience in collaborating with governmental and non-governmental organizations, such as State and local health departments, community planning groups, and State and local non-governmental organizations that provide HIV, TB, STD or substance abuse prevention, treatment and care services.

5. Organizational History and Capacity (Total 10 points).

a. Applicant's capacity to conduct the proposed activities based on organizational structure and support and ability to provide services to the targeted community.

b. Applicant's capacity to provide services that are culturally competent and that respond effectively to the cultural, gender, environmental, social and multilingual character of the target audiences, including documentation of any history of providing such services.

6. Program Proposal (Total 25 points).

a. Objectives. The extent to which the proposed objectives are specific, realistic, time-phased, measurable, and consistent with the program's long-term goals and proposed activities.

b. Plan of operation.

(1) Overall quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed goals and objectives;

(2) The extent to which the applicant's plans address all the activities listed under Required Recipient Activities.

c. Timeline. The extent to which the applicant's proposed timeline is specific and realistic.

d. Plan of evaluation. The quality of the applicant's evaluation plan for monitoring the implementation of the proposed activities and measuring the achievement of program goals and objectives.

7. Program Management and Staffing Plan (Total 10 points). The extent to which the program management and staffing plan is appropriate and will be able to support the proposed program activities.

8. Communication and Dissemination Plan (Total 5 points). The quality of the applicant's plan for sharing lessons learned with other organizations

9. Evidence of Support from the Target Community (Total 10 points). The extent and appropriateness of the community, agencies and organizations providing evidence of their support for the project.

10. Plan for Acquiring Additional Resources (Not Scored). The quality of the applicant plan for obtaining additional resources from other (non-Federal) sources to supplement the proposed program.

11. Budget Breakdown and Justification (Not Scored). The extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of funds.

12. Training and Technical Assistance Plan (Not Scored). The quality of the applicant's plan for obtaining needed technical assistance and staff training to support the proposed project.

Before final award decisions are made, CDC will either make predecisional site visits to CBOs whose applications are highly ranked or review the items below with the local or State health department and applicant's board of directors.

a. The organizational and financial capability of the applicant to implement the proposed program.

b. The special programmatic conditions and technical assistance requirements of the applicant.

A business management and fiscal recipient capability assessment may be required of some applicants prior to the award of funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Progress reports quarterly, no more than 30 days after the end of each quarter;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317 (k)(2) of the Public Health Service Act (42 U.S.C. 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.939, HIV Prevention Activities—Nongovernmental Organization Based.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call NPIN at 1–800–458–5231 (TTY users: 1–800–243–7012); visit their web site: www.cdcnpin.org/program; send requests by fax to 1–888–282–7681 or send requests by e-mail: You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest (99094).

Pre-application Audio-conference Information.

May 27 (1:00—2:30 p.m. EDT)
June 1 (1:00—2:30 p.m. EDT)

The telephone number for all calls is: 800–713–1971 and the pass code (when asked by the automated voice) is 407763 and the name of the audio-conference (Coalition Development).

Prospective applicants are strongly encouraged to participate in one of the scheduled audio-conferences. These audio conferences will include information on the application and business management requirements, and how to access additional pre-application resources relevant to application development. Prospective applicants are strongly encouraged to read and become familiar with this program announcement before participating in the audio-conferences.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Kevin Moore or Sheri Disler, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone (770) 488–2720;
E-mail sjd9@cdc.gov
E-Mail kgm1@cdc.gov

See also the CDC home page on the Internet: http://www.cdc.gov

For program technical assistance, contact: Jessica Gardom, Dorothy Gunter, or Craig Studer, Community Assistance, Planning, and National Partnerships Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, M/S E–58, Atlanta, GA 30333, Telephone number (404) 639–5230.

Dated: May 19, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

Appendix A—Background

The HIV/AIDS epidemic constitutes a significant threat to the public health of the United States. Through June 1998, 665,357 cases of AIDS have been reported to CDC. The most recent estimate of HIV prevalence indicates that between 650,000 and 900,000 Americans are living with HIV. African Americans accounted for 47% of persons diagnosed with AIDS in 1997, the highest proportion thus far in the epidemic. They also accounted for a large proportion of HIV infection cases. Through June 1998, African Americans accounted for 52% of the total number of HIV infection cases reported from 31 states with confidential HIV infection reporting. While there has been a decline in incidence of AIDS as well as AIDS deaths in general, HIV prevalence among racial and ethnic minorities has remained at a high level.

Data suggest that other sexually transmitted diseases (STDs), tuberculosis, and substance use are also disproportionately impacting minority populations. The interconnectedness of these epidemics with HIV is illustrated by the following:

1. In 1997, of the total 19,851 tuberculosis cases, 6,610 were reported among African Americans. It is estimated that 10 to 15 percent of all TB cases and nearly 30 percent of cases among people ages 25–44 are occurring in HIV-infected individuals.

2. Even though there has been a decline in gonorrhea across all racial/ethnic groups, reported rates among African Americans remain more than 30 times higher than rates among whites. The gonorrhea rate among African Americans is 807.9 per 100,000, and among Hispanics it is 69.4 per 100,000. The rate for whites is 26 per 100,000.

3. Primary and secondary syphilis rates are 44 times higher among African Americans than among whites.

4. While there has been an increase in herpes infection among all racial/ethnic groups, herpes disproportionately affects African Americans (more than 45% of cases).

5. Biological and epidemiological evidence suggests that persons with STDs are more likely to acquire HIV; additionally, if a person is HIV infected and has an STD, the likelihood of transmission of HIV increases.

6. Racial and ethnic minority populations in the United States bear the heaviest burden of HIV disease related to drug injection. In 1997, IDU-associated AIDS cases made up 38% of all cases among African Americans, compared with 22% of all cases among whites.

Several factors may be influencing the disproportionate morbidity among minority populations, including: (1) Insufficient access to services by the population at risk; (2) a lack of culturally appropriate prevention services; (3) a lack of access among providers to the population at risk; (4) inadequate linkages among the services; and (5) insufficient follow-up of referral services provided by various agencies. The community coalition approach to health promotion and risk reduction, with its increased awareness and access to acceptable health care, can be effective in empowering grassroots leadership and organizations to decrease or eliminate many health disparities within the target population.

CDC, through this announcement, is seeking to promote the utilization of community coalitions to foster strong linkages between HIV, STD, TB, and substance abuse prevention, treatment and care and other health and social services in minority communities. It is hypothesized that the linkages fostered by these coalitions will also empower the community to address health problems in the context of related socio-economic issues.

Appendix B—Listing of Counties in each Eligible MSA—DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention
Program Announcement No. 99094
Community Coalition Development Projects for African American Communities

Atlanta, GA

Counties—Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton.

Baltimore, MD

Counties and city—Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore City.

Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH

Massachusetts counties—Bristol, Essex, Middlesex, Norfolk, Plymouth, Suffolk, Worcester.

New Hampshire counties—Rockingham, Hillsborough, Strafford.

Chicago, IL

Counties—Cook, DeKalb, DuPage, Grundy, Kane, Kendall, Lake, McHenry, Will.

Dallas, TX

Counties—Collin, Dallas, Denton, Ellis, Henderson, Hunt, Kaufman, Rockwall.

Detroit, MI

Counties—Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne.

Fort Lauderdale, FL

County—Broward.

Houston, TX

Counties—Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller.

Jacksonville, FL

Counties—Clay, Duval, Nassau, St. John's.

Los Angeles-Long Beach, CA

Counties—Los Angeles.

Miami, FL

County—Dade.

Newark, NJ

Counties—Essex, Morris, Sussex, Union, Warren.

New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT

Counties—Fairfield, New Haven.

New Orleans, LA

Parishes—Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany.

New York City, NY

Counties—Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, Westchester.

Oakland, CA

Counties—Alemeda, Contra Costa.

Philadelphia, PA–NJ

New Jersey counties—Burlington, Camden, Gloucester, Salem. Pennsylvania counties—Bucks, Chester, Delaware, Montgomery, Philadelphia.

San Francisco, CA

Counties—Marin, San Francisco, San Mateo.

Washington, DC–MD–VA–WV

District of Columbia.

Maryland counties and cities—Calvert, Charles, Frederick, Montgomery, Prince George's.

Virginia counties and cities—Arlington, Clarke, Culpeper, Fairfax, Fauquier, King George, Loudoun, Prince William, Spotsylvania, Stafford, Warren, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city.

West Virginia counties—Berkeley, Jefferson.

West Palm Beach-Boca Raton, FL

County—Palm Beach.

[FR Doc. 99–13139 Filed 5–24–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[Announcement Number 99067]

Cooperative Agreement for an Evaluation Research Study in the Area of Aggression and Interpersonal Youth Violence; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement to identify organizations to participate in a multiple site violence prevention evaluation study. This program addresses the ''Healthy People 2000'' priority area of Violent and Abusive Behavior. The purpose of this prevention study is to determine the effectiveness of a middle school-based, social cognitive intervention to reduce violence, and to determine the impact of including a community-based intervention that complements the school-based activities. CDC is seeking applicants interested in collaborating with other recipients funded under this announcement in the development and implementation of the violence prevention evaluation study.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State, local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $1,700,000 is available in FY 1999 to fund three awards. It is expected that the average award will be $565,000, ranging from $400,000 to $600,000. It is expected that the awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period up to four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Use of Funds

The initial budget period (Year 1) will serve as a planning year to prepare projects for institutional review, develop and plan the specific social-cognitive intervention to be implemented in the school setting and the specific community programming that will be used to complement the school-based efforts, develop the common protocol, determine which participants will serve as intervention and comparison groups, determine training needs and staffing requirements for implementation years, and develop instruments. Program implementation is expected to take place in Years 2 and 3. The final year of the project period will be utilized for data analysis, the writing of final reports, and dissemination activities.

2. Budgets

Budgets should include costs for travel for two project staff to attend three planning meetings (10/99, 2/00, and 6/00) in Atlanta with CDC staff and other cooperative agreement recipients.

D. Funding Preferences

Important considerations for funding under this announcement are a national geographic balance among the potential study sites. Priority will also be given to competing applications that demonstrate an existing collaboration in middle schools utilizing social cognitive interventions to reduce violence.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities):

1. Recipient Activities

a. Design and develop intervention components, data collection instruments, implementation and evaluation study protocols, and data management procedures.

b. Collaborate with other cooperative agreement recipients in the development and evaluation of intervention components, analysis of data, and dissemination of results.

c. Establish goals and realistic, measurable, and time-oriented objectives for all phases of the project.

d. Pilot test research instruments for data collection.

e. Recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocol and program requirements.

f. Collect and compile monitoring (process) and outcome data.

g. Pool data for analyses and publication and develop and analyze site-specific data.

h. Publish results in peer review journals or other appropriate distribution.

2. CDC Activities

a. Provide technical assistance in the design and conduct of the research.

b. Provide technical advice and guidance in the development of study protocols, consent forms, and data collections forms.

c. Assist in the development of a research protocol for Institutional Review Board review by all cooperating institutions participating in the research project. The CDC Institutional Review Board will review and approve the protocol initially and on at least an annual basis until the research project is complete

d. Assist in designing a data management system.

e. Arrange for information sharing among the various projects and facilitate coordination of research activities among the different sites.

f. Assist in the analyses of research information and presentation and publication of research findings.

g. Assist in the transfer of information and methods developed in these projects to other prevention programs.

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program.

The application may not exceed 25 double-spaced pages in length, excluding appendices (the abstract, budget justification, and attachments) (i.e., letters of commitment, data collections forms, resumes, etc). Applicants should provide a one-page abstract of the proposal. Number all pages clearly and sequentially and include a complete index to the application and appendices. The original and each copy of the application must be submitted UNSTAPLED and UNBOUND. Print all material, double spaced, in a 12-point or larger font on 8½ by 11 paper, with at least 1″ margins and printed on one side only.

The application should include a general introduction, followed by one narrative subsection per application content element in the order in which the elements appear below. Each narrative subsection should be labeled with the element title and contain all of the information needed to evaluate that element of the application (except for curriculum vita, references, and letters of support, which are appropriate for the appendices). The application content elements are outlined below for all research issues.

1. Abstract

A one page summary of the application outlining the target population and location of intervention activities, experience delivering the intervention components, experience with evaluation research methods and the management of complex interventions, project management and staffing, and proposed collaborations.

2. Description of the Target Population

The application needs to identify the specific target population for the study and the location or setting in which the intervention activities will take place. The application should include the following information:

a. Identification of the various middle schools to participate in the evaluation study and description of their demographic characteristics (i.e. type of school—public, private/parochial, urban, rural, size of school, grade levels, composition of student population, e.g., gender, race/ethnicity, percentage of students receiving reduced or free meals; IOWA basic skills scores and grade equivalencies).

b. Demographic information for study participants (e.g., targeted age group or grade levels, sex, race/ethnic background).

c. Pertinent available morbidity and violence-related data (e.g., physical fights or injury-related incidents at school, weapon-carrying, suspension/expulsion rates, absenteeism) (See Addendum 2 for definition of high incidence of physical fighting and weapon-carrying).

d. The prevalence or incidence within the target group of any cognitive, attitudinal, or behavioral characteristics that will be influenced by the intervention.

e. Projected sample size per school for the evaluation study, including statistical power calculations to justify sample size and expected levels of attrition on final sample size and power.

f. Demographic characteristic of neighborhood (i.e. population size, race/ethnicity, socioeconomic status, unemployment rates, county-level aggravated assault and homicide rates, high school drop-out rates) (See Addendum 2 for definition of high incidence of homicide).

g. Applicant must describe the capacity, feasibility, and/or prior experience of the targeted schools to link with appropriate community-based organizations or mental health or social service agencies (e.g., do the selected schools have any experience with parent training activities, after-school programs, or have referral mechanisms in place for children in need of additional social or counseling services?).

h. The applicant should include a detailed description of the procedures that makes the applicant compliant with CDC's Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. The applicant's procedures should include:

(1) A proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Access to Target Population

a. This section should provide evidence that the applicant or a full working partner has access to the target population for proposed intervention and evaluation activities.

b. The application should include letters of commitment from the targeted schools indicating knowledge of proposed activities (i.e., implementation and evaluation of a social cognitive intervention and appropriate community-based programming to complement the school-based activities) and agreement to provide access to the target population, facilities, and relevant records (e.g., aggregate-level suspension/expulsion, absenteeism, disciplinary data).

c. Letters of commitment should indicate a willingness to facilitate the implementation of intervention activities and collection of appropriate evaluation data.

4. Experience Delivering Intervention Components

a. The applicant should provide a detailed description and documented support (e.g., abstracts, presentations, published peer-reviewed manuscripts) of prior experience in the area of youth violence prevention and experience with designing and implementing school-based, social-cognitive interventions and any related intervention components (e.g., parent training, mental health/psychological services, mentoring, after-school programs, etc).

b. The applicant should describe the types of programs previously delivered; the frequency, intensity, and duration of previous programs; the settings and targeted age groups; and the manner in which previous programs were staffed and monitored.

5. Experience with Evaluation Research

a. Applicants should provide a detailed description and documented support (e.g., abstracts, presentations, published peer-reviewed manuscripts) of prior experience with the management of complex intervention trials, prior experience or the experience of a full working partner in evaluation research methods, and their ability or the ability of a full working partner to collect, manage, and analyze both quantitative and qualitative data.

b. Applicants should describe the nature and scope of programs previously evaluated; the types of evaluation designs utilized for these studies, the targeted age groups evaluated; and the settings in which the evaluations took place.

c. This section should also describe familiarity with various statistical approaches for analyzing complex evaluation data (e.g., ANCOVA, MANOVA, Hierarchical Linear Modeling, Growth Curve Analysis, Repeated Measures Analysis, Mixed Effects Models, etc.) and any prior experience with analyzing and modeling multi-level prevention data.

6. Project Management and Staffing Plan

a. The applicant should demonstrate the availability of staff and facilities to carry out Year 1 planning and development activities.

b. The applicant should describe in detail each existing or proposed position for the planning year by job title, function, general duties, and activities for which that position will be involved. It should include the level of effort and allocation of time for each project activity by staff position. If the identity of any individual who will fill a position is known, his/her name and curriculum vitae should be attached.

c. Management operation principles, structure, and organization should be described.

d. This section should also describe available resources and facilities for processing and maintaining data for analysis.

7. Collaboration

a. This section should describe and document current and proposed collaborations between schools, community-based organizations, and university or other research organizations working with the specified target population.

b. The application should include letters of commitment and/or memoranda of understanding which specify precisely the nature of past, present, and proposed collaborations, and the products/services or other activities that will be provided by and to the applicant through the collaboration on the proposal.

c. The applicant should describe their willingness to collaborate with the other cooperative agreement recipients funded under this announcement on all phases of the project (e.g., development and evaluation of intervention components, analysis of data, and dissemination of results).

d. The applicant should further describe current or past funding that has been received for similar projects and the outcomes of these projects. Evidence should be provided that these funds do not duplicate already funded components of ongoing projects.

8. Human Subjects

a. The applicant should describe the degree to which human subjects may be at risk and what protections will be in place to assure protection and confidentiality.

b. The applicant should demonstrate that it has adequately addressed the requirements of Title 45 CFR Part 46 for the protection of human subjects.

9. Budget

Provide a detailed budget for each priority activity to be undertaken during the planning year, with accompanying justification of all operating expenses that is consistent with the stated activities under this program announcement. Applicants should be precise about the purpose of each budget item and should itemize calculations wherever appropriate.

G. Application Submission and Deadline

1. Letter of Intent

Although not a prerequisite of application (optional), a non-binding letter of intent-to-apply is requested from potential applicants. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to determine the level of interest in the announcement and to plan the review more efficiently.

On or before June 11, 1999, submit the letter of intent to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

2. Application

Submit the original and two copies of the application PHS–5161–1 (OMB Number 0925–0001). Forms are in the application kit.

On or before July 19, 1999, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

a. Deadline:

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Sent on or before the deadline date and received in time for orderly processing. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

b. Late applications: Applications which do not meet the criteria in a.1 or a.2 above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Applications which are complete and determined to be responsive will be subjected to a preliminary evaluation (triage) by a Special Emphasis Panel (SEP) to determine if the application is of sufficient technical and scientific merit to warrant further review by the SEP. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated individually against the following criteria by a Special Emphasis Panel (Maximum 100 total points):

1. Description of Target Population (10 Points)

a. The extent to which the target population is clearly identified, has a high incidence or prevalence of the risk factors to be influenced by intervention activities, and supported with appropriate demographic, morbidity and violence-related data.

b. The extent to which the settings for the intervention components are clearly described; adequate for reaching the target population; and suggest a need for violence prevention programming.

c. The extent to which the capacity, feasibility, and/or experience of the targeted schools to link with appropriate community-based resources or programming is described and documented.

d. The extent to which sample size estimates, power estimates, and anticipated attrition of the target population are clarified, reasonable, and sufficient for evaluation activities.

e. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

2. Access to the Target Population (15 Points)

a. The extent to which targeted schools are identified and access to the target population is demonstrated.

b. The extent to which applicant provides proof of commitment from the targeted schools (e.g., letters from school principals indicating knowledge of proposed activities and agreement to provide access to the target population, relevant records, facilities) and their willingness to facilitate the implementation of intervention activities and collection of appropriate evaluation data.

3. Experience Delivering Intervention Components (25 Points)

a. The extent to which the applicant has documented (e.g., abstracts, presentations, peer-reviewed publications) prior experience designing and implementing school-based, social-cognitive interventions and related community intervention components (e.g., parent training, mental health/psychological services, after-school programs, mentoring, etc).

b. The extent to which applicant's prior experience, or that of a full working partner, is relevant to proposed activities under this program announcement, reflects a high degree of expertise, and is sufficient for accomplishing proposed activities under this announcement.

4. Experience With Evaluation Research (25 Points)

a. The extent to which applicant demonstrates prior experience managing complex intervention trials, prior experience with evaluation research methods, and has the capacity and relevant expertise to collect, manage, and analyze both quantitative and qualitative data.

b. The extent to which the applicant demonstrates expertise and familiarity with a range of statistical approaches for analyzing complex evaluation data (e.g., ANCOVA, MANOVA, Repeated Measures Analysis), and has prior experience with analyzing and modeling multi-level prevention data (e.g., using Hierarchical Linear Modeling, Growth Curve Analysis, Mixed Effects Models).

5. Project Management and Staffing Plan (10 Points)

a. The extent to which the research team and other project personnel are clearly described, appropriately assigned (i.e., duties, responsibilities, time allocation), and have pertinent training, skills, qualifications, and experiences.

b. The extent to which the applicant or a full working partner has the capacity to successfully complete proposed implementation activities and the facilities, equipment, and data management resources to successfully complete proposed evaluation activities.

c. The extent to which management operation, structure, and/or organization is described.

6. Collaboration (15 Points)

a. The extent to which the applicant is willing to collaborate with the other cooperative agreement recipients funded under this announcement on all phases of the project (e.g., the development and evaluation of intervention components, analysis of data, and dissemination of results).

b. The extent to which the necessary partners are clearly described and their qualifications and intentions to participate explicitly stated. The extent to which the applicant provides proof of commitment (e.g., letters of commitment and/or memoranda of understanding) from proposed collaborators (other than school partners) for project activities.

c. Evidence should be provided that these funds do not duplicate already funded components of ongoing projects.

7. Human Subjects (Not Scored)

The extent to which procedures for the protection of human subjects are described and adequately address the requirements of the Department of Health and Human Resources (45 CFR part 46) for the protection of human subjects.

8. Budget (Not Scored)

The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient for proposed year 1 activities and consistent with the intended use of these cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original and two copies of:

1. A semiannual progress report no later than 30 days after the end of each six month period. Semiannual progress reports should include:

a. A brief description of the project;

b. A comparison of the actual accomplishments to the goals and objectives established for the period;

c. Documentation of both the reason for the deviation and the anticipated corrective action or deletion of the activity from the project if established goals and objectives were not accomplished or were delayed; and

d. Other pertinent information, including the analysis of information collected.

2. Financial status reports are required no later than 90 days after the end of each budget period.

3. Final financial status and performance reports are required 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a), 391, and 393 (42 U.S.C. 241(a), 280b, and 280b–1a) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.262.

K. Where To Obtain Additional Information

This and all other CDC Announcements may be found and downloaded from the CDC homepage. Internet address: http://www.cdc.gov (click on funding).

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Ricky Willis, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99067, Centers for Disease Control and Prevention 2920 Brandywine Road, Suite 3000, Mailstop E–13, Atlanta, GA 30341–4146; Telephone (770) 488–2719; E-mail: rqw0@cdc.gov

For program technical assistance contact: Wendy Watkins, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop K–60, Atlanta, GA 30341;Telephone (770)–488–1567; E-mail address: dmw7@cdc.gov

Dated: May 19, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control, and Prevention (CDC).

[FR Doc. 99–13141 Filed 5–24–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99100]

Human Immunodeficiency Virus (HIV) Related Applied Research and Professional Education Projects; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of funds beginning in fiscal year (FY) 1999 for cooperative agreements to conduct human immunodeficiency virus (HIV) related applied research and professional education in the control and prevention of HIV. The purpose of this program is to encourage new and innovative methods to further the prevention of HIV infection. Projects that will be considered for funding are applied research or professional education for the control and prevention of HIV. This program addresses the ''Healthy People 2000'' priority areas of HIV Infection, Sexually Transmitted Diseases, and Immunization and Infectious Diseases.

National Program Goals

CDC's national strategic goals for the programs supported by the National Center for HIV, STDs and TB Prevention are:

1. Increase public understanding of, involvement in, and support for HIV, STDs, and TB prevention.

2. Ensure completion of therapy for persons identified with active TB or TB infection.

3. Prevent or reduce behaviors or practices that place persons at risk for HIV and STDs infection or, if already infected, place others at risk.

4. Increase individual knowledge of HIV sero status and improve referral systems to appropriate prevention and treatment services.

5. Assist in building and maintaining the necessary State, local, and community infrastructure and technical capacity to carry out necessary prevention programs.

6. Strengthen the current systems and develop new systems to accurately monitor HIV, STDs, and TB, as a basis for assessing and directing prevention programs.

B. Eligible Applicants

Eligible applicants will include universities, colleges, research institutions, hospitals, public and private non-profit organizations, community-based, national, and regional organizations, State and local governments or their bona fide agents or instrumentalities, federally recognized Indian Tribal governments, Indian tribes or organizations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 1999 to fund approximately four awards. It is expected that the average award will be $125,000, ranging from $100,000–$300,000. Funding estimates

are subject to change. It is expected that awards will begin in September, 1999, and will be made for a 12 month budget period within a project period of up to three years. Funding estimates are subject to change. Continued support in future years will be based on the availability of funds and success in demonstrating progress toward achievement of objectives.

Program Priority Areas

Funding Priorities

Interested persons are invited to comment on the proposed funding priorities. All comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priority is established. If the funding priority changes because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Address comments to the Grants Management Specialist listed in the ''Where to Obtain Additional Information'' section of this announcement.

1. Among HIV-infected persons receiving medical care, prevent development of opportunistic infections and prevent or delay progression to AIDS and death.

2. Develop, pilot, evaluate, and transfer technology of HIV rapid testing and counseling strategies.

3. Among national organizations representing health professionals who provide prenatal or neonatal care, assist in the national dissemination of perinatal HIV transmission information, resources, and interventions to pediatricians, obstetricians, family practitioners, nurse practitioners, and other health care providers.

4. The identification and characterization of recently HIV-infected persons in specific populations or geographic areas; or the assessment of HIV incidence in selected high-risk populations or social networks in geographically-defined communities where HIV incidence is known or expected to be high; or use of HIV incidence data to evaluate prevention interventions.

5. Develop and implement methods to improve access to care of HIV-infected person and to reduce HIV associated morbidity and mortality among persons in medical care.

6. Pilot test, implement, and evaluate perinatal HIV transmission prevention programs to domestic and global prevention partners, e.g., ministries of health, UNAIDS, UNICEF.

D. Program Requirements

Recipient activities to achieve the purposes of this program will vary by project. CDC will be responsible for the activities under CDC Activities.

1. Recipient Activities (applied research).

a. Complete the development of the research protocol.

b. Carry out the activities according to the approved protocol.

c. Ensure that appropriate approvals are secured for the protection of human subjects, Office of Management and Budget and Paperwork Reduction Act, privacy, confidentiality, and data security.

d. Compile and disseminate findings.

2. Recipient Activities (professional education).

a. Develop and disseminate HIV prevention education and training programs and materials.

b. Evaluate the materials and their dissemination.

c. Report and disseminate results and recommendations and relevant HIV prevention and education and training information to appropriate health-care providers, HIV/AIDS prevention and service organizations, and the general public.

3. CDC Activities.

a. Monitor and evaluate scientific and operational accomplishments of the project through periodic site visits, frequent telephone calls, and review of technical reports and interim data analysis.

b. For recipients whose project involves collaboration with a State or local health department, CDC will assist in facilitating the planning and implementation of the necessary linkages with local or State health departments and assist with the developmental strategies for applied clinical or prevention oriented research programs.

c. Facilitate the technological and methodological dissemination of successful prevention and intervention models among appropriate target groups, such as, State and local health departments, community based organizations, and other health professionals.

d. As requested, provide technical assistance in planning and evaluating strategies and protocols.

E. Application Content

Letter of Intent (LOI)

Potential applicants must submit an original and two copies of a two-page typewritten Letter of Intent (LOI) that briefly describes the title of the project, purpose and need for the project, and funding priority which it addresses. Current recipients of CDC funding must provide the award number and title of the funded programs. No attachments, booklets, or other documents accompanying the LOI will be considered.

LOI's will be reviewed by CDC program staff and an invitation to submit a full application will be made based on the documented need for the proposed project, relationship to funding priorities, and the availability of funds. LOI's may focus on more than one programmatic priority area.

An invitation to submit a full application does not constitute a commitment by CDC to fund the applicant.

Application

Applications may be submitted only after a Letter of Intent has been approved by CDC and a written invitation from CDC has been extended to the prospective applicant. Applicants who are invited to submit a full application must submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. The application narrative should consist of:

1. Abstract (Not to exceed 1 page): An executive summary of your program covered under this announcement, specifying whether your program is applied research or professional education.

2. Program Plan (Not to exceed 10 pages): In developing the application under this announcement, please review the recipient activities and, in particular, evaluation criteria and respond concisely and completely.

3. Budget: Submit an itemized budget and supporting justification that is consistent with your proposed program plan.

F. Submission and Deadlines

Letter of Intent (LOI)

One Original and Two Copies of the LOI must be postmarked on or before June 21, 1999. (Facsimiles Are Not Acceptable.)

Application

Submit the original and five copies of the application on Form PHS 398 (OMB Number 0925–0001). Forms are available at the following Internet address: HTTP://WWW.CDC.GOV/OD/PGO/FROMINFO.HTM or in the application kit. On or before July 23, 1999, submit your application to the Grants Management Specialist listed in

the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Letters of Intent and Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the objective review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Applications that do not meet these criteria are considered late applications and will be returned to the applicant without review.

G. Evaluation Criteria

Letters of Intent responding to this announcement will be evaluated on the documented need for the proposed activities and the relationship to the listed funding priorities.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Applied Research

a. The inclusion of a brief review of the scientific literature pertinent to the study being proposed and specific research questions or hypotheses that will guide the research. The originality and need for the proposed research, the extent to which it does not replicate past or present research efforts, and how findings will be used to guide prevention and control efforts. (25 points)

b. The quality of the plans to develop and implement the study, including the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits. (25 points)

c. Extent to which proposed activities, if well executed, support attaining project objectives. (25 points).

d. Extent to which personnel involved in this project are qualified, including evidence of past achievements appropriate to the project, and realistic and sufficient time commitments. Evidence of adequacy of facilities and other resources supported to carry out the project. (25 points).

e. Other (not scored).

(1) Budget: Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

(2) Human Subjects: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

2. Professional Education

a. Extent to which the applicant demonstrates the scientific soundness of the technology to be transferred. (25 points)

b. The extent to which the applicant's description of the proposed material relates to HIV prevention and education, responds to a specific public health need, and can be expected to influence public health practices. (25 points)

c. The adequacy and commitment of institutional resources to administer the program. (25 points)

d. The degree to which the application demonstrates that all key personnel have education and expertise relative to its objectives. (25 points)

e. Budget: Will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of the funds, and allowable. All budget categories should be itemized.

Funding decisions on approved applications will depend on the area of interest of the proposals, their relationship to NCHSTP National Program Goals, and the quality of the application.

H. Other Requirements

Technical Reporting Requirements Provide CDC with original plus two copies of:

1. An annual progress report,

2. Financial status report, no more than 90 days after the end of the budget period, and

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see attachment 1 in the application kit.

AR–1—Human Subjects Requirements (applied research only)
AR–2—Inclusion of Women and Racial and Ethnic Minorities in Research Requirements (applied research only)
AR–4—HIV/AIDS Confidentiality Provisions
AR–5—HIV Program Review Panel Requirements
AR–6—Patient Care Prohibitions
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2000
AR–12—Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, section 317(k)(2)(42 U.S.C. 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance numbers are 93.941, HIV Demonstration, Research, Public and Professional Education; 93.943, Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups.

J. Where to Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–472–6874. You will be asked to leave your name and address and will be instructed to identify the announcement of interest.

This and other CDC announcements are also available through the CDC home page on the Internet. The address for the CDC home page is HTTP://www.cdc.gov.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Sheryl Disler, Grants Management Specialist, Grants Management Branch, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mailstop E–15, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2756 or facsimile at (770) 488–2777, or INTERNET address: HTTP://WWW.SJD9@CDC.GOV

You may obtain programmatic technical assistance from: Peggy Bloom, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Atlanta, GA 30333, Telephone (404) 639–0927, INTERNET

address: HTTP://WWW.PMB1@CDC.GOV

Dated: May 19, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13140 Filed 5–24–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 99139]

Grants for Minority Health Statistics Dissertation Research; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 1999 funds to fund Grants for Minority Health Statistics Dissertation Research which was published in the **Federal Register** on May 18, 1999, (Vol. 64, No. 95, Pages 26975–26977). The notice is amended as follows:

On page 26975, Second Column, under Section C. Availability of Funds, delete the last two sentences. Add the following sentence:

The awards will be made for a 12-month budget/project period.

Dated: May 19, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13142 Filed 5–24–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1387]

Agency Information Collection Activities; Agency Emergency Processing Request Under OMB Review; Survey of Licensed Biologics Manufacturers and Registered Blood Establishments for Year 2000 Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a survey of manufacturers of biological products, including both licensed biologics manufacturers and registered blood establishments, to obtain information about the Year 2000 compliance status of the facilities used to manufacture regulated products. The information will be made available to the public via FDA's web site.

DATES: Submit written comments on the collection of information by June 1, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. FDA is requesting certain information on the Year 2000 compliance status of biologics manufacturing processes. This information is needed immediately in order to allow the agency to: (1) Assess the impact of the Year 2000 problem on the continued availability of an adequate supply of safe and effective biological products, (2) properly advise the healthcare industry and U.S. public regarding the preparedness of the biologics industry, and (3) assess the need for additional government actions to address potential supply disruptions. This information is essential to the mission of the agency. The potential existence of the Year 2000 problems in the biologics industry could pose potentially serious health and safety consequences. The use of normal clearance procedures would prolong the time needed to assess the Year 2000 compliance by regulated industry.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Survey of Licensed Biologics Manufacturers and Registered Blood Establishments for Year 2000 Compliance

Facilities will be asked to provide information about their Year 2000 readiness. They will also be asked if they have established contingency plans to address potential Year 2000 related problems and if those contingency plans address issues with foreign suppliers. The request will ask licensed manufacturers if they expect to file supplements to their applications for Year 2000 related manufacturing changes or as part of contingency planning. The survey will also request manufacturers to provide information about their plans and capability to increase production should there be an increased demand for their products. The survey will request that respondents identify contact information, including, where available, the address of a web site where more information about their Year 2000 activities can be found. The respondents will be able to provide information via facsimile or paper copy.

FDA intends to use the survey information to provide information to health care providers and the general public on the status of Year 2000 readiness of biologics facilities. FDA needs this information in a timely manner so as to have sufficient time in which to analyze the data received and make the information available.

Respondents: Licensed biologics manufacturers and registered blood establishments.

FDA estimated the number of respondents through its licensing and registration data bases. FDA estimates that it will take firms an average of 18 hours to collect, prepare, and submit the requested information.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3,600	1	3,600	18	64,800
Total				64,800

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 19, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–13152 Filed 5–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1270]

New Monographs, Revisions of Certain Food Chemicals Codex Monographs, and New General Analytical Procedure; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex specification monographs in the fourth edition, on proposed new specification monographs, and on a proposed new general analytical procedure. New specification monographs for certain substances used as food ingredients; additions, revisions, and corrections to current monographs; and a new general analytical procedure to replace an existing procedure are being prepared by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex (the committee). This material is expected to be presented in the next publication of the Food Chemicals Codex (the second supplement to the fourth edition) scheduled for public release in the spring of 2000.

DATES: Written comments by July 9, 1999. (The committee advises that comments received after this date may not be considered for the second supplement to the fourth edition. Comments received too late for consideration for the second supplement will be considered for later supplements or for a new edition of the Food Chemicals Codex.)

ADDRESSES: Submit written comments and supporting data and documentation to the NAS/IOM Committee on Food Chemicals Codex/FO–3042, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418. Copies of the new monographs, the proposed revisions to current monographs, and the proposed new general analytical procedure may be obtained upon written request from NAS (address above) or may be examined at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests for copies should specify by name the monographs or general analytical procedure desired. Copies may also be obtained through the Internet at ''http://www2.nas.edu/codex''.

FOR FURTHER INFORMATION CONTACT: Project Director/FO–3042, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or Paul M. Kuznesof, Division of Product Manufacture and Use (HFS–246), Office of Premarket Approval, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3009.

SUPPLEMENTARY INFORMATION: By contract with NAS/IOM, FDA supports the preparation of the Food Chemicals Codex, a compendium of specification monographs for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or other documentation to facilitate and expedite review by the committee.

In the **Federal Register** of March 28, 1997 (62 FR 14911), and December 3, 1996 (61 FR 64098), FDA announced that the committee was considering additional new monographs and a number of monograph revisions for inclusion in the first supplement to the fourth edition of the Food Chemicals Codex. The first supplement to the fourth edition of the Food Chemicals Codex was released by the National Academy Press (NAP) in September 1997. It is now available for sale from NAP (1–800–624–6242; 202–334–3313; FAX 202–334–2451; Internet ''http://www.nap.edu'') 2101 Constitution Ave. NW., Lockbox 285, Washington, DC 20055. In the **Federal Register** of January 29, 1999 (64 FR 4667), FDA announced that the committee is considering new and revised monographs and new and revised general analytical procedures for inclusion in the second supplement to the fourth edition of the Food Chemicals Codex.

FDA now gives notice that the committee is soliciting comments and information on additional proposed new monographs, proposed changes to certain current monographs, and a proposed new general analytical procedure. These new monographs, revised monographs, and the new general analytical procedure are also expected to be published in the second supplement to the fourth edition of the Food Chemicals Codex. Copies may be obtained upon written request from NAS at the address listed previously or through the Internet at ''http://www2.nas.edu/codex''.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's new monographs and general analytical procedures or revised monographs into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of new monographs and changes that have received final approval of the committee, it will announce its intention and provide an opportunity for public comment in the **Federal Register**.

The committee invites comments and suggestions by all interested parties on specifications to be included in the proposed new monographs (4), revisions of current monographs (8), and a new general analytical procedure listed below:

I. Proposed New Monographs

Sheanut Oil, Refined

l-Carnitine

Ferric Citrate

Ferrous Citrate

II. Current Monographs to which the Committee Proposes to Make Revisions

Calcium Citrate (reduce the lead limit and revise the fluoride limit test to an ion-selective electrode procedure)

Cellulose Gum (change the identification tests and heavy metals procedures)

Diatomaceous Earth (modify the description and the pH specification to include acid-washed powders)

Magnesium Phosphate, Tribasic (change the assay procedure, reduce the lead and heavy metals limits)

Nickel (revise the assay procedure for sponge nickel catalyst to provide sufficient complexing agent, dimethylglyoxime)

Sodium Erythorbate (add specification for loss on drying)

Sucrose (reduce lead limit)

Terpene Resin, Synthetic (delete the arsenic specification, revise the saponification value test)

III. Proposed New General Analytical Procedure

Total Unsaturation (replace method with one using Fourier transform infrared multivariate analysis)

Interested persons may, on or before July 9, 1999, submit to NAS written comments regarding the monographs and general analytical procedure listed in this notice. Timely submission will ensure that comments are considered for the second supplement to the fourth edition of the Food Chemicals Codex. Comments received after this date may not be considered for the second supplement, but will be considered for subsequent supplements or for a new edition of the Food Chemicals Codex. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments regarding the monographs or the general analytical procedure listed in this notice are to be submitted to NAS (address above). Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and each submission should include the statement that it is in response to this **Federal Register** notice. NAS will forward a copy of each comment to the Dockets Management Branch (address above). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13092 Filed 5–24–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Principles for Recipients of NIH Research Grants and Contracts on Obtaining and Disseminating Biomedical Research Resources: Request for Comments

AGENCY: National Institutes of Health (NIH), Public Health Service, DHHS.

ACTION: Notice.

Introduction: The National Institutes of Health (NIH) is seeking comments on a proposed policy entitled SHARING BIOMEDICAL RESEARCH RESOURCES: Principles and Guidelines for Recipients of NIH Research Grants and Contracts. This policy represents part of the overall implementation of recommendations made by the Advisory Committee to the Director (ACD) to Dr. Harold Varmus, Director, NIH. Dr. Varmus requested that a Working Group of the ACD look into problems encountered in the dissemination and use of proprietary research tools, the competing interests of intellectual property owners and research users underlying these problems, and possible NIH responses. One of the recommendations in the Report was that NIH issue guidance to the recipients of NIH funding.

Purpose: This policy is a two-part document, consisting of Principles to set forth the fundamental concepts and Guidelines to provide specific information to patent and license professionals for implementation. The purpose of these Principles and Guidelines is to assist NIH funding recipients in determining (1) reasonable terms and conditions for making NIH-funded research resources available to scientists in other institutions in the public and private sectors (disseminating research tools), and (2) restrictions to accept as a condition of receiving access to research tools for use in NIH-funded research (importing research tools). The intent is to help Recipients ensure that the conditions they impose and accept on the transfer of research tools will facilitate further biomedical research, consistent with the requirements of the Bayh-Dole Act and NIH funding agreements.

Request for Comments: NIH is seeking comment not only from NIH grantees, but from the full range of academic, not-for-profit, government, and private sector participants in biomedical research and development. Widespread comment and participation by varied stakeholders in the biomedical research and development enterprise is critical if these Principles, and their implementing Guidelines, are to be effective in guiding the interactions of NIH funding recipients with these sectors. It is also hoped that these Principles and Guidelines will be adopted by the wider research community so that all biomedical research and development can be synergistic and accelerated.

The NIH welcomes public comment on the full text of the Principles and Guidelines, set forth below. Comments should be addressed to: Research Tool Guidelines Project, Ms. Barbara M. McGarey, J.D., NIH Office of Technology Transfer, 6011 Executive Boulevard, Suite 325 Rockville, MD 20852–3804. Comments may also be sent by facsimile transmission to the Research Tool Guidelines Project, Ms. Barbara M. McGarey, at (301) 402–3257, or by e-mail to nihott@od.nih.gov.

DATES: Comments must be received by NIH on or before August 23, 1999.

Dated: May 18, 1999.

Maria C. Freire,

Director, Office of Technology Transfer, National Institutes of Health.

Sharing Biomedical Research Resources

Principles and Guidelines for Recipients of NIH Research Grants and Contracts

Introduction

The National Institutes of Health is dedicated to the advancement of health through science. As a public sponsor of biomedical research, NIH has a dual interest in accelerating scientific discovery and facilitating product development. In 1997, Dr. Harold Varmus, Director, NIH requested that a Working Group of the Advisory Committee to the Director look into problems encountered in the dissemination and use of unique research resources, the competing interests of intellectual property owners and research tool users, and possible NIH responses.[1] The Working Group

[1] The term ''unique research resource'' is used in its broadest sense to embrace the full range of tools that scientists use in the laboratory, including cell lines, monoclonal antibodies, reagents, animal models, growth factors, combinatorial chemistry and DNA libraries, clones and cloning tools (such as PCR), methods, laboratory equipment and

Continued

found that intellectual property restrictions can stifle the broad dissemination of new discoveries and limit future avenues of research and product development.

At the same time, reasonable restrictions on the dissemination of research tools are sometimes necessary to protect legitimate proprietary interests and to preserve incentives for commercial development. One of the recommendations of the Working Group was that NIH issue guidance to its funding recipients to assist them to achieve the appropriate balance. This two-part document, consisting of Principles to set forth the fundamental concepts and Guidelines to provide specific information to patent and license professionals for implementation, represents that guidance.

A copy of the full Report of the Working Group, with more detailed background information, is available at the NIH web site, www.nih.gov/welcome/forum, or from the NIH Office of the Director.

Principles

1. Ensure Academic Freedom and Publication

Academic research freedom based upon collaboration, and the scrutiny of research findings within the scientific community, are at the heart of the scientific enterprise. Institutions that receive NIH research funding through grants or contracts (''Recipients'') have an obligation to preserve research freedom and ensure timely disclosure of their scientists' research findings through, for example, publications and presentations at scientific meetings. Recipients are expected to avoid signing agreements that unduly limit the freedom of investigators to collaborate and publish.

Reasonable restrictions on collaboration by academic researchers involved in sponsored research agreements with an industrial partner that avoid conflicting obligations to other industrial partners, are understood and accepted. Similarly, brief delays in publication may be appropriate to permit the filing of patent applications and to ensure that confidential information obtained from a sponsor or the provider of a research tool is not inadvertently disclosed. However, excessive publication delays or requirements for editorial control, approval of publications, or withholding of data all undermine the credibility of research results and are unacceptable.

2. Ensure Appropriate Implementation of the Bayh-Dole Act

When a Recipient's research work is funded by NIH, the activity is subject to various laws and regulations, including the Bayh-Dole Act (Public Law 96–517). Generally, Recipients must maximize the use of their research findings by making them available to the research community and the public, and through their timely transfer to industry for commercialization.

The right of Recipients to retain title to inventions made with NIH funds comes with the corresponding obligations to promote utilization, commercialization, and public availability of these inventions. The Bayh-Dole Act encourages Recipients to patent and license subject inventions as one means of fulfilling these obligations. However, the use of patents and exclusive licenses is not the only, nor in some cases the most appropriate, means of implementing the Act. Where the subject invention is useful primarily as a research tool, inappropriate licensing practices are likely to thwart rather than promote utilization, commercialization and public availability of the invention.

Restrictive licensing, especially when coupled with indiscriminate use of the patent system, can be antithetical to the goals of the Bayh-Dole Act, such as where these are employed primarily for financial gain. Utilization, commercialization and public availability of technologies that are useful primarily as research tools rarely require patent protection; further research, development and private investment are not needed to realize their usefulness as research tools. In such cases, the goals of the Act can be met through publication, deposit in an appropriate databank or repository, widespread non-exclusive licensing for nominal or cost-recovery fees, or any other number of dissemination techniques.

In addition, commercialization and product development becomes more encumbered as the number of stakeholders laying claim to prospective revenues increases. Proprietary rights in research tools that do not require further development may function more as a tax on commercial development than as a source of rights to preserve the viability of end products and to motivate further investment. While such a tax may benefit the public by providing a financial return on the research investment, it may not always represent the appropriate valuation of a research tool and therefore serve as a disincentive to private sector use of the invention.

3. Minimize Administrative Impediments to Academic Research

Each iteration in a negotiation over the terms of a license agreement or materials transfer agreement delays the moment when a research tool may be put to use in the laboratory. Recipients should take every reasonable step to streamline the process of transferring their own research tools freely to other academic research institutions using either no formal agreement, a cover letter, the Simple Letter Agreement of the Uniform Biological Materials Transfer Agreement (UBMTA), or the UBMTA itself.

Recipients should also examine and, where possible and appropriate, simplify the transfer of materials developed with NIH funds to for-profit institutions for internal use by those institutions. NIH endorses distinguishing internal use by for-profit institutions from the right to commercial development and sale or provision of services. Recipients are encouraged to transfer research tools developed with NIH funding to for-profit institutions with the fewest encumbrances possible in instances where the for-profit institution is seeking access for internal use purposes. Examples of such internal uses are research, screening, and the use of methods or devices for product development.

Where they have not already done so, Recipients should develop and implement clear policies which articulate acceptable conditions for importing resources, and refuse to yield on unacceptable conditions. NIH acknowledges the concern of some for-profit organizations that the concept of purely academic research may be diluted by the close ties of some not-for-profit organizations with for-profit entities, such as research sponsors and spin-off companies in which such organizations take equity. Of concern to would-be providers is the loss of control over a proprietary research tool that, once shared with a not-for-profit Recipient for academic research, results in commercialization gains to the providers' for-profit competitors. Recipients must be sensitive to this legitimate concern if for-profit organizations are expected to share tools freely.

machines. The terms ''research tools'' and ''materials'' are used throughout this document interchangeably with ''unique research resources.'' Databases and materials subject to copyright, such as software, are also research tools in many contexts. Although the information provided here may be applicable to such resources, the NIH recognizes that databases and software present unique questions which cannot be fully explored in this document.

For-profit organizations, in turn, must minimize the encumbrances they seek to impose upon not-for-profit organizations for the academic use of their tools. Reach-through royalty or product rights, unreasonable restraints on publication and academic freedom, and improper valuation of tools impede the scientific process whether imposed by a not-for-profit or for-profit provider of research tools. While these Principles are directly applicable only to recipients of NIH funding, it is hoped that other not-for-profit and for-profit organizations will adopt similar policies and refrain from seeking unreasonable restrictions or conditions when sharing materials.

4. Ensure Dissemination of Research Resources Developed With NIH Funds

Progress in science depends upon prompt access to the unique research resources that arise from biomedical research laboratories throughout government, academia, and industry. Ideally, these new resources flow to others conducting further research, advancing science and serving as the new standard which itself will be improved upon and ultimately replaced. This is accomplished by wide distribution on a nonexclusive basis, although wide distribution on reasonable terms by an exclusive distributor may meet these objectives as well. When research tools are used only within one or a small number of institutions, there is a great risk that fruitful avenues of research will be neglected.

Unique research resources arising from NIH funded research must be made available to the scientific research community. Recipients are expected to manage interactions with third parties that have the potential to restrict Recipients' ability to disseminate research tools developed with NIH funds. For example, a Recipient might co-mingle NIH funds with funds from one or more third party sponsors, or import a research tool from a third party provider for use in an NIH-funded research project. Either situation may result in a Recipient incurring obligations to a third party that conflict with Recipient's obligations to the NIH. To avoid inconsistent obligations, Recipients are encouraged to share these Principles with potential co-sponsors of research projects and third party providers of materials.

Summary

Access to research tools is a prerequisite to continuing scientific advancement. Ensuring broad access while preserving opportunities for product development requires thoughtful, strategic implementation of the Bayh-Dole Act. The NIH urges Recipients to develop patent, license, and material sharing policies with this goal in mind, realizing both product development as well as the continuing availability of new research tools to the scientific community.

Appendix—Guidelines for Implementation

The following Guidelines provide specific information to patent and license professionals at Recipient institutions for implementing the Principles on Obtaining and Disseminating Biomedical Resources.

Guidelines for Disseminating Research Resources Arising Out of NIH-Funded Research

• Recipients must ensure that unique research resources arising from NIH funded research are made available to the scientific research community. Although some licensing of research tools to for-profit companies is necessary and appropriate, the majority of transfers, to both not-for-profit entities and for-profit entities, should be implemented under terms no more restrictive than the UBMTA. In particular, Recipients are expected to use the Simple Letter Agreement of the UBMTA (text below), or other comparable document with no more restrictive terms, to readily transfer unpatented tools developed with NIH funds to other Recipients for use in NIH funded projects. If the materials are patented (or licensed to an exclusive provider), other arrangements such as a simple license agreement may be used, but commercialization option rights, royalty reach-through, or product reach-through rights back to the provider are inappropriate.

Simple Letter Agreement for Transfer of Non-Proprietary Biological Material

PROVIDER

Authorized Official: _____

Organization: _____

Address: _____

RECIPIENT

Authorized Official: _____

Organization: _____

Address: _____

In response to the RECIPIENT's request for the BIOLOGICAL MATERIAL identified as [insert description of material] the PROVIDER asks that the RECIPIENT and the RECIPIENT SCIENTIST agree to the following before the RECIPIENT receives the BIOLOGICAL MATERIAL:

1. The above BIOLOGICAL MATERIAL is the property of the provider and is made available as a service to the research community.

2. The BIOLOGICAL MATERIAL will be used for teaching and academic research purposes only.

3. The BIOLOGICAL MATERIAL will not be further distributed to others without the PROVIDER'S written consent. The RECIPIENT shall refer any request for the BIOLOGICAL MATERIAL to the PROVIDER. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agrees to make the BIOLOGICAL MATERIAL available, under a separate Simple Letter Agreement, to other scientists (at least those at nonprofit organizations or government agencies) who wish to replicate the RECIPIENT SCIENTIST'S research.

4. The RECIPIENT agrees to acknowledge the source of the BIOLOGICAL MATERIAL in any publications reporting use of it.

5. Any BIOLOGICAL MATERIAL delivered pursuant to this simple letter agreement is understood to be experimental in nature and may have hazardous properties. THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE BIOLOGICAL MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the BIOLOGICAL MATERIAL. The PROVIDER will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT, or made against the RECIPIENT by any other party, due to or arising from the use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

6. The RECIPIENT agrees to use the BIOLOGICAL MATERIAL in compliance with all applicable statutes and regulations, including, for example, those relating to research involving the use of human and animal subjects or recombinant DNA.

7. The BIOLOGICAL MATERIAL is provided at no cost, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. If a fee is requested, the amount will be indicated here: [insert fee].

The RECIPIENT and the RECIPIENT SCIENTIST should sign both copies of this letter and return one signed copy to the PROVIDER SCIENTIST. The PROVIDER will then forward the BIOLOGICAL MATERIAL.

PROVIDER SCIENTIST

Organization: _____

Address: _____

Name: _____

Title: _____

Signature: _____

Date: _____

RECIPIENT SCIENTIST

Organization: _____

Address: _____

Name: _____

Title: _____

Signature: _____

Date: _____

RECIPIENT ORGANIZATION APPROVAL

Authorized Official: _____

Title: _____

Address: _____

Signature: _____

Date: _____

[Source: 60 FR 12771, March 8, 1995]

• Recipients must ensure that obligations to other sources of funding of projects in which NIH funds are co-mingled are consistent with the Bayh-Dole Act and NIH funding requirements. Unique research resources generated under such projects are expected to be made available to the research community. Recipients are encouraged to share these Guidelines with potential co-sponsors. Any agreements covering projects in which NIH funds will be used along with other funds are expected to contain language to address the issue of dissemination of unique research resources. Examples of possible language follow. The paragraphs are presented in a ''mix and match'' format:

''The project covered by this agreement is supported with funding from the National Institutes of Health, which requires that unique research resources arising out of NIH-funded research be made widely available to third parties for further research. Provider agrees that upon publication, unpatented unique research resources arising out of this project may be freely redistributed.''

''In the event an invention is primarily useful as a research tool, any option granted shall either be limited to a non-exclusive license or the terms of any resulting exclusive license shall include provisions that ensure that the research tool will be available to the academic research community on reasonable terms.''

''Provider agrees that Recipient shall have the right to make any materials and inventions developed by Recipient in the course of the collaboration (including materials and inventions developed jointly with Provider, but not including any Provider materials (or parts thereof) or Provider sole inventions) available to other scientists at not-for-profit organizations for use in research, subject to Provider's independent intellectual property rights.''

''Subject to Recipient's obligations to the U.S. government, including 37 CFR 401, the PHS Grants Policy Statement, and the NIH Guidelines for Obtaining and Disseminating Biomedical Research Resources, Recipient grants to Sponsor the following rights:
* * *''

• Exclusive licenses for research tools should generally be avoided except in cases where the licensee undertakes to make the research tool widely available at moderate cost to researchers through unrestricted sale or the licensor retains rights to make the research tool widely available. When an exclusive license is necessary to promote investment in commercial applications of a subject invention that is also a research tool, the Recipient should ordinarily limit the exclusive license to the commercial field of use, retaining rights regarding use and distribution as a research tool. Examples of possible language include:

'' ''Research License'' means a nontransferable, nonexclusive license to make and to use the Licensed Products or Licensed Processes as defined by the Licensed Patent Rights for purposes of research and not for purposes of commercial manufacture, distribution, or provision of services, or in lieu of purchase, or for developing a directly related secondary product that can be sold. Licensor reserves the right to grant such nonexclusive Research Licenses directly or to require Licensee to grant nonexclusive Research Licenses on reasonable terms. The purpose of this Research License is to encourage basic research, whether conducted at an academic or corporate facility. In order to safeguard the Licensed Patent Rights, however, Licensor shall consult with Licensee before granting to commercial entities a Research License or providing to them research samples of the materials.''

''Licensor reserves the right to provide the Biological Materials and to grant licenses under Patent Rights to not-for-profit and governmental institutions for their internal research and scholarly use.''

''Notwithstanding anything above to the contrary, Licensor shall retain a paid-up, nonexclusive, irrevocable license to practice, and to sublicense other not-for-profit research organizations to practice, the Patent Rights for internal research use.''

''The grant of rights provided herein is subject to the rights of the United States government and limited by the right of the Licensor to use Patent Rights for its own research and educational purposes and to freely distribute Materials to not-for-profit entities for internal research purposes.''

''Licensor reserves the right to supply any or all of the Biological Materials to academic research scientists, subject to limitation of use by such scientists for research purposes and restriction from further distribution.''

''Licensor reserves the right to practice under the Patent Rights and to use and distribute to third parties the Tangible Property for Licensor's own internal research purposes.''

Guidelines for Importing Research Resources for Use in NIH-Funded Research

• Agreements importing materials for use in NIH funded research are expected to address the timely dissemination of research results. Recipients should not agree to significant publication delays, any interference with the full disclosure of research findings, or any undue influence on the objective reporting of research results. A delay of thirty days to allow for patent filing or review for confidential proprietary information is generally viewed as reasonable.

• Under the Bayh-Dole Act and its implementing regulations, agreements importing materials for use in NIH funded projects cannot require that title to resulting inventions be assigned to the provider. For this reason, definitions of ''materials'' that include all derivatives or all modifications are unacceptable. Conversely, it is important for providers of materials to be aware that a Recipient does not gain any ownership or interest in a provider's material by virtue of the Recipient using the material in an NIH-funded activity. Examples of acceptable definitions for ''materials'' include:

'' ''Materials'' means the materials provided as specified in this document.''

'' ''Materials'' means the materials provided as specified in this document. Materials may also include Unmodified Derivatives of the materials provided, defined as substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the original material, such as subclones of unmodified cell lines, purified or fractionated subsets of the original material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.''

'' ''Materials'' means the materials provided as specified in this document. Materials may also include Progeny and Unmodified Derivatives of the materials provided. Progeny is an unmodified descendant from the original material, such as virus from virus, cell from cell, or organism from organism. Unmodified Derivatives are substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the original material, such as subclones of unmodified cell lines, purified or fractionated subsets of the original material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.''

'' ''Materials'' means the material being transferred as specified in this document. Materials shall not include: (a) Modifications, or (b) other substances created by the recipient through the use of the Material which are not Modifications, Progeny, or Unmodified Derivatives. Progeny is an unmodified descendant from the Material, such as virus from virus, cell from cell, or organism from organism. Unmodified Derivatives are substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the original Material, such as subclones of unmodified cell lines, purified or fractionated subsets of the original Material, proteins expressed by DNA/RNA supplied by the Provider, or monoclonal antibodies secreted by a hybridoma cell line.'' [Source: Uniform Biological Materials Transfer Agreement; terms defined therein]

• Recipients are expected to avoid signing agreements to import research tools that are likely to restrict Recipients' ability to promote broad dissemination of additional tools that may arise from the research. This might occur when an agreement gives a provider an exclusive license option to any new intellectual property arising out of the project. A new transgenic mouse developed during the project could fall under this license option and become unavailable to third party scientists as a result. Examples of agreements to examine include material transfer agreements (MTAs), memoranda of understanding (MOU), research or collaboration agreements, and sponsored research agreements. Recipients should consider adopting standard language to place in such agreements to address this issue. The following are examples of possible language to include in MTAs, sponsored research agreements, and other agreements that either import materials from or co-mingle funds with non-government sources. The paragraphs are presented in a ''mix and match'' format:

''The project covered by this agreement is supported with funding from the National Institutes of Health, which requires that unique research resources arising out of NIH-funded research be made widely available to third parties for further research. Provider agrees that after publication, unpatented unique research resources arising out of this project may be freely redistributed.''

''In the event an invention is primarily useful as a research tool, any option granted shall either be limited to a non-exclusive license or the terms of any resulting exclusive license shall include provisions which insure that the research tool will be available to the academic research community on reasonable terms.''

''Provider agrees that Recipient shall have the right to make any materials and inventions developed by Recipient in the course of the collaboration (including materials and inventions developed jointly with Provider, but not including any Provider materials (or parts thereof) or Provider sole inventions) available to other scientists at not-for-profit organizations for use in research, subject to Provider's independent intellectual property rights.''

''Subject to Recipient's obligations to the U.S. government, including 37 CFR 401, the PHS Grants Policy Statement, and the NIH Guidelines for Obtaining and Disseminating Biomedical Research Resources, Recipient grants to Sponsor the following rights:
* * *''

• Agreements importing materials from for-profit entities for use in NIH funded research may provide a grant back of non-exclusive, royalty-free rights to the provider to use improvements and new uses of the material that, if patented, would infringe any patent claims held by the provider. They may also provide an option for an exclusive or non-exclusive license to new inventions arising directly from use of the material. These should be limited to circumstances where the material sought to be imported is unique, such as a patented proprietary material, and not reasonably available from any other source. A non-exclusive ''grant-back'' might be used, for example, to protect a for-profit entity that provides a proprietary compound from being blocked from using new uses of that compound discovered during the NIH-funded project. In providing license options, Recipients must ensure that licenses granted to providers under such options are consistent with Bayh-Dole requirements, including the preference for U.S. industry requirements and reservation of government rights under 37 CFR Part 401.

• In determining the scope of license or option rights that are granted in advance to a provider of materials, Recipient should balance the relative value of the provider's contribution against the value of the rights granted, cost of the research, and importance of the research results. The rights granted to providers should be limited to inventions that have been made directly through the use of the materials provided. In addition, Recipients should reserve the right to negotiate license terms that will ensure: (1) continuing availability to the research community if the new invention is a unique research resource; (2) that the provider has the technical and financial capability and commitment to bring all potential applications to the marketplace in a timely manner; and (3) that if an exclusive license is granted, the provider will provide a commercial development plan and agree to benchmarks and milestones for any fields of use granted.

• It is expected that agreements importing NIH-funded materials from not-for-profit entities for use in NIH funded research will not provide commercialization option rights, royalty reach-through, or product reach-through rights back to the provider. Such materials should be imported under the UBMTA, or, if the materials are patented, a simple license agreement that does not request reach-through to either future products or royalties. If the providing not-for-profit organization is constrained in sharing the material due to a pre-existing sponsored research agreement or license, NIH expects the not-for-profit provider to negotiate a suitable resolution with the private research sponsor or licensee. The co-mingling of NIH and sponsored research funds is allowed, however, Recipient is responsible for ensuring that the sponsored funds do not interfere with NIH funding requirements such as open dissemination of research tools.

[FR Doc. 99–13044 Filed 5–24–99; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Special Emphasis Panel I; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in June 1999.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: June 28–30, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: June 28–29, 1999, 8:30 a.m.–5:00 p.m., June 30, 1999, 8:30 a.m.–adjournment.

Panel: Substance Abuse and Mental Health Services Administration Basic Action Grant–I, Hispanic Priority SM 99–007.

Contact: Raquel Crider, Room 17–89, Parklawn Building, Telephone: 301–443–5063 and FAX: 301–443–3437 or Amie Rogal, Room 17–89, Parklawn Building, Telephone: 301–443–8216 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: June 23–25, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: June 23–24, 1999, 8:30 a.m.–5:00 p.m.; June 25, 1999, 8:30 a.m.–adjournment.

Panel: Substance Abuse and Mental Health Services Administration Family Strengthening Coordinating Center SP 99–002.

Contact: Peggy Riccio, Room 17–89, Parklawn Building, Telephone: 301–443–9996 and FAX: 301–443–3437.

Dated: May 18, 1999.

Coral Sweeney,

Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–13153 Filed 5–24–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Special Emphasis Panel I; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in June 1999.

A summary of the meeting and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: June 14–17, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: June 14–16, 1999, 8:30 a.m.–5:00 p.m.; June 17, 1999, 8:30 a.m.–adjournment.

Panel: Substance Abuse and Mental Health Services Administration Child Mental Health Initiative SM 99–005.

Contact: Peggy Thompson, Room 17–89, Parklawn Building, Telephone: 301–443–9912 and FAX: 301–443–3437 or Michael Koscinski, Room 17–89, Parklawn Building, Telephone: 301–443–6094 and FAX: 301–443–3437.

Dated: May 18, 1999.

Coral Sweeney,

Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–13154 Filed 5–24–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Special Emphasis Panel II; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in May and June 1999.

A summary of the meeting may be obtained from: Ms. Coral Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

These meetings will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: June 8, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: June 8, 1999, 8:30 a.m.–5 p.m.

Contact: Dr. Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX: (301) 443–3437.

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: May 25–26, 1999.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: May 25–26, 1999, 8:30 a.m.–5 p.m.

Contact: Dr. Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX: (301) 443–3437.

Dated: May 18, 1999.

Coral M. Sweeney,

Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–13155 Filed 5–24–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in May 1999.

A summary of the meeting and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (6) and 5 U.S.C. App. 2, section 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: May 26, 1999.

Place: 5600 Fisher Lane, Rockville, MD 20857.

Closed: May 26, 1999, 8:30 a.m.–adjournment.

Panel: Substance Abuse and Mental Health Services Administration Alaska Co-Occurring TI 99–007.

Contact: Peggy Riccio, Room 17–89, Parklawn Building, Telephone: 301–443–9996 and FAX: 301–443–3437.

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.

Dated: May 17, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–13189 Filed 5–24–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, June 17, 1999.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at the Rhode Island Historical Preservation & Heritage Commission, The Old State House, 150 Benefit Street, Providence, RI, for the following reasons:

1. Approval of Minutes
2. Executive Director's Report
1. Commission's Chair Report
4. Public Input

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 99–13181 Filed 5–24–99; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–1430–01; CACA 7381]

Public Land Order No. 7390; Revocation of Executive Order dated March 30, 1922; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order in its entirety as it affects 1,160 acres of lands withdrawn for Reservoir Site Reserve No. 15. The withdrawal is no longer needed and the revocation would make 640 acres available for exchange. These lands have been and will remain open to mineral leasing. The remaining 520 acres have been conveyed out of Federal ownership and this is a record-clearing action only for these lands.

EFFECTIVE DATE: May 25, 1999.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated March 30, 1922, which withdrew public lands for the Bureau of Land Management's Reservoir Site Reserve No. 15, is hereby revoked in its entirety as it affects the following described lands:

San Bernardino Meridian

(a). Federal lands (640 acres)
T. 5 S., R. 4 W.,
Sec. 14, E½SE¼;
Sec. 26, NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, and W½SE¼;
Sec. 34, SE¼NE¼, NE¼SE¼, and S½SE¼.
(b). Non-Federal lands (520 acres)
T. 5 S., R. 4 W.,
Sec. 13, W½SW¼;
Sec. 23, E½;
Sec. 24, W½NW¼, and NW¼SW¼.

The areas described in (a) and (b) above aggregate 1,160 acres in Riverside County.

2. The lands described in Paragraph 1(a) are hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1994).

3. The lands described in paragraph 1(b) have been conveyed out of Federal ownership and this is a record-clearing action only for these lands.

Dated: May 7, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–13183 Filed 5–24–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–0777–63; GP7–0064; OR–19112]

Public Land Order No. 7391; Revocation of Executive Order dated November 14, 1917; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order in its entirety as to 16 acres of public lands withdrawn for Bureau of Land Management Powersite Reserve No. 658. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 11.50 acres to surface entry. These lands have been and will remain open to mining. The remaining 4.50 acres are included in an overlapping withdrawal and will remain closed to surface entry and mining. All the lands will remain open to mineral leasing.

EFFECTIVE DATE: August 24, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth J. St. Mary, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6168.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated November 14, 1917, which established Powersite Reserve No. 658, is hereby revoked in its entirety:

Willamette Meridian

Oregon and California Railroad Grant Land
T. 22 S., R. 5 W.,
Sec. 33, SW¼NE¼ and E½NW¼, all land lying within 50 feet of centerline of transmission line.
T. 35 S., R. 5 W.,
Sec. 29, W½SW¼, all land lying within 50 feet of centerline of transmission line.
T. 3 S., R. 3 E.,
Sec. 29, lot 4, all land lying within 50 feet of centerline of transmission line.
T. 2 S., R. 4 E.,
Sec. 1, that portion of Tract 37 lying within the NE¼NW¼.

The areas aggregate approximately 16 acres in Clackamas, Douglas, and Josephine Counties.

2. That portion of Tract 37 in the NE¼NW¼ of sec. 1, T. 2 S., R. 4 E., lying within the boundary of Power Project No. 477, remains closed to operation of the public land laws, including the mining laws.

3. At 8:30 a.m. on August 24, 1999, the lands described in paragraph 1, except as provided in paragraph 2, will be opened to such forms of disposition as may by law be made of Revested Oregon and California Railroad Grant Lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on August 24, 1999, shall be considered as simultaneously filed at that time. Applications received thereafter shall be considered in the order of filing.

4. The State of Oregon has a preference right as to the lands referenced in paragraph 3 for public highway rights-of-way or material sites for a period of 90 days from date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by section 24 of the Act of June 10, 1920, as amended 43 U.S.C. 818 (1994).

Dated: May 7, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–13182 Filed 5–24–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 15, 1999. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 10, 1999.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Alameda County

Montgomery Ward and Company, 2825 E. 14th St., Oakland, 99000691

Yuba County

Marysville Historic Commercial District, Roughly bounded by First, Sixth, C, and E Sts., Marysville, 99000692

FLORIDA

Lee County

Alva Consolidated Schools (Lee County MPS) 21291 N. River Rd., Alva, 99000695

Putnam County

Palatka Ravine Gardens Historic District, 1600 Twigg St., Palatka, 99000694

Seminole County

Seminole County Home, 300 Bush Blvd., Sanford, 99000696

GEORGIA

Greene County

Brown-Bryson Farm, 1760 Siloam-Veazey Rd., Siloam vicinity, 99000693

MONTANA

Missoula County

Lower Rattlesnake Historic District, Roughly bounded by Vene St., Greenough Park, Elm St., and Pierce St., Missoula, 99000697

NEVADA

Carson City Independent City

Adams House, 990 N. Minnesota St., Carson City, 99000700

NORTH CAROLINA

Alamance County

North Main Street Historic District, Roughly bounded by Whitsett, New Hill, N. Melville, Market, Mill and Sideview Sts., Graham, 99000698

Mecklenburg County

Croft Historic District, Jct. of NC 115 and NC 2483, Charlotte vicinity, 99000699

OHIO

Franklin County

Ohio Moline Plow Company Building, 343 Front St., Columbus, 99000701

Old North End Historic District (Boundary Increase), Roughly bounded by W. First and E. Second Ave., N. Pearl St., E. Fifth Ave., and Summit St. and Beacon Alley, Columbus, 99000702

OREGON

Josephine County

Rand Ranger Station, 14335 Galice Rd., Merlin vicinity, 99000703

VIRGINIA

Botetourt County

Bowyer-Holladay House, US 220, Fincastle, 99000704

Suffolk Independent City

Suffolk Historic District (Boundary Increase), Roughly along N. Main St., from Constance Rd., to Norfolk and Western RR Tracks, Suffolk, 99000705

[FR Doc. 99–13116 Filed 5–24–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 751–TA–21–27 and 303–TA–23, 731–TA–566–570, and 731–TA–641 (Reconsideration)]

Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Suspension of review investigations Nos. 751–TA–21–27 and institution of proceedings to reconsider the Commission's affirmative determinations in countervailing duty investigation No. 303–TA–23 (Final) concerning ferrosilicon from Venezuela, and antidumping investigations Nos. 731–TA–566–570 and 641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.

SUMMARY: The Commission hereby gives notice that it has suspended the subject investigations under section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the Act) and is instituting proceedings in which it will reconsider its determinations in countervailing duty investigation No. 303–TA–23 (Final) concerning ferrosilicon from Venezuela, and antidumping investigations Nos. 731–TA–566–570 and 731–TA–641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.

For further information concerning the conduct of this reconsideration and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, C, and D (19 CFR part 207).

EFFECTIVE DATE: May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1998, the Commission received a request to review its affirmative determination as it applied to imports of ferrosilicon from Brazil (the request) [1] in light of changed circumstances, pursuant to section 751(b) of the Act. The request was filed by counsel on behalf of Associação Brasileira dos Productores de Ferroligas e de Silicio Metalico (ABRAFE), Companhia Brasileira Carbureto de Calcio (CBCC), Companhia de Ferroligas de Bahia (FERBASA), Nova Era Silicon S/A, Italmagnesio S/A-Industria e Comercio, Rima Industrial S/A, and Companhia Ferroligas Minas Gerais (Minasligas).

Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)), the Commission published a notice in the **Federal Register** on May 20, 1998 (63 FR 27747), requesting comments as to whether the alleged changed circumstances warranted the institution of review investigations. The Commission received comments in support of the request from C.V.G. Venezolana de Ferrosilicio C.A. (Fesilven), a Venezuelan producer of ferrosilicon; General Motors Corp., a purchaser of ferrosilicon; and the Governments of Brazil and Kazakhstan. Comments in opposition to the request were received from counsel on behalf of AIMCOR, American Alloys, Inc., Elkem Metals Co., and SKW Metals & Alloys, Inc., U.S. producers of ferrosilicon. After reviewing these comments, the Commission determined on July 28, 1998, that certain of the alleged changed circumstances were sufficient to warrant review investigations. See 63 FR 40314–15. Among the issues that were briefed by the parties to the investigations was the fact that, between 1995 and 1997, two members of the domestic industry pleaded guilty to conspiring to fix prices of commodity ferrosilicon products during the periods of the Commission's original investigations, and a third member, and an officer of that member, were convicted of conspiring to fix prices of commodity ferrosilicon products during the periods of the Commission's original investigations. The Commission has now decided to suspend the section 751(b) reviews and reconsider the original determinations.

Participation in the reconsideration and public service list: Parties who have

[1] The request concerned only imports from Brazil. However, as the alleged changed circumstances predominantly relate to the domestic industry, the Commission solicited comments on the possibility of self-initiating reviews of the outstanding orders on imports from China, Kazakhstan, Russia, Ukraine, and Venezuela.

entered appearances in the section 751(b) reviews do not have to enter new appearances in this reconsideration in order to participate. Other persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reconsideration proceedings as parties must file an entry of appearance with the Secretary to the Commission no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reconsideration proceedings.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list: Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reconsideration proceedings available to authorized applicants under the APO issued in these reconsideration proceedings, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9). A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO. Individuals subject to the APO in the section 751(b) reviews need not submit new applications for access to BPI in the reconsideration proceedings.

Written submissions: The record of the section 751(b) reviews will be incorporated into the record of these reconsideration proceedings. Each party can submit comments, including new factual information, to the Commission. Comments must be limited to the issues of (a) the price-fixing conspiracy, or other anticompetitive conduct relating to the original periods of investigation, and (b) any possible material misrepresentations or material omissions, by any entity that provided information or argument in the original investigations, concerning: (1) the conspiracy or other anticompetitive conduct or (2) any other matter. Comments must conform with the relevant provisions of section 207.23 of the Commission's rules and the deadline for filing is June 23, 1999. Parties may submit rebuttal comments, which may include new factual information, by July 7, 1999. Rebuttal comments shall be limited to the same issues as the opening comments. In addition, any person who has not entered an appearance as a party to the reconsideration proceedings may submit a brief written statement of information pertinent to the subject of the reconsideration proceedings on or before June 23, 1999. On July 12, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 16, 1999, but such final comments must not contain new factual information and must otherwise comply with the requirements stated in section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reconsideration proceedings must be served on all other parties to the reconsideration proceedings (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reconsideration proceedings are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to sections 201.10 and 207.45 of the Commission's rules.

Issued: May 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13387 Filed 5–24–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting; Emergency Notice of Canceled Agenda Item

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 24, 1999 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

CANCELED AGENDA ITEM: Agenda Item 6.—Inv. Nos. 751–TA–21–27 (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela)—briefing and vote.

In accordance with 19 CFR § 201.35(d)(2), the Commission has determined to cancel the above referenced agenda item for the meeting of Monday, May 24, 1999 at 2:00 p.m. Commissioners Miller, Crawford, Hillman, Koplan, and Askey determined that Commission business required such a change; Commissioner Bragg dissented. No earlier announcement of such change was possible.

Issued: May 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13390 Filed 5–21–99; 2:52 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27, 1999, and published in the **Federal Register** on February 4, 1999, (64 FR 6682), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture in bulk for distribution to its customers.

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lonza Riverside to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Lonza Riverside on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local news, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of

controlled substances listed above is granted.

Dated: May 14, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–13099 Filed 5–24–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 2, 1999, Noramco, Inc., 1400 Olympic Drive, Athens, Georgia 30601, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

The firm plans to support its other manufacturing facility with manufacturing and analytical testing.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 26, 1999.

Dated: May 12, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–13095 Filed 5–24–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a regulation under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 2, 1999, Research Biochemicals, Limited Partnership, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
Bufotenine (7433)	I
Etonitazene (9624)	I
Methylphenidate (1724)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Thebaine (9333)	II
Levo-alphacetylmethadol (LAAM) (9648).	II
Oxymorphone (9652)	II

The firm plans to import small quantities of the listed controlled substances to manufacture laboratory reference standards and neurochemicals.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47. Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 14, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–13097 Filed 5–24–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 23, 1999, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, PO Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The institute will manufacture marihuana cigarettes for the National Institute on Drug Abuse (NIDA) and the cocaine will be used for reference standards, human and animal research, as dictated by NIDA.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 26, 1999.

Dated: May 12, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–13094 Filed 5–24–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Adminsitration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on, March 31, 1999, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, PO Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The firm plans to import small quantities of the listed controlled substances for the National Institute of Drug Abuse and other clients.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 24, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 12, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–13096 Filed 5–24–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 25, 1999, Sigma Chemical Company, Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
3, 4-Methylenedioxyamphetamine (7400).	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404).	I
3, 4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocyn (7438)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecogonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk, (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Oxymorphone (9652)	II
Fentanyl (9802)	II

The firm plans to repackage and offer as pure standards controlled substances in small milligram quantities for drug testing and analysis.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in

accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47. Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 24, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 14, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–13098 Filed 5–24–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Revision of Disaster Unemployment Assistance (DUA) Handbook and Program Operating Forms, Including the ETA 90–2, Disaster Payment Activities Under the ''Stafford Disaster Relief Act''; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed revision of a currently approved collection of the Disaster Unemployment Assistance (DUA) Handbook and Program Operating forms, including the ETA 90–2, Disaster Payment Activities Under the ''Stafford Disaster Relief Act.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 26, 1999.

ADDRESSES: Sterling Green, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S4231, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone: 202–219–7301 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Sterling Green, telephone number (202) 219–7301, ext. 186 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 100–707 (Sections 410 and 423) provide for benefit assistance to ''any individual unemployed as a result of a major disaster.'' State Employment Security Agencies (SESA's), through agreements between the States and the Secretary of Labor, act as agents of the Secretary for the purpose of providing assistance to applicants in the various States who are unemployed as a result of a major disaster. The forms in Chapters III through V, VII and X of the DUA Handbook are used in connection with the provision of this benefit assistance. In the revised DUA Handbook, as approved by OMB on 8/26/98, we have eliminated the use of Federally-mandated DUE initial claims, weekly claims, determinations of entitlement and overpayment forms. We have permitted the SESA's to adopt forms to better accommodate the types of disasters involved and the requirements of their automated eligibility determination and payment systems. The President is directed by the Act to provide DUA through agreements with States which in his judgment have an adequate system for administering such assistance through existing State agencies. Without the data obtained from these reports, ETA would have no grasp on the program as it is administered by the States.

II. Current Actions

The data obtained from the Form ETA 90–2 are used by at least three organizational units within ETA. The Umemployment Insurance Service uses the data for evaluation of State agency performance on making payments and providing claimant services and for making required reports. The Employment Service uses the data to project funding needs in the areas of counseling, referrals to suitable work opportunities and suitable training. The Office of Financial and Administrative Management (OFAM) uses the data in accounting for the financial management of the program funds and fund transfers. In addition, the data are also used by the Federal Emergency Management Agency (FEMA), to whom the President has delegated the responsibility by Executive Order No. 12148, for administering the Act. All other forms (described above) are used by SESA's in operating the program and are not reports per se. Use of these forms by SESA's is essential to the operation of the DUA program. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Employment and Training Administration.

Title: Employment and Training Administration (ETA) Disaster Unemployment Assistance (DUA) Handbook and Program Operating Forms, Including the ETA 90–2, Disaster Payment Activities Under the ''Stafford Disaster Relief Act.''

OMB Number: 1205–0051.

Agency Number(s): DUA Handbook and Program Operating Forms, Including the ETA 90–2.

Affected Public: Individuals/State Governments.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hour)	Burden hours
Initial Application	11,000	Annually	11,000	1/6	1,833
Supplemental/Self-emp	3,800	Annually	3,800	1/6	633
Weekly Claim	11,000	6	66,000	1/12	5,500
Notice of Overpayment	235	Annually	235	1/4	59
ETA 90–2	50	6	300	1/6	50
Totals	26,035		81,035		8,075

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $124,193.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 19, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–13187 Filed 5–24–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–67)]

Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Scout Technologies, Inc., of Jeffersonville, Indiana, has applied for a partially exclusive license to practice the invention described and claimed in: U.S. Patent No. 5,166,679, entitled ''Driven Shield Capacitive Proximity Sensor;'' U.S. Patent No. 5,214,388, entitled ''Phase Discriminating Capacitive Array Sensor System;'' U.S. Patent No. 5,363,051, entitled ''Steering Capacitor Sensor;'' U.S. Patent No. 5,442,347, entitled ''Double Shield Capacitive Type Proximity Sensor;'' U.S. Patent No. 5,515,001, entitled ''Current Measuring Op Amp Devices;'' U.S. Patent No. 5,373,245, entitled ''Capaciflector Camera;'' U.S. Patent No. 5,539,292, entitled ''Capaciflector Guided Mechanisms;'' U.S. Patent No. 5,521,515, entitled ''Frequency Scanning Capaciflector;'' and U.S. Patent No. 5,726,581, entitled ''3D Capaciflector.'' Each is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the proposed grant of a license should be sent to NASA Goddard Space Flight Center.

DATES: Responses to this notice must be received by July 26, 1999.

FOR FURTHER INFORMATON CONTACT: Guy M. Miller, Chief Patent Counsel, NASA Goddard Space Flight Center, Code 750.2, Greenbelt, Maryland 20771.

Dated: May 14, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–13227 Filed 5–24–99; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC)

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Grant/Cooperative Agreement Provisions.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion, one time.

5. *Who will be required or asked to report:* Recipients of NRC grants or cooperative agreements.

6. *An estimate of the number of responses:* 91.

7. *The estimated number of annual respondents:* 60.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1069.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* The Division of Contracts and Property Management uses provisions, required to obtain or retain a benefit in its awards and cooperative agreements to ensure: adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the recipient are settled.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 24, 1999). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0107), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 18th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13218 Filed 5–24–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681–MLA–6; ASLBP No. 99–766–06–MLA]

International Uranium (USA) Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.1201 and 2.1207 of Part 2 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

International Uranium (USA) Corporation (IUSA) (Request for Materials License Amendment)

The hearing, if granted, will be conducted pursuant to 10 CFR Part 2, Subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing submitted by Envirocare of Utah, Inc., in response to an application from the International Uranium (USA) Corporation to amend its license to allow for the receipt and processing of uranium-bearing materials from a site near St. Louis, Missouri, being managed under the Formerly Utilized Sites Remedial Action Program. Envirocare opposes this amendment on the basis that it allegedly violates NRC regulations and the National Environmental Policy Act.

The Presiding Officer in this proceeding is Administrative Judge Peter B. Bloch. Pursuant to the provisions of 10 CFR §§ 2.722, 2.1209, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bloch and Judge Cole in accordance with 10 CFR § 2.1203. Their addresses are:

Administrative Judge Peter B. Bloch, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Dr. Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001

Issued at Rockville, Maryland, this 19th day of May 1999.

G. Paul Bollwerk, III,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 99–13217 Filed 5–24–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–2 and NPF–8 issued to the Southern Nuclear Operating Company (SNC or the licensee) for operation of the Joseph M. Farley Nuclear Plant, Unit 1 and 2, located in Houston County, Alabama.

The proposed amendments, requested by the licensee in a letter dated March 12, 1998, as supplemented by letters dated April 24, August 20, October 20, and November 20, 1998, and two letters dated April 30, 1999, would represent a full conversion from the current Technical Specifications (CTSs) to a set of TSs based on NUREG–1431, Revision 1, ''Standard Technical Specifications—Westinghouse Plants,'' dated April 1995. NUREG–1431 has been developed through working groups composed of both NRC staff members and industry representative and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TSs. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the current Farley TS and developed a proposed set of improved TSs for Farley using NUREG–1431 as a basis. The criteria in the final policy statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change which was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the CTSs into six general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, removed detailed changes, allowance to use a simulated or actual actuation signal, and less restrictive changes.

Administrative changes are editorial in nature, involve the movement of requirements within the CTS without affecting the technical content, simply reformat a requirement, or clarify the TS (such as deleting a footnote no longer applicable due to a technical change to a requirement). It also includes non-technical changes such as reformatting and rewording the remaining requirements in order to conform with the format and style of the standard technical specification (STS).

Relocated changes are those requirements and surveillances for structures, systems, components or variables that do not meet the screening criteria for inclusion in the TSs. Relocated changes are those current TS requirements which do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may thus be relocated to appropriate licensee-controlled documents. The licensee's application of the screening criteria is described in its March 12, 1998, submittal. The affected structures, systems components or variables are not initiators of analyzed events and are not assumed to mitigate accident or transients. These requirements and surveillances will be relocated from the TS to administratively controlled documents such as the Updated Final Safety Analysis Report (UFSAR), the TS Bases document, or plant procedures. Future changes made by the licensee to these documents will be pursuant to 10 CFR 50.59 or other appropriate control mechanisms.

More restrictive changes are those involving more stringent requirements for operation of the facility or eliminate existing flexibility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the assessment of process variables and operation of structures, systems, and components described in the safety analyses. For each requirement in the current Farley TSs that is more restrictive than the

corresponding requirement in NUREG–1431 which SNC proposes to retain in the improved Technical Specifications (ITSs), SNC has provided an explanation of why it has concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facilities because of the specific design features of the plant.

Removed detail changes move details from the current TS to a licensee-controlled document. The details being removed from the current TS are not initiators of any analyzed event and are not assumed to mitigate accidents or transients. Therefore, the removed details do not involve a significant increase in the probability or consequences of an accident previously evaluated. Removal of details to a licensee-controlled document will not involve a significant change in design or operation of the plant, and no hardware is being added to the plant as part of the proposed changes to the current TS. The changes will not alter assumptions made in the safety analysis and licensing basis. Therefore, the changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not reduce the margin of safety since they have no impact on any safety analysis assumptions. In addition, the details to be moved from the current TS to a licensee-controlled document are the same as the existing TSs.

Allowance to use a simulated or actual actuation signal applies to those changes that provide the allowance to utilize a simulated or actual signal to verify the automatic actuation of specific components in the Surveillance test requirements of the TSs. This type of change is considered less restrictive as it provides an alternate method to satisfy surveillance requirements that verify automatic equipment/system actuation. This change allows satisfactory automatic actuations (required equipment/system operations is verified) that occur due to an actual automatic actuation to fulfill the surveillance requirement. Operability is adequately demonstrated in either case as the affected equipment or system cannot discriminate between an actual or simulated (test) signal.

Less restrictive changes involve revision to existing requirements such that more restoration time is provided, fewer compensatory measures are needed, or fewer or less restrictive surveillance requirements are required. This would also include requirements which are deleted from the TS (not relocated to other documents) and other technical changes that do not fit a generic category. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the ITSs. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431 and thus provides a basis for these revised TSs or if relaxation of the requirements in the current TSs is warranted based on the justification provided by the licensee.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 24, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated March 12, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. and at the local public document room located at Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 18th day of May 1999.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Section 1, Project Directorate II–1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–13219 Filed 5–24–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–648]

UMETCO Minerals Corporation; Final Finding of No Significant Impact; Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Finding of No Significant Impact; Notice of Opportunity for Hearing.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–648 to authorize the licensee, Umetco Minerals Corporation (Umetco), to reclaim the Above-Grade Impoundment (Impoundment), located in Natrona County, Wyoming, according to the 1997 Enhanced Reclamation Plan, as amended. The Umetco East Gas Hills site is located approximately 50 miles (80 kilometers) southeast of the town of Riverton, Wyoming. The Impoundment was constructed to a previously approved reclamation design, except for the top cover layer, and several changes have been proposed in the enhanced plan. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of Umetco's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Ms. Elaine Brummett, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J9, Washington, DC 20555. Telephone 301/415–6606.

SUPPLEMENTARY INFORMATION:

Background

The Umetco Mineral Corporation (Umetco) site is licensed by the NRC, under Materials License SUA–648, to possess byproduct material in the form of uranium waste tailings, as well as other radioactive wastes generated by past milling operations. The mill has been dismantled and current site activities include completion of reclamation of three disposal areas and continuation of the ground water corrective action program.

The mill operated from 1960 to 1979 and tailings slurry was placed in the Impoundment during this period. The earth dams of the Impoundment are of silty clayey sands. Beside the original dam on the north, additional dams were built to expand the capacity (on the east in 1969, north in 1972, and east of the main dam in 1974). The material in the Impoundment had completed 90 percent settlement before the cover soil was placed.

In 1980, Umetco submitted a reclamation plan for the Above-Grade Impoundment (Impoundment), incorporating the adjacent experimental heap leach area. The plan was approved with modifications as documented in License Condition (LC) 54. Umetco completed tailings re-grading and construction of the cover, except for six inches of topsoil and seed, in 1992. As per the approved design, the cover consists of 1-foot of clay, 1-foot of filter soil, and 7.5-feet of overburden soil. Several years after construction, erosion of the cover was noted, and concerns were expressed for erosion along the east toe of the Impoundment, the closure of the north toe drain, and additional contamination found near the north edge of the Impoundment.

The major proposed modifications in the enhanced design to the approved Reclamation Plan for stabilization and containment of the waste material include:

1. Extend the radon barrier/cover on the north and east sides about 200 feet in order to close the drain system and cover contamination found along the downstream toe.
2. Add erosion protection (rip rap) along a portion of East Canyon Creek to protect the toe of the Impoundment.
3. Replace the previously proposed topsoil/vegetative cover with rip rap (rock) erosion protection on both the top and side slopes of the Impoundment.

In addition, Umetco would verify the stability, settlement, radon attenuation, and other aspects of the existing Impoundment.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the enhanced reclamation plan for the Impoundment, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. The license amendment would authorize Umetco to complete reclamation of the Impoundment as proposed. In conducting its appraisal, the NRC staff considered the following information: (1) Umetco's 1997 license amendment request and proposed design, as amended; (2) previous environmental evaluations of the facility; (3) data contained in required semiannual environmental monitoring reports; (4) existing license conditions; (5) results of

NRC staff site visits and inspections of the Umetco facility; and (6) consultations with the U.S. Fish and Wildlife Service, the U.S. Bureau of Land Management, and the Wyoming State Historic Preservation Office. The technical aspects of the enhanced reclamation plan are discussed separately in a Technical Evaluation Report (TER) that will accompany the final agency licensing action.

The results of the staff's appraisal are documented in an EA placed in the docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined actual and potential impacts associated with the enhanced reclamation of the Impoundment, and has determined that the requested amendment of Source Material License SUA–648, authorizing implementation of the reclamation plan, will: (1) be consistent with requirements of 10 CFR part 40, Appendix A; (2) not be inimical to public health and safety; and (3) not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been, and are expected to remain, below the regulatory limits;

2. Present and potential health risks to the public and risks of environmental damage from the proposed reclamation were assessed. Given the remote location, limited activities requested, small area of impact, and past activities on the site, the staff determined that the risk factors for health and environmental hazards are insignificant.

Because the staff has determined that there will be no significant impacts associated with approval of the license amendment, there can be no disproportionally high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA–648, for reclamation of the Impoundment, as requested by Umetco. Therefore, the principal alternatives available to NRC are to:

1. Approve the license amendment request as submitted; or

2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

3. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of Umetco's future operations or the denial of the license amendment. Additionally, in the TER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for reclamation, specified in 10 CFR Part 40, Appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed renewal of NRC Source Material License SUA–648. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant and, therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings,'' of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Umetco Minerals Corporation, P.O. Box 1029, Grand Junction, CO 81502;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings'' in 10 CFR part 2, Subpart L.

Dated at Rockville, Maryland, this 15th day of May 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–13220 Filed 5–24–99; 8:45 am]

BILLING CODE 7590–01–U

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the

month, a special message had been transmitted to Congress.

This report gives the status, as of May 1, 1999, of three rescission proposals that have been pending for more than 45 days and three deferrals contained in two special messages for FY 1999. These messages were transmitted to Congress on October 22, 1998, and February 1, 1999.

Rescissions (Attachments A and C)

As of May 1, 1999, three rescission proposals totaling $35 million have been transmitted to the Congress. Attachment C shows the status of the FY 1999 rescission proposals.

Deferrals (Attachments B and D)

As of May 1, 1999, $921 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 63949, Tuesday, November 17, 1998
64 FR 6721, Wednesday, February 10, 1999

Jacob J. Lew,

Director.

Attachments

ATTACHMENT A—STATUS OF FY 1999 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	35.0
Rejected by the Congress	.....
Currently before the Congress	35.0

ATTACHMENT B—STATUS OF FY 1999 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,680.7
Routine Executive releases through April 1999. (OMB/Agency releases of $760.6 million, partially offset by a cumulative positive adjustment of $0.9 million)	−759.7
Overturned by the Congress	.....
Currently before the Congress	921.0

BILLING CODE 3110–01–P

ATTACHMENT C
Status of FY 1999 Rescission Proposals - As of May 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Management of Lands and Resources	R99-1		6,800	2-1-99	*			
EXECUTIVE OFFICE OF THE PRESIDENT								
Unanticipated Needs								
Unanticipated Needs for Natural Disasters	R99-2		10,000	2-1-99	*			
INTERNATIONAL ASSISTANCE PROGRAMS								
International Security Assistance								
Foreign Military Financing Loan Program Account	R99-3		18,240	2-1-99	*			
TOTAL, RESCISSIONS			**35,040**					

* No funds were withheld.

[FR Doc. 99–13129 Filed 5–24–99; 8:45 am]
BILLING CODE 3110–01–C

ATTACHMENT D
Status of FY 1999 Deferrals - As of May 1, 1999
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-99
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund	D99-1	82,858	17,724	10-22-98	57,724				42,858
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic Support Fund	D99-2	84,777		10-22-98					
			1,310,376	2-1-99	562,896			881	833,138
Agency for International Development									
International Disaster Assistance	D99-3	185,000		2-1-99	139,956				45,044
TOTAL, DEFERRALS		**352,635**	**1,328,100**		**760,576**			**881**	**921,040**

POSTAL RATE COMMISSION

[Docket No. MC98–1; Order No. 1241]

Mail Classification Proceeding

AGENCY: Postal Rate Commission.

ACTION: Order terminating experimental docket.

SUMMARY: The Commission, at the Postal Service's request, terminates an experimental docket established to consider a proposed ''Mailing Online'' service. Termination will allow the Service to consider revisions to the proposal, given adoption of a consolidation policy regarding its Internet presence. Termination is without prejudice to a new filing.

DATES: Termination was effective May 12, 1999.

ADDRESSES: Send communications regarding this notice and order to the attention of Margaret P. Crenshaw, Secretary of the Commmission, 1333 H Street NW., Washington, DC, 20268–0001.

FOR MORE INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 1333 H Street, NW., Washington, DC, 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: On May 5, 1999, the US Postal Service filed a pleading announcing the withdrawal of its request in this proceeding and moving that the Commission close this docket. Notice of US Postal Service Withdrawal of Request for a Recommended Decision and Motion to Close Docket (Postal Service Motion), May 5, 1999. In its pleading, the Postal Service states that it intends to consolidate its Internet presence within one website, USPS.com, rather than using the ''PostOffice Online'' website as a platform for certain Internet services such as Mailing Online, as was originally proposed by the Service in this docket. Id. at 1–2. According to the Service, the consolidation will enable it to avoid unnecessary redundancies and costs, and to manage efficiently the issue of year 2000 compatibility. Id. at 1. The consolidation further is touted as a sound business decision in accordance with the practice of other firms engaged in Internet transactions. Ibid.

The Postal Service states that it hopes to file a new, reformulated and supplemented request for its Mailing Online service at some unspecified point in the future. Id. at 2. As Mailing Online's platform would be the consolidated USPS.com website, rather than the currently proposed PostOffice Online, an updated explanation of the system's operation and revisions of certain estimated information systems costs would be necessary. Ibid. In light of these modifications, the Service has concluded that the least complicated course of action is to withdraw its request. (In its motion to close the docket, the Postal Service states that it would seek to incorporate into the record of the new docket substantial, relevant parts of the record in the instant docket in order to allow for an expedited resolution of the new request. Postal Service Motion at 2.)

No participant has opposed the Postal Service's motion to terminate this docket. In light of the nature of this docket—a proposal for an experimental service by the Postal Service—the Commission does not believe that terminating proceedings at this time will result in prejudice to the due process rights of any participant. Accordingly, the Commission shall grant the Postal Service's motion to terminate this proceeding. (For information regarding the Service's initial filing, *see* Commission notice and order no. 1216, published at 63 FR 39600 (July 23, 1998)).

It is ordered:

1. The motion of the U.S. Postal Service to close docket no. MC98–1 is granted.

2. The Secretary shall cause this notice and order to be published in the **Federal Register**.

Authority: 39 U.S.C. 3623.

Dated: May 20, 1999.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 99–13146 Filed 5–24–99; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Postal Service Board of Governors

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, June 7, 1999; 8:30 a.m., Tuesday, June 8, 1999.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, in the Benjamin Franklin Room.

STATUS: June 7 (Closed): June 8 (Open).

MATTERS TO BE CONSIDERED:

Monday, June 7–1:00 p.m. (Closed)

1. Legal Issues.
2. Personnel Matters.

Tuesday, June 8–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, May 3–4, 1999.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Capital Investments.
   a. Point of Service One (POS 1)—Stage 2A.
   b. Cincinnati, Ohio, Airport Mail Facility (AMF).
4. Tentative Agenda for the July 12–13, 1999, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–13388 Filed 5–21–99; 2:32 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41412; File No. SR–BSE–99–5]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange Relating to Its Transaction Fee Schedule

May 17, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 1999, the Boston Stock Exchange (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its transaction fee schedule to implement a maximum transaction fee cap for floor broker-entered orders executed on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections, A, B. and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to amend the Exchange's transaction fee schedule to improve the Exchange's overall competitive position in the marketplace. The transaction fee schedule encompasses the trade recording and comparison charges and the value charges that the Exchange applies to orders that member firms send to the Exchange for execution. The Exchange proposes to amend the schedule by implementing a maximum transaction fee cap of $.35 per 100 average monthly shares on all floor broker-entered orders executed on the Exchange. The Exchange will apply this cap to floor broker-entered orders prior to applying the existing total volume transaction fee cap of $.45 per 100 average monthly shares.[3]

(2) Basis

The basis for the proposed rule change in section 6(b)(5) of the Act,[4] in that the proposed rule change is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective on filing, for implementation on May 1, 1999, pursuant to section 19(b)(3)(A) of the Act[5] and subparagraph (f) of 19b–4 thereunder.[6] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned Exchange. All submissions should refer to File No. SR–BSE–99–5 and should be submitted by June 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13110 Filed 5–24–99; 8:45 am]

BILLING CODE 8010–01–M

[3] To calculate the total transaction fees for all order flow, the Exchange will add the total fees for electronic trades (capped at $50,000 per month) to the total fees for broker-entered trades (capped at the new rate of $.35 per 100 average monthly shares). The Exchange then will apply the total volume cap of $.45 per 100 average monthly shares to that sum. Telephone conversation between Kathy Marshall, Assistant Vice President, Finance, Boston Stock Exchange, and Joshua Kans, Attorney, and Matthew Boesch, Paralegal, Division of Market Regulation, Commission, May 7, 1999.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

[7] In reviewing these rules, the Commission has considered the effect of the proposed rule change on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41413; File No. SR–CBOE–99–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Market-Maker Surcharge Fee Schedule

May 17, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage.*[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999)(order approving CBOE Rule 2.40).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, the Equity Floor Procedure Committee approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract) [4]
Barnes and Noble, Inc. (BKS)	$0.10	$0.00
Tyco (TYC)	0.02	0.00
Kerr-McGee Corp. (KMG)	0.10	0.00
Network Associates Inc. (CQM)	0.05	0.00
Associated First Capital Corp. (AFS)	.0.04	0.00
BankAmerica Corporation (BAC)	0.02	0.00
BP Amoco (BPA)	0.02	0.00
Sunrise Technology (RNU)	0.03	0.00
Sprint (PCS)	0.15	0.00
Cendant (CD)	0.07	0.00
National Discount Broker (NDB)	0.03	0.00
Abercrombie & Fitch (ANF)	0.13	0.00
ENZO Biochem (ENZ)	0.13	0.00
Checkfree (FCQ)	0.15	0.00
Neomagic Corp (GJQ)	0.22	0.00
Intimate Brands (IBI)	0.16	0.00
Maxtor Corp.	0.12	0.00
Amkor (QEL)	0.06	0.00
Ortel Corp. (OQE)	0.09	0.00
Data Dimensions	0.24	0.00

These fees will be effective as of May 1, 1999, and will remain in effect until such time as the Equity Floor Procedure Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

[4] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)(40) [5] of the Act because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(b)(3)(A)(ii) [6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–19 and should be submitted by June 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13109 Filed 5–24–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41414; File No. SR–NASD–99–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Filing Fees Under the Corporate Financing Rule

May 17, 1999.

On January 11, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its regulatory subsidiary NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] On March 18, 1999, and March 23, 1999, NASD Regulation submitted to the Commission Amendment Nos. 1 and 2, respectively, to the proposed rule change.[3] In its filing, NASD Regulation proposed to amend Section 6 of Schedule A to the NASD By-Laws (''Section 6 of Schedule A'') and NASD Conduct Rule 2710 (the ''Corporate Financing Rule'') to simplify the fee structure for public offerings filed under NASD Conduct Rules 2710, 2720, and 2810. Notice of the proposal as contained in Amendment No. 2 was

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Regulation filed Amendment No. 1 which superseded the original rule filing in its entirety. *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 17, 1999; Amendment No. 2 also superseded Amendment No. 1 and the original rule filing in its entirety. *See* Letter from Joan C. Conley, Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated March 22, 1999.

published in the **Federal Register** on April 12, 1999 (''Notice'').[4] No comments were received on the proposal.

I. Description of the Proposal

The proposed rule change amends Section 6 of Schedule A to clarify the method of calculating the Corporate Financing filing fees by the Corporate Financing Department of NASD Regulation (''Department''). Presently, the Corporate Financing Rule requires that NASD members file most proposed public offerings with the Department. The Department reviews these filings prior to the commencement of the offering to determine whether the underwriting terms and arrangements are fair and reasonable pursuant to standards set forth in NASD Conduct Rules 2710, 2720, and 2810. The proposal amends certain of the NASD's rules to address problems with the manner in which the Department calculates the Corporate Financing filing fees.

Application of Fee to All Securities on Offering Document—Currently, offerings filed with the Department are charged a fee equal to $500 plus .01% of the gross dollar amount of the offering, not to exceed $30,500. The definition of the term ''gross dollar amount of the offering'' in Paragraph (a)(1) of Conduct Rule 2710 allows NASD Regulation to collect a fee on ''all securities offered to the public.'' This language is often interpreted by NASD members to impose a fee only with respect to those specific securities currently offered to the public by the NASD member filing a proposed offering, even when the issuer has included other securities on the same offering document for later public sale by the same or another NASD member. Further, in the case of securities registered with the SEC pursuant to Rule 415, NASD members have argued that the Department should recalculate the filing fee each time a shelf take down is made so that the NASD member is only responsible for that portion of the Corporate Financing filing fee that relates to that NASD member's specific shelf take down.

Accordingly, NASD Regulation proposes to amend Section 6(a) of Schedule A to clarify that the Corporate Financing filing fee will be calculated on the proposed maximum aggregate offering price[5] or other applicable value[6] of all securities included on a SEC registration statement or any other type of offering document—regardless of whether the securities are currently ''offered to the public.'' Further, NASD Regulation proposes to delete the definition of the term ''gross dollar amount of the offering'' in Paragraph (a)(1) of Conduct Rule 2710 because the calculation of the Corporate Financing filing fee in Section 6(a) of Schedule A will no longer be based on this term.

Calculation of Fee on Amendments—Section 6(b) of Schedule A currently requires that NASD Regulation collect an additional filing fee when an amendment to the offering document increases the number of securities being registered, regardless of whether there is any increase in the aggregate value of the securities that were included on the original offering document. This additional filing fee is calculated by multiplying the number of additional securities times their new offering price and charging a fee of .01% of this product, but not to exceed $30,500 for total filing fees for any offering filed. When an amendment decreases the maximum aggregate offering price for the whole offering (as well as increasing the number of securities offered), the collection of an additional filing fee by the Department is not always warranted. Conversely, the Department is currently prevented by the language of Section 6(b) of Schedule A from collecting an additional fee when the amendment increases the maximum aggregate offering price of the securities offered, but does not increase the number of securities.

The proposal would amend Section 6(b) of Schedule A to impose an additional fee on amendments only when there is an increase in the maximum aggregate offering price or other applicable value of all securities included on the offering document. Specifically, an additional filing fee would be imposed on amendments in the amount of .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document, with a maximum of $30,500 in total filing fees charged for any offering. However, no refund will be made as a result of a net decrease in the maximum aggregate offering price or other applicable value.

The proposed change to Section 6(b) of Schedule A would clarify that NASD Regulation recognizes that there can be a net increase in the maximum aggregate offering price or other applicable value of an offering registered with the SEC through an amendment to the registration statement or through ''any other change.'' The proposed language also treats as an amendment a net increase in the maximum aggregate offering price or other applicable value that is reflected in an SEC Rule 430A prospectus[7] or a related registration statement filed pursuant to SEC Rule 462(b).[8]

SEC Rule 457—NASD Regulation also proposes to eliminate Section 6(c) of Schedule A. Originally, this section referenced SEC Rule 457 for the calculation of the Corporate Financing filing fees in certain situations. Specifically, it requires that Corporate Financing filing fees be computed according to SEC Rule 457, to the extent that SEC Rule 457 is not inconsistent with Section 6 of Schedule A. NASD Regulation states that the proposed amendments to Section 6 of Schedule A would incorporate all necessary concepts for the calculation of such filing fees. Therefore, NASD Regulation proposes to eliminate Section 6(c) of Schedule A, as the reference to SEC Rule 457 is no longer necessary.

Elimination of Duplicate Provision—Section 6 of Schedule A and Paragraph

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[4] Securities Exchange Act Release No. 41248 (April 2, 1999), 64 FR 17707 (April 12, 1999) (File No. SR–NASD–99–01).

[5] The term ''proposed maximum aggregate offering price'' is the same term used in the fourth column of the fee table on the cover of SEC registration statement forms to identify registration statement.

[6] The inclusion of the words ''other applicable value'' is intended to cover debt securities or a situation in which the company only registers a dollar amount of securities without specifying the type of or number of securities being offered. This is the same value that would be included under the fourth column of the fee table titled '' proposed maximum aggregate offering price'' on the cover of SEC registration forms in the case where a debt issue or a dollar amount of securities is being registered with the SEC.

[7] SEC Rule 430A permits a registrant to omit certain information from a prospectus that is filed as part of a registration statement declared effective by the SEC if the omitted information is contained in a prospectus filed with the SEC pursuant to SEC Rule 424(b) or SEC Rule 497(h) within 15 business days after effectiveness. If the omitted information is not contained in a prospectus filed with the SEC within fifteen business days after effectiveness, it must be contained in an effective post-effective amendment to the registration statement. SEC Rule 430A permits a registrant to reflect in the prospectus filed pursuant to SEC Rule 424(b) or SEC Rule 497(h) or in a post-effective amendment to the registration statement a change in the volume of securities offered (if the total value of securities offered would not exceed that which was registered) or a change in the bona fide estimate of the maximum offering price range if the changes, in the aggregate, represent no more than a 20 percent change in the maximum aggregate offering price set forth in the fee table in the effective registration statement.

[8] SEC Rule 462(b) permits a registrant to file a registration statement that is effective upon filing if, among other things, the registration statement registers ''additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective by the Commission.''

(b)(10) of Conduct Rule 2710 include identical provisions that impose a fee on each filing in the amount of $500 plus .01% of the value of securities with a maximum filing fee limit of $30,500. NASD Regulation proposes to eliminate paragraph (b)(10) of Conduct Rule 2710 in its entirety because it duplicates Section 6 of Schedule A. NASD Regulation further believes that Schedule A is the more appropriate location for provisions that impose fees on NASD members.

Method for Submission of Filing Fees—The language of Sections 6(a) and 6(b) of Schedule A currently specifies that a filing fee will accompany an initial filing and amendments, in certain cases. The proposal would eliminate this language within these sections.

II. Discussion

The Commission has determined to approve the Association's proposal to amend Section 6 of Schedule A and NASD Conduct Rule 2710. The Commission believes that the proposal to amend Section 6 of Schedule A and NASD Conduct Rule 2710 to simplify the NASD's Corporate Financing filing fee structure for public offerings filed under NASD Conduct Rules 2710, 2720, and 2810 is consistent with Section 15A(b)(5)[9] of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among NASD members. The Commission also believes that the proposal to amend Sections 6(a) and 6(b) of Schedule A provides enhanced guidance to both NASD members and the Department's staff regarding the Corporate Financing filing fee structure. The Commission believes that the proposed amendment to Section 6(a) will facilitate the calculation of Corporate Financing filing fees by the Department and will remove disputes over filing fees that currently occur over whether securities included on an offering document are being currently ''offered to the public.'' The Commission believes that requiring NASD Regulation to do a piecemeal calculation of filing fees to account for each NASD member's shelf take down would be time consuming and cause accounting difficulties for the Department.

With respect to the proposed amendment Section 6(b) of Schedule A, the Commission believes that this amendment is also consistent with Section 15A(b)(5)[10] of the Act in that it provides for equitable allocation of filing fees charged for amendments of public offerings. The Commission notes that the Department will charge a maximum of $30,500 in total filing fees for reviewing any public offerings filed. The Commission recognizes that the potential effect of the proposed amendment to Section 6(b) of Schedule A is to decrease the total Corporate Financing filing fees collected for amendments filed. NASD represents that it will provide notice to NASD members of the uniform, no-refund policy of NASD Regulation regarding any amendments filed that may result in a decrease in the maximum aggregate offering price or other applicable value. The Commission believes that this clarification will eliminate further confusion among the NASD members as to whether a refund would be warranted in such case. For all the reasons set forth above, the Commission believes that the proposed amendment to Section 6(b) of Schedule A will provide for the equitable allocation of fees among NASD members.

The Commission also believes that the language of Sections 6(a) and 6(b) of Schedule A that currently specifies that a filing fee shall accompany an initial filing and amendments, in certain cases, should be deleted. The Commission believes that this deletion, which will provide NASD Regulation with greater flexibility respecting the manner in which filing fees are paid, is also consistent with a prior Commission order approving the NASD proposal implementing payment of the Corporate Financing filing fee by wire transfer.[11]

The Commission also believes that it is reasonable for NASD Regulation to eliminate Section 6(c) of Schedule A which referred to SEC Rule 457 for filing fee guidance. NASD Regulation represents that there is no longer a need for the Department to refer to SEC Rule 457 for guidance as to the calculation methodology of certain Corporate Financing filing fees. Instead, NASD Regulation represents that the Department may now refer to the amended Section 6 of Schedule A for computation guidance for the Corporate Financing filing fees. Based on a review of the proposed amendments to Section 6 of Schedule A, the Commission believes that this section incorporates all necessary concepts for the calculation of the Corporate Financing filing fees.

The Commission believes that the proposal to delete the definition of ''gross dollar amount of the offering'' in paragraph (a)(1) of NASD Conduct Rule 2710 is appropriate. Given that Section 6(a) of Schedule A will be amended as discussed above, the Commission agrees that the definition will no longer be applicable.

Further, the Commission agrees that NASD Regulation's proposal to delete NASD Conduct Rule 2710(b)(10) in its entirety is reasonable because it duplicates Section 6 of Schedule A. The Commission further believes that Schedule A, which incorporates all the rules relating to fees, is the more appropriate location for fee provisions imposed on NASD members.

III. Conclusion

The Commission finds that the proposed rule change, as amended, is consistent with the Act, and, particularly, with Section 15A thereof.[12] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[13]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–99–01) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13111 Filed 5–24–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3184]

State of Florida

Bay County and the contiguous counties of Calhoun, Gulf, Jackson, Walton, and Washington in the State of Florida constitute a disaster area as a result of damages caused by high wind, heavy rain, and flooding that occurred on May 7, 1999. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on July 15, 1999 and for economic injury until the close of business on February 14, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

[10] 15 U.S.C. 78*o*–3(b)(5).

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] The NASD recently deleted Subsection (6)(c) of Schedule A to the NASD By-Laws and Subparagraph (b)(10)(C) of NASD Conduct Rule 2710, which mandated that Corporate Financing filing fees be paid in the form of a check or money order. The NASD also renumbered Subsection (6)(d) to Subsection (6)(c) of Schedule A to the NASD By-Laws. Securities Exchange Act Release No. 40706 (November 24, 1998), 63 F.R. 66618 (December 2, 1998) (File No. SR–NASD–98–87).

[12] 15 U.S.C. 78*o*–3.

[13] 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

The interest rates are:

	(Percent)
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 318406 for physical damage and 9C8800 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 14, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–13186 Filed 5–24–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3183]

State of Tennessee

As a result of the President's major disaster declaration on May 12, 1999, I find that Cheatham, Chester, Davidson, Decatur, Dickson, Hardeman, Hardin, Henderson, Hickman, Houston, Humphreys, Lawrence, McNairy, Perry, Stewart, White, and Williamson Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on May 5, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 10, 1999 and for economic injury until the close of business on February 14, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Benton, Bledsoe, Carroll, Cumberland, DeKalb, Fayette, Giles, Haywood, Henry, Lewis, Madison, Marshall, Maury, Montgomery, Putnam, Robertson, Rutherford, Sumner, Van Buren, Warren, Wayne, and Wilson Counties in Tennessee; Alcorn, Benton, Tippah, and Tishomingo Counties in Mississippi; Lauderdale and Limestone Counties in Alabama; and Calloway, Christian, and Trigg Counties in Kentucky.

The interest rates are:

	(Percent)
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 318312. For economic injury the numbers are 9C8400 for Tennessee, 9C8500 for Mississippi, 9C8600 for Alabama, and 9C8700 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 14, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–13185 Filed 5–24–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3052]

Bureau for International Narcotics and Law Enforcement Affairs; Anti-Domestic Violence and Trafficking in Women and Children; Training and Technical Assistance Program

AGENCY: Office of Europe, NIS, and Training; Bureau for International Narcotics and Law Enforcement Affairs, State.

ACTION: Notice.

SUMMARY: State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) began an anti-domestic violence and trafficking in women and children program in 1997 to provide training and technical assistance in consultation with counterparts in Russia and the New Independent States (NIS). The goal of the program is to increase professionalism and improve the technical capabilities of law enforcement institutions to develop prevention and early intervention strategies to combat domestic violence and trafficking in women and children while protecting the human rights of victims.

This program includes the participation of non-Federal agencies (e.g., universities, state/local government agencies, private non-profit organizations, etc.) in the delivery of law enforcement training and technical assistance to Russia, and the NIS. This non-Federal component of the INL program has a timeframe of 1999–2001.

DATES: Full proposals must be received at INL no later than 30 days following the announcement date. We anticipate that review of full proposals will occur during July 1999 and funding should begin during September. September 27, 1999 should be used as the proposed start date on proposals, unless otherwise directed by the Grants Officer. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: *Submit proposals to:* Linda Gower, U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, 2430 E Street, N.W., Washington, D.C. 20520, TEL: 202–776–8774.

SUPPLEMENTARY INFORMATION:

Funding Availability

This Program Announcement is for projects to be conducted by agencies/programs outside the Federal government, over a period of up to two years. Current plans are for up to a total of $2.8 million to be available for new (or renewing) INL awards. The funding instrument for awards will be a grant. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to INL are not available under this announcement. Matching share, though encouraged, is not required by this program.

Program Authority

Authority: Section 635(b) of the Foreign Assistance Act, as amended.

Program Objectives

One of the goals of the INL program is to institute democratic practices by increasing the technical capabilities of foreign country law enforcement institutions.

The INL program has been designed to generate assistance to foreign governments which will complement the training and assistance provided by Federal agencies on a range of crime issues. All training and assistance of the INL anti-domestic violence and trafficking in women and children program should be focused on city or local police forces, the procuracy and advocacy/non-governmental organizations (NGOs).

Program Priorities

The FY 1999 INL Program Announcement invites training and technical assistance program proposals for Russia and the Newly Independent States in the following areas:

(1) Domestic Violence; and

(2) Trafficking in Women and Children.

All training conducted under this program must utilize a multi-disciplinary training format that encourages law enforcement cooperation with prosecutors, judges, social workers, medical personnel, psychologists, crisis centers and other relevant NGOs. This training format should address the elements of ''prevention,'' ''enforcement and prosecution,'' and ''protection/assistance for victims''.

As much as possible, training programs should also have a regional focus targeting cities where there are crisis centers and other relevant NGOs.

Any grant applicants who will be working with Russian and NIS crisis centers or other relevant foreign NGOs to implement the proposed training program may sub-grant or sub-contract services and provide equipment and supplies to assist in fulfilling program objectives.

Government Involvement

The Department of State will exercise normal federal stewardship responsibilities during the implementation of programs. Department of State involvement will include, but is not limited to: site visits, review and response to performance, technical or subject matter, review of financial reports, and audit of programs to ensure that the objectives, terms, and conditions of a grant award are accomplished. Grant recipients will also be required to provide information to the Department of State on proposed meetings, trainees or organizations intended to receive technical assistance. The Department of State has the right to approve or deny any such meetings, trainees or organizations.

Eligibility

Eligibility is limited to non-Federal agencies and organizations, and is encouraged with the objective of developing a strong partnership with the state/local law enforcement community. Non-law enforcement proposers are urged to seek collaboration with state/local law enforcement institutions, crisis centers and other relevant NGOs. Experience of U.S. trainers related to combating domestic violence and/or trafficking in women and children is required. State and local governments, universities, and non-profit organizations are included among entities eligible for funding under this announcement. Direct funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address one or both of the program priorities identified above and meet the following evaluation criteria:

(1) *Relevance (20%):* Importance and relevance to the goal and objectives of the INL Anti-Domestic Violence and Trafficking in Women and Children program.

(2) *Methodology (25%):* Adequacy of the proposed approach and activities, including development of relevant training curricula, training methods proposed, project evaluation methodology, project milestones, and final products.

(3) *Readiness (25%):* Relevant history and experience in conducting training/technical assistance in the program priority areas identified above, strength of proposed training/technical assistance, past performance record of proposers.

(4) *Linkages (15%):* Connections to existing law enforcement agencies and NGOs in Russia and the NIS, in addition to previous training or related assistance experience in these countries.

(5) *Costs (15%):* Adequacy/efficiency of the proposed resources; appropriate share of total available resources; prospects for joint funding.

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by independent peer panel review composed of INL and other Federal USG agency experts. Their recommendations and evaluations will be considered by INL in final selections. Those ranked by the panel and program as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated for possible funding, the program managers will: (a) ascertain which proposals meet the objectives, fit the criteria posted, and do not duplicate other projects that are currently funded by INL, other USG agencies or foreign governments, or international organizations (note: proposals or elements that duplicate existing activities of USG agencies will not receive awards. end note); (b) select the proposals to be funded; (c) determine the total duration of funding for each proposal; and (d) determine the amount of funds available for each proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals

(1) Proposals submitted to INL must include the original and three unbound copies of the proposal. (2) Proposals must be limited to 30 pages (numbered), including budget, personnel vitae, and all appendices, and should be limited to funding requests for one to two year duration. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. (3) Proposals should be sent to INL at the above address. (4) Facsimile transmissions of full proposals will not be accepted.

(b) Required Elements

(1) Signed title page: The title page should be signed by the Project Director (PD) and the institutional representative and should clearly indicate which project area is being addressed. The PD and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be

completed. The abstract should appear as a separate page, headed with the proposal title, institution(s) name, investigator(s), total proposed cost and budget period.

(3) Prior training experience: A summary of prior law enforcement training experience should be described, including training related to program priorities identified above and/or conducted in Russia and the NIS. Reference to each prior training award should include the title, agency, award number, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) Statement of work: The proposed project must be completely described, including identification of the problem, project objectives, proposed training and evaluation methodology, relevance to the goal and objectives of the INL Anti-Domestic Violence and Trafficking in Women and Children program, and the program priorities listed above. Benefits of the proposed project to U.S. law enforcement efforts should be discussed. A year-by-year summary of proposed work must be included clearly indicating that each year's proposed work is severable and can easily be separated into annual increments of meaningful work. The statement of work, including figures and other visual materials, must not exceed 15 pages of length.

(5) Budget: Applicants must submit a Standard Form 424 (4–92) ''Application for Federal Assistance,'' including a detailed budget using the Standard Form 424a (4–92), ''Budget Information—Non-Construction Programs.'' The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Additional text to justify expenses should be included (i.e., salaries and benefits by each proposed staff person; direct costs such as travel (airfare, per diem, miscellaneous travel costs); equipment, supplies, contractual, and indirect costs). Indicate if indirect rates are DCAA or other Federal agency approved or proposed rates and provide a copy of the current rate agreement. In addition, furnish the same level of information regarding subgrantee costs, if applicable, and submit a copy of your most recent A–110 audit report.

(6) Vitae: Abbreviated curriculum vitae are sought with each proposal. Vitae for each project staff person should not exceed three pages in length.

(c) Other Requirements

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.'' Applicants are also hereby notified of the following:

1. Non procurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, ''Non procurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

2. Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants of more than $100,000; and

4. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit SF-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

(1) Recipients must require applicants/bidders for subgrants or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure Form SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to Department of State (DOS). SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOS in accordance with the instructions contained in the award document.

(2) Recipients and subrecipients are subject to all applicable Federal laws and Federal and Department of State policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of State to cover preaward costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, ''Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' OMB Circular No. A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions,'' and 15 CFR Part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' as applicable. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(5) All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) a negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of State are made.

(8) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of State has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of

performance is at the total discretion of the Department of State.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of or be subjected to discrimination under any program or activity receiving assistance from the INL Anti-Domestic Violence and Trafficking in Women and Children program.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: May 19, 1999.

James Puleo,

Director, Office of Europe, NIS, and Training, Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State.

[FR Doc. 99–13212 Filed 5–24–99; 8:45 am]

BILLING CODE 4710–17–U

STATE DEPARTMENT

[Public Notice 3043]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 29 and 30, at the Little America Hotel in Salt Lake City, Utah. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b[c] [1] and [4], it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, phone: 202–663–0869.

Dated: May 12, 1999.

Peter E. Bergin,

Director of the Diplomatic Security Service.

[FR Doc. 99–13211 Filed 5–24–99; 8:45 am]

BILLING CODE 4710–24–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending May 14, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5677.
Date Filed: May 12, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 NMS–ME 0081 dated 14 May 1999
Mail Vote 005—Resolution 010k
North Atlantic-Middle East Special Passenger Amending
Resolution from Bahrain, Oman, Qatar, United Arab
Emirates to North Atlantic
Intended effective date: 1 June 1999.

Docket Number: OST–99–5678.
Date Filed: May 12, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0452 dated 14 May 1999
Mail Vote 003—Resolution 010L
Special Passenger Amending Resolution from/to Switzerland
Intended effective date: 1 June 1999 for travel on/after
15 June 1999.

Docket Number: OST–99–5680.
Date Filed: May 12, 1999.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 ME–TC3 0062 dated 11 May 1999
Mail Vote 002—Middle East-South West Pacific Resolution 010i
Special Passenger Amending Resolution from Bahrain, Oman, Qatar, United Arab Emirates to South West Pacific
Intended effective date: 1 June 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–13131 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending May 14, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5670.
Date Filed: May 10, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: June 7, 1999.
Description: Joint Application of Southern Air Inc. and Southern Air Transport, Inc. pursuant to 49 U.S.C. Section 41105 and Subpart Q, requests the transfer to Southern of the SAT certificates of public convenience and necessity and exemption authority for interstate, overseas and foreign all-cargo air transportation listed in Exhibit SAT–1.

Dorothy W. Walker.

Federal Register Liaison.

[FR Doc. 99–13130 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5702]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) and its Committees on Navigation Equipment and Prevention Through People (PTP) will meet to discuss various issues relating to the safety of navigation. All meetings are open to the public.

DATES: NAVSAC will meet on Wednesday, June 9 and 10, 1999, from 8:00 a.m. to 4 p.m. The Committees on

Navigation Equipment and PTP will meet on Wednesday, June 9, 1999, from 9:30 a.m. to 12 noon. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before June 7, 1999. Requests to have a copy of your material distributed to each member of the Council should reach the Coast Guard on or before June 4, 1999.

ADDRESSES: NAVSAC will meet in Leamy Hall at the U.S. Coast Guard Academy, 15 Mohegan Avenue, New London, CT 06320–4195. Committee meetings will be held at the same location. Send written material and requests to make oral presentations to Ms. Margie G. Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Margie G. Hegy, Executive Director of NAVSAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Navigation Safety Advisory Council (NAVSAC). The agenda includes the following:

(1) Introduction and swearing-in of new Chairperson and members.

(2) Update on the Marine Transportation System Initiative.

(3) Overview of Coast Guard's Research and Development Projects on Aids to Navigation and VTS/AIS.

(4) Brief on the Formal Safety Assessment Process.

(5) High Speed Craft—Overview of impacts to navigation safety.

Committee on Navigation Equipment. The agenda includes the following:

(1) Electronic Chart System (ECS) criteria for inland/domestic vessels not subject to SOLAS.

(2) Universal Automatic Information System (AIS) carriage requirements.

Committee on Prevention Through People (PTP). The agenda includes the following:

(1) Communications Plan for deck personnel.

(2) Funding and liability issues associated with near miss reporting.

(3) Fatigue and work hours issues for inland waterway marine personnel.

Procedural

All meeting are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than June 7, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than June 4, 1999. If you would like a copy of your material distributed to each member of the Council in advance of a meeting, please submit 25 copies to the Executive Director no later than June 4, 1999.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: May 18, 1999.

Jeffrey P. High,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–13156 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5592]

Differential Global Positioning System (DGPS)

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it has determined that the Maritime Differential Global Positioning System (DGPS) Service has achieved Full Operational Capability (FOC). The network now meets the high standards for accuracy, integrity, reliability, availability, and coverage required for the Harbor Entrance and Approach phase of maritime navigation. In addition, the Coast Guard announces that it is beginning expansion of DGPS into the continental U.S. as the Nationwide DGPS (NDGPS). The NDGPS will have the same signal characteristics as the Maritime DGPS Service. However, until it is fully operational, it may not meet the same coverage, availability, and reliability specifications. This notice describes the two systems, and explains how users can identify which system is providing the signal they are using.

DATES: The Maritime DGPS Service was certified FOC on March 15, 1999.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. It is available for inspection or copying in room PL–401 on the Plaza Level of the Nassif Building at the Docket Management Facility, US Department of Transportation, 400 Seventh Street SW, Washington DC 20590–0001. Hours are between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT:

For questions on this notice, contact LT Terry Johns, Office of Aids to Navigation, Radio Aids Division (G-OPN–3), Coast Guard, telephone 202–267–6538. You can obtain a copy of this notice by calling the Coast Guard's Navigation Information Center at (703) 313–5900, via email nisws@smtp.navcen.uscg.mil or on the Internet at http://www.navcen.uscg.mil.

For questions on viewing the docket, contact Chief, Dockets, Department of Transportation, telephone 202–366–9329.

For questions or copies of documents mentioned in this Notice:

1. *Federal Radionavigation Plan (FRP).* Contact the National Technical Information Service, Springfield, VA 22161 or on the Internet at http://www.navcen.uscg.mil.

2. *BROADCAST STANDARD FOR THE USCG DGPS NAVIGATION SERVICE, COMDTINST M16577.1.* Available on the Internet at http://www.navcen.uscg.mil or contact LT Terry Johns, telephone 202–267–6538, as listed above in this preamble.

3. *International Telecommunications Union (ITU) document ITU-R M.823.* Write to ITU, General Secretariat, Place des Nations, CH–1211 Geneva, Switzerland or on the Internet at http://www.itu.ch.

4. *International Maritime Organization's International Electrotechnical Committee (IEC) documents IEC–61108–1 and IEC–61108–4.* Write to IEC, 3 rue de Verembe' PO Box 131, CH–1211 Geneva, Switzerland or on the Internet at http://www.iec.ch.

SUPPLEMENTARY INFORMATION:

Determinations

On January 30, 1996, the Coast Guard determined that the Maritime DGPS Service met Initial Operational Capability (IOC) and was declared operational. This notice announces that the Coast Guard has determined that the Maritime DGPS Service achieved FOC on March 15, 1999. All Maritime DGPS Service broadcast sites are operational,

providing better than 10-meter (95 percent) horizontal navigational accuracy with integrity. Also, the Coast Guard has verified the system coverage areas, and installed beacon transmitters and antenna systems necessary to meet advertised availability and reliability standards.

In addition to the real-time DGPS correction broadcast by the Maritime DGPS Service, each site has been integrated into the Continuously Operating Reference Stations (CORS) network operated by the Department of Commerce. The full GPS signal is archived and made available publicly for all post-processing GPS applications at the following Internet address—http://www.ngs.noaa.gov/CORS/cors-data.html.

This notice also announces that the Coast Guard is beginning expansion of DGPS into the continental U.S. as the Nationwide DGPS (NDGPS). Eight NDGPS sites in: Appleton, WA; Whitney, NB; Savannah, GA; Penobscot, ME; Chico, CA; Hartsville, TN; Clark, SD; and Driver, VA have been installed and another eight NDGPS sites should be installed by the end of 1999. By December 31, 2002, the NDGPS is expected to provide single coverage for the continental U.S. and portions of Alaska.

Until the NDGPS achieves full operational capability, it may not meet the same coverage, availability and reliability specifications as the Maritime DGPS Service; however where healthy NDGPS signals are available, they will meet the same accuracy and integrity specifications as the Maritime DGPS Service.

Background and Purpose

a. *Definitions*. The following terms used in this notice are defined. Further explanation may be found in the Federal Radionavigation Plan. The FRP is jointly developed by the Department of Defense and the Department of Transportation as the official source of radionavigation policy and planning for the Federal Government.

Accuracy of an estimated or measured position of a craft at a given time is the degree of conformance of that position with the true position of the craft at that time.

Availability is the percentage of time that the services of the system are usable by the navigator.

Coverage provided by a radionavigation system is that surface area in which the signal strengths are adequate to permit the navigator to determine a position to a specified level of accuracy.

Full Operational Capability (FOC) was established for the Maritime DGPS Service when the signals were capable of providing the accuracy, integrity, reliability, availability, and coverage defined in the FRP. For the NDGPS, FOC has not yet been defined.

Initial Operational Capability (IOC) was established for the Maritime DGPS Service when the signals were capable of being received at selected portions of the nation's coastline and major inland rivers with full integrity, and accuracy as specified by the FRP. For the NDGPS, IOC has not yet been defined.

Integrity is the ability of a system to provide timely warnings to users when the system should not be used for navigation.

Reliability is a function of the frequency with which failures occur within the system.

b. *System Description*. The FRP contains information concerning navigational accuracy required for different phases of navigation, descriptions of radionavigation systems, and plans for government operated radionavigation systems. One of the systems described in the FRP is the Global Positioning System (GPS). This space-based radionavigation system is available worldwide. The Standard Positioning Service (SPS) is the standard specified level of positioning and timing accuracy which provides a predictable positioning accuracy of 100 meters (95 percent) horizontally and time transfer accuracy to Universal Time Coordinated (UTC) within 340 nanoseconds (95 percent). Delays and adjustment factors such as propagation anomalies, errors in geodesy, or other factors, affect GPS accuracy.

The FRP defines the degree of accuracy required for the Ocean and Coastal phases of maritime navigation. GPS has met these standards for some time. However, unaugmented GPS provides only 100-meter accuracy (95 percent) horizontal. This performance does not meet the more precise accuracy requirements defined for the U.S. Harbor Entrance and Approach phase of maritime navigation by the FRP. Additionally, other Coast Guard missions such as Vessel Traffic Services and positioning aids to navigation require higher levels of accuracy than unaugmented GPS can provide. In addition, the unaugmented GPS service may be inadequate for many proposed land-based applications.

GPS augmentations are designed to provide integrity and to improve position accuracy. The Coast Guard Maritime DGPS Service augments GPS by using a system of DGPS broadcast sites to provide pseudo-range corrections and integrity checks for users within the advertised coverage area of each site. Each site is surveyed to establish its precise location. Using this known location, the station calculates a pseudo-range correction for each satellite in view. The user receives GPS signals from the satellites and DGPS corrections from the DGPS broadcast site. Those corrections are automatically applied to the individual satellite pseudo-ranges in DGPS user equipment. The resulting calculated position accuracy is better than 10 meters (95 percent) horizontal, and may be more accurate depending on factors including user equipment capabilities, positioning process, and the user's distance from the DGPS broadcast site. Positioning accuracy near the site can be as good as one-half meter, but degrades up to one meter for every 150 kilometers from the DGPS broadcast site. Given this degradation, users are encouraged to identify and use the nearest healthy DGPS site to receive the most accurate corrections.

In addition to providing a highly accurate navigational signal, the Maritime DGPS Service also provides a continuous integrity check on GPS satellite health. Due to the design of the ground segment of GPS, a satellite can be transmitting an unhealthy signal for 2 to 6 hours before it can be detected and corrected by the Master Control Station or before users can be warned not to use the signal. However, the equipment at a DGPS broadcast site can detect a malfunctioning satellite and inform users. Through its use of continuous, real-time messages, the Maritime DGPS Service can often extend the use of unhealthy GPS satellites by providing accurate corrections, or by directing the navigator to ignore erroneous GPS signals.

The Federal Government has completed the establishment of the Maritime DGPS Service and is beginning the expansion of that service to create the NDGPS. The Coast Guard currently operates the Maritime DGPS Service, which includes coastal areas of the continental U.S., the Great Lakes, Puerto Rico, portions of Alaska and Hawaii, and portions of the Mississippi River Basin. The Federal Railroad Administration is sponsoring the NDGPS, and the Coast Guard is responsible for the establishment, operation, management, and future improvements of the service. The NDGPS is planned to provide dual signal coverage for the continental U.S. and the major transportation corridor in Alaska, from Anchorage to Fairbanks, with single signal coverage planned for the interior of Alaska. The NDGPS will

provide the required enabling technology for the Federal Railroad Administration's Positive Train Control initiative, and will benefit the Federal Highway Administration's Intelligent Transportation Systems, precision farming, weather forecasting, survey, and other applications. NDGPS sites may be identified by one or more of the methods described in paragraph c.1–3 of this notice.

c. *System Identification/Notifications:* Occasionally, Maritime and Nationwide DGPS signals may not meet the established service requirements of accuracy, integrity and coverage. When such a condition occurs, one or more of the following notifications are made:

(1) Through Coast Guard Broadcast Notice to Mariners for those sites with maritime coverage. The processes to notify terrestrial (NDGPS) users have not been defined. Until such time as the process for those notices is developed, concerned users are encouraged to use the resources in (2).

(2) By the Navigation Information Center at (703) 313–5900 or http://www.navcen.uscg.mil.

(3) By a type 16 informational message transmitted by the site.

(4) By automatic transmission of ''DO NOT USE'' values, or Unmonitored/Unhealthy health codes embedded in the standardized GPS correction messages.

d. *Equipment.* The following equipment is capable of receiving and applying broadcast station DGPS correction messages:

1. A GPS receiver that has the ability to accept differential correction messages that comply with the BROADCAST STANDARD FOR THE USCG DGPS NAVIGATION SERVICE, COMDTINST M16577.1.

2. A differential beacon receiver designed to receive differential correction messages that comply with the BROADCAST STANDARD FOR THE USCG DGPS NAVIGATION SERVICE, COMDTINST M16577.1.

These two pieces of equipment are often integrated into a single unit. Users should note that the quality of equipment selected will have an effect on their ability to receive the differential transmissions, and on the final navigational accuracy achieved after these corrections are applied in the GPS receiver. Appropriate authority will promulgate specific standards.

Further international maritime DGPS signal standards are contained in the International Telecommunications Union document: ITU–R M.823. Maritime GPS/DGPS receiver specifications and minimum performance standards are prepared by the International Maritime Organization's International Electrotechnical Committee. The GPS receiver specifications are contained in IEC–61108–1; the maritime DGPS receiver specifications are still under development, the draft specifications are contained in document IEC–61108–4.

Dated: May 14, 1999.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 99–13238 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airworthiness and Operational Approval of Digital Flight Data Recorder Systems

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on an advisory circular (AC) that provides guidance on design, installation, and continued airworthiness of Digital Flight Data Recorder Systems (DFDRS). The AC applies to applicants for type certificates and supplemental type certificates for aircraft that are required to have a digital flight data recorder installed. It also applies to operators of those aircraft. Specifically, the AC provides guidance for design approval, schedule of compliance, and post-installation actions, including functional and operational checks, demonstrations, documentation and maintenance program changes.

DATES: Comments submitted must be received on or before June 25, 1999.

ADDRESSES: Send all comments on the proposed advisory circular to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW, Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Michelle Swearingen, Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW, Washington, DC 20591, Telephone: (202) 267–3817, FAX: (202) 493–5173.

Comments Invited

Interested persons are invited to comment on the proposed advisory circular listed in this notice by submitting such written data, views, or arguments, as they desire, to the specified address. Comments received on the proposed advisory circular may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW, Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final AC.

Background

AC 20–DFDRS, Airworthiness and Operational Approval of Digital Flight Data Recorder Systems, provides guidance on design, installation, and continued airworthiness of DFDRS. On July 17, 1997, the FAA revised 14 CFR parts 121, 125, 129, and 135 to require that certain aircraft be equipped to accommodate additional flight data recorder parameters. The purpose of this revision was to provide additional information to enable the National Transportation Safety Board to conduct more thorough investigations of accidents and incidents. The additional information would also be available to manufacturers and operators to detect and evaluate trends that may be useful in determining modifications or other actions to avoid accidents and incidents. The FAA determined that an AC should be published to include guidance for type certificate and supplemental type certificate applicants as well as certificate holders operating under 143 CFR Parts 121, 125, 129, and 135. The AC would address the type certification requirements of parts 21, 23, 25, 27, and 29 and the operating requirements of parts 121, 125, 129 or 135, emphasizing the changes introduced on July 17, 1997.

The AC is effective on publication. Should the FAA determine that changes are required as a result of comments received, a revised AC will be published.

How To Obtain Copies

A copy of the proposed AC 20–DFDRS may be obtained via Internet (http://www.faa.gov/avr/air/airhome.htm) or on request from the

office listed under ''For Further Information Contact.''

Issued in Washington, DC, on May 19, 1999.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–13232 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Adequacy of Truck Parking Facilities; Notice of Conference

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of conference.

SUMMARY: This notice is an invitation to participate in a 1½ day commercial truck Rest Area Forum, to be held in Atlanta, Georgia. The forum will address the issue of how best to improve the availability and safety of commercial vehicle parking along the Nation's highways.

DATES: The Rest Area Forum will be held on June 29 and 30, 1999. The first day's session will begin at 8:30 a.m. and end at 5 p.m. The second day will begin at 8:30 a.m. and end at approximately 2 p.m.

ADDRESSES: The forum will be held at the Sheraton Colony Square Hotel, in midtown Atlanta, Georgia (Telephone: (404) 892–6000. A block of rooms has been reserved until May 28, 1999 under ''FHWA Rest Area Forum.''

FOR FURTHER INFORMATION CONTACT: For information about the forum and to obtain registration materials, contact Dr. Patricia Hamilton, NATEK Inc., 4200–G Technology Court, Chantilly, VA 20151. E-mail: *pat@natekinc.com*. Telephone: (703) 818–7070, extension 3028. FAX: (703) 818–0165. To register on-line: *http://www.natekinc.com/*. Questions about the Forum may also be addressed to Mr. Robert Davis, Office of Motor Carrier Research and Standards (HMCS–30), Office of Motor Carrier and Highway Safety, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–2997; FAX: (202) 366–8842; E-mail: robert.davis@fhwa.dot.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

On June 29 and 30, 1999, in Atlanta, Georgia, the Office of Motor Carrier and Highway Safety of the Federal Highway Administration (FHWA) will host a 1½ day Rest Area Forum for representatives of State enforcement and department of transportation officials, motor carriers, private truck stop operators, commercial drivers, safety advocates, and other interested parties. During the Forum, attendees will be asked to: (1) Review various issues associated with the current provision, by both public and private parties, of parking spaces for commercial drivers; (2) describe and document ''success stories'' and ''best practices'' being employed to alleviate shortages of parking spaces and enhance their safety during day and nighttime hours; (3) consider effective means to provide ''real-time'' information to commercial drivers about available parking spaces at privately owned truck stops or public rest areas; (4) identify appropriate actions, initiatives, and pilot efforts that could be undertaken by both public and private sources to expand the number of safe, accessible parking spaces across the United States; and (5) identify any needed legislative initiatives, including the provision of resources, that would be helpful in facilitating the improvement of commercial vehicle parking.

The impetus for the Rest Area Forum is taken from the requirements of section 4027, ''Study of Adequacy of Parking Facilities'', of the Transportation Equity Act for the 21st Century (Pub.L. 105–178, 112 Stat.107), which calls upon the Secretary of Transportation to ''conduct a study to determine the location and quantity of parking facilities at commercial truck stops and travel plazas and public rest areas that could be used by motor carriers to comply with Federal hours of service rules.'' According to section 4027, the study ''shall include an inventory of current facilities serving the National Highway System, analyze where shortages exist or are projected to exist, and propose a plan to reduce the shortages.''

In considering this requirement, the FHWA has determined that a first step in satisfying it should include a national work session with public and private sector officials experienced in dealing with this issue, who have researched it, or who want to contribute to its resolution. The FHWA believes that the feedback that would be obtained from the forum would help focus the FHWA's response to the section 4027 effort, while also providing for an healthy exchange of ideas and recommendations among the participants.

Accordingly, the Rest Area Forum will provide attendees with the opportunity to directly contribute to the dialogue on how best to improve the availability and safety of commercial vehicle parking along the Nation's highways. Aside from introductory and concluding plenary sessions, most of the 1½ day Forum will be conducted in break-out sessions, during which the groups will be asked to consider a variety of issues and contribute their experiences and perspectives. Attendees will be asked to contribute their experiences and recommendations through an interactive discussion with their peers; formal presentations will not be required or solicited.

Ultimately, the discussions and recommendations of these collective sessions will be used to construct a final Forum report that will: (1) Offer a ''best practices'' guide; (2) identify for Federal, State and private sector customers how best they may proceed to influence and bring about better, more available, and safer commercial vehicle parking; and (3) provide the FHWA with needed information about challenges and workable solutions which can be used to both satisfy the immediate requirement of Section 4027 and ensure that the Congress and other interested parties are kept informed about progress in this area.

Due to limited seating, early registration is encouraged. For those registering by May 28, the registration fee is $50. Those registering after May 28 or at the door will be charged $75.

Authority: 23 U.S.C. 315; 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

Issued on May 12, 1999.

Dwight A. Horne.

Director, Office of Highway Safety Infrastructure, Federal Highway Administration.

[FR Doc. 99–13127 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. FRA–1999–5685, Notice No. 1]

Federal Transit Administration

RIN 2130–AB33

Proposed Joint Statement of Agency Policy Concerning Shared Use of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

AGENCIES: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), DOT.

ACTION: Proposed policy statement.

SUMMARY: The Federal Railroad Administration (FRA) and the Federal Transit Administration (FTA) have been working together to develop a policy concerning safety issues related to light rail transit operations that take place, or are planned to take place, on the general railroad system. This policy explains how the two agencies intend to coordinate use of their respective safety authorities with regard to such shared use operations. The policy also summarizes how the process of obtaining waivers of FRA's safety regulations may work, especially where the light rail and conventional rail operations occur at different times of day. FRA will soon issue a separate proposed statement of policy providing more details on its jurisdiction and a more detailed explanation of issues that will be addressed in the waiver process related to shared use of the general system.

The agencies are not required by law to provide notice and opportunity for comment on a statement of policy. However, given the number of shared use operations being planned around the nation and the level of interest in how the safety of those operations will be assured, the agencies concluded that they could benefit from receiving comments before drafting their policy in final. The agencies do not plan to hold a hearing, but will discuss the proposed statement with interested groups.

DATES: Submit written comments on or before July 30, 1999.

ADDRESSES: Procedures for written comments: Submit one copy to the Department of Transportation Central Docket Management Facility located in room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. All docket material on the proposed statement will be available for inspection at this address and on the Internet at *http://doms.dot.gov*. (Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.) Persons desiring notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, FTA, TCC–2, Room 9316, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 366–4063); and Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6029).

Proposed Joint Statement of Agency Policy Concerning Shared Use of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

In many areas of the United States, local communities are considering, planning, or developing light rail, street-level transit systems similar to those now in operation in Portland, Oregon; Sacramento, California; Dallas, Texas; San Diego, California; and Baltimore, Maryland. Patterned on the trolleys that operated along the streets of hundreds of American cities and towns earlier in the century, these newer light rail systems promote more livable communities by serving those who live and work in urban areas without adding additional congestion to the nation's crowded highways.

Like the existing systems in San Diego and Baltimore, some of the planned light rail operations would, in addition to service provided along community streets, take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right of way, would be prohibitively expensive. These potential passenger services generally envision light rail operations during the day and freight operations during the night. Some plans also envision rail transit operations on a right-of-way shared with intercity passenger or commuter operations.

The Federal Railroad Administration (FRA) has long regulated the nation's railroads for safety purposes. FRA's railroad safety jurisdiction extends to all types of railroads, including ''commuter or other short-haul railroad passenger service in a metropolitan or suburban area,'' but does not include ''rapid transit operations in an urban area that are not connected to the general railroad system of transportation.'' 49 U.S.C. 20102. In this statutory context, ''rapid transit operations'' refers to rail systems that, while they may haul many commuters, are devoted in substantial part to moving people from point to point within an urban area. Such systems (*e.g.*, the Washington Metro and San Francisco's BART) may use heavy subway, elevated, or light rail equipment and will be covered in this statement by the general terms ''local rail transit'' or ''light rail transit.'' ''Commuter'' service, by contrast, refers to systems that have as their primary purpose transporting commuters to and from work within a metropolitan area, but do not devote a substantial portion of their service to moving passengers between stations within an urban area. Examples include Metra in Chicago and the Long Island Railroad in New York. FRA's jurisdiction covers all commuter railroad operations without regard to their general system connections or the type of equipment they use. This statement of policy does not apply to commuter railroad operations.

Until recently, there was no Federal program for addressing the safety of local rail transit systems that are not subject to FRA's safety jurisdiction (i.e., those not connected to the general railroad system). However, faced with the growing movement to develop new rail transit systems, Congress addressed the safety of such systems in the Intermodal Surface Transportation Efficiency Act of 1991, requiring that the Federal Transit Administration (FTA) issue regulations requiring that states having rail fixed guideway mass transportation systems ''not subject to regulation by the Federal Railroad Administration'' establish a state safety oversight program. 49 U.S.C. 5330. Those regulations, which appear at 49 CFR part 659, provide that they apply where FRA does not regulate. Thus, with no overlap in jurisdiction, Congress has now provided for the oversight of both railroads subject to FRA's safety jurisdiction and rail transit systems that are not connected to the general railroad system.

The primary issue addressed by this policy statement is the means by which FRA and FTA propose to coordinate their safety programs with regard to rail transit systems that share tracks with freight railroads. Although compatible in terms of track gage, these two forms of rail service are incompatible in terms of equipment. A collision between a light rail transit vehicle with passengers aboard and heavy-duty freight or passenger equipment would likely result in catastrophe. This statement will also address how the two agencies

will coordinate their programs with regard to rail transit systems that operate within the same right-of-way as conventional equipment but without actually sharing trackage.

FRA will soon separately issue a proposed statement of agency policy concerning its safety jurisdiction over railroad passenger operations. In that statement, the reader will find a thorough discussion of the extent and exercise of FRA's jurisdiction and guidance on which of FRA's safety rules are likely to apply in particular operational situations. In general, FRA provides safety oversight of all railroad operations except rapid transit operations that have no significant connection to the general railroad system, such as the Chicago Transit Authority (CTA) in Chicago, the Washington Metro, and the subway systems in New York, Boston, and Philadelphia. As noted, the safety rules of FRA and FTA are mutually exclusive. If FRA regulates a rail system, FTA's rules on state safety oversight do not apply. Conversely, if FRA does not regulate a system, FTA's rules do apply, assuming that the system otherwise meets the definition of a ''rail fixed guideway system'' under 49 CFR 659.5. FRA's policy statement reviewing in detail its jurisdiction will more clearly define where FTA's rules apply.

This joint statement is intended to: (1) Explain the nature of the most important safety issues related to shared use of the general railroad system by conventional and rail transit equipment; (2) summarize the application of FRA safety rules to such shared-use operations; and (3) help transit authorities, railroads, and other interested parties understand how the respective safety programs of the two agencies will be coordinated.

1. Safety Issues Related to Shared Use of the General System

The expansion of rail passenger transportation promises significant benefits to America's communities in terms of reduced highway congestion, reduced pollution, lower commuting times, and increased economic opportunities. However, the expansion of rail transit systems operating over portions of conventional railroad trackage poses major safety issues that must be addressed if such service is to be provided within a suitably safe transportation environment.

Potential for a Collision

The most important safety issue related to shared use of the general railroad system is the potential for a catastrophic collision between conventional rail equipment and rail transit equipment of lighter weight. Because of the significantly greater mass and structural strength of conventional equipment, the two types of equipment are simply not designed to be operated in a setting where there is any appreciable risk of their colliding.

Shared Use of Highway-Rail Grade Crossings

For decades, the greatest cause of death associated with railroading in America has been collisions between railroad vehicles and highway vehicles at grade crossings. Existing and contemplated shared-use light rail operations on the general system will typically involve train movements over highway grade crossings. To the extent train movements over grade crossings increase, the collision exposure to the highway user, rail employees, and rail passengers increases. We want to ensure that local rail transit operations that are conducted on the general system are designed and operated to address these serious risks and to prevent grade crossing collisions involving light rail equipment.

A related issue is the prevalence of death and serious injury to trespassers on railroad property. Trespasser fatalities have recently outpaced grade crossing accidents as the leading cause of death on the nation's railroads. To the extent that shared use of the general system results in a substantial increase in the number of pedestrians crossing by foot in the path of trains, the potential for additional deaths to trespassers is very real and should be addressed in planning these operations.

Shared Infrastructure

Light rail operations on or over the general railroad system will affect and be affected by the track, bridges, signals, and other structures on the line. The light rail and conventional systems may also share a communications system. The responsibility for operating and maintaining this shared infrastructure may vary. However, even if the light rail operator has no direct responsibility for maintenance, there will need to be sufficient coordination to alert the light rail operator to related safety problems and to ensure the light rail operator conveys relevant information (*e.g.*, readily apparent track defects or signal failures) to the party responsible for operation and maintenance.

Employee Safety

The safety of employees who operate trains on the general system, control movements over that system, or maintain its infrastructure is protected in certain ways by the Federal railroad safety laws. Light rail employees will be entitled to appropriate protections during shared-use operations. In addition, the light rail operators will need to observe rules designed to protect employees of other organizations who may be working along the right-of-way.

2. Approaches to Various Forms of Shared Use

Operations on the General System

Local rail transit operations conducted over the lines of the general system become part of that system and necessitate FRA safety oversight of rail transit operations to the extent of such shared use. The only two existing examples are the San Diego Trolley and the Central Light Rail Line in Baltimore. This does not mean that all of FRA's regulations will be applied to all aspects of these operations. First, FRA has no intention of overseeing rail transit operations conducted separate and apart from the general system. (As noted above, FRA regulates commuter operations without regard to their general system connections.) Second, FRA anticipates granting appropriate waivers of its rules to permit shared use of general system lines by light rail and conventional equipment where the applicant transit systems and railroads commit to alternative measures and FRA finds that those measures will ensure safety.

Where complete temporal separation between light rail and conventional operations is achieved, the risk of collision between the two types of equipment can be minimized or eliminated. Temporal separation involves operating conventional and light rail equipment at completely distinct periods of the day (*e.g.*, where the light rail line operates only between 6 a.m. and 10 p.m., and freight or other conventional rail movements occur only between 11 p.m. and 5 a.m., and where procedures and/or technologies are in place to ensure strict observation of these limits). Under these circumstances, FRA anticipates granting necessary waivers concerning rules related to design of the passenger equipment, although waivers in other safety areas not addressed by temporal separation may not be appropriate.

Operations Outside of the Shared-Use Area

Where local rail transit operations consist of segments that involve shared use with conventional equipment adjoined with segments that do not involve shared use (*e.g.*, street railway

segments), FRA does not currently intend to exercise its jurisdiction over operations outside of the shared-use area (which, because of their connection to the general system, are within FRA's jurisdiction). Instead, FRA, with FTA's assistance, will coordinate with the state oversight agency to ensure effective and non-duplicative monitoring of the safety of the different segments of the operation. FRA, again with FTA's assistance, will make every effort in its waiver process to give due weight to elements of the operation's system safety plan that carry over into the shared-use portion of the system.

Operations Within a Shared Right-of-Way

A light rail transit operation may share a right-of-way but no trackage with a conventional railroad. An example is a light rail system whose tracks run parallel to but between the tracks of a freight line. Where such systems share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions. In addition, FRA and FTA will coordinate with rapid transit agencies and railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit trains and conventional equipment.

Operations Over a Rail Crossing at Grade and Other Limited Connections

Where a rail transit system crosses a conventional railroad at grade, but has no other connection to the general system, FRA's safety rules cover the point of connection, and FRA and FTA will coordinate with the transit system and railroad to ensure safety at the crossing. FRA does not consider a switch that merely permits the transit system to receive shipments for its own use a connection significant enough to warrant application of FRA's rules.

3. FTA and FRA Safety Partnership

FTA and FRA have been working closely together for several years to ensure proper coordination of their safety programs. In October 1998, FRA and FTA entered into an agreement designed to enhance their efforts in identifying and resolving safety issues in rail-related projects funded by FTA. Under the agreement, the agencies agreed to take actions that will ensure that FRA's rail safety expertise is brought to bear on safety issues inherent in rail grant proposals early in the planning and development process.

Coordination on Rail Safety Waiver Requests

Light rail transit operators who intend to share use of the general railroad system with conventional equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. FRA may grant a waiver ''if the waiver is in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103(d). FRA intends to make its waiver process as smooth and comprehensive as possible. FTA will assist FRA in that effort. As part of that process, FRA asks that the light rail operator and all other affected railroads jointly file a Petition for Approval of Shared Use. In its separate statement of policy to be published in the near future, FRA provides guidance on what factors the petition should address. The factors include:

- A detailed description of both the light rail and the conventional railroad's operations on the shared use trackage.
- Plans for separation of the light rail and conventional operations by time of day, including a description of what protective systems will ensure that simultaneous operation of the two types of equipment will not occur.
- Alternative safety measures to be employed in place of each rule for which waiver is sought.
- Any system safety program plan developed for the operation, including one prepared for a stand-alone rapid transit segment under FTA's State Safety Oversight Program.

Note: FRA and FTA have grave concerns about whether, given their structural incompatibility, light rail and conventional equipment can ever be operated safely on the same trackage at the same time. In the event that petitioners nevertheless seek approval of simultaneous joint use, the petitioners will face a steep burden of demonstrating that extraordinary safety measures will be taken to adequately reduce the likelihood and/or severity of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable. FRA expects that such a petition will contain a considerable amount of additional information, including:

- Equipment specifications for any equipment that will not meet FRA's passenger equipment safety standards, plus an engineering analysis of the equipment's resistance to damage in various types of collisions.
- A quantitative risk assessment concerning the risk of collision between the light rail and conventional equipment and between the light rail equipment and highway vehicles.

Like all waiver petitions, a Petition for Approval of Shared Use will be reviewed by FRA's Railroad Safety Board. FTA will appoint a non-voting liaison to FRA's board, and that person will participate in the board's consideration of all such petitions. This close cooperation between the two agencies will ensure that FRA benefits from the insights, particularly with regard to operational and financial issues, that FTA can provide about light rail operations, as well as from FTA's knowledge of and contacts with state safety oversight programs. This working relationship will also ensure that FTA has a fuller appreciation of the safety issues involved in each specific shared use operation and a voice in shaping the safety requirements that will apply to such operations.

In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. It is the intention of FTA and FRA to maintain the level of safety typical of conventional rail passenger operations while accommodating the character and needs of light rail transit operations.

FRA and FTA believe that they can give light rail operators a high degree of confidence that FRA will provide the waivers they need to operate on a time-separated basis in shared-use situations. To facilitate the waiver process, FRA will include in its soon-to-be-issued proposed statement of policy a detailed statement of the rules light rail operators should expect to comply with and those rules from which they can expect to receive waivers, provided that the planned light rail operations will be wholly separated in time from conventional rail operations. For discussion purposes only, we have attached a chart summarizing FRA's early thinking on these issues. With this information, light rail operators can plan and design their projects in such a way that they can be confident, absent unusual facts about a particular project presenting some atypical safety hazard, of receiving the waivers needed to operate.

In its petition, the light rail operator may want to certify that the subject matter addressed by the rule to be waived is addressed by the system safety plan and that the light rail operation will be monitored by the state safety oversight program. That is likely to expedite FRA's processing of the petition. FRA will analyze information submitted by the Petitioner to demonstrate that a safety matter is addressed by the light rail operator's system safety plan. Where FRA grants a waiver, the state agency will oversee the area addressed by the waiver, but FRA will actively participate in partnership with FTA and the state agency to address any safety problems. If the

conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

Conclusion

Expanded use of existing railroad lines to provide increased transportation opportunities for passengers in metropolitan areas is a development that FTA and FRA strongly wish to encourage. Working together, the two agencies intend to ensure that such development goes forward smoothly and in a way that guarantees that the blending of light rail and conventional rail operations continues their excellent safety records.

Issued in Washington, DC, on May 18, 1999.

Jolene M. Molitoris,

Federal Railroad Administrator.

Gordon J. Linton,

Federal Transit Administrator.

Summary of FRA Waivers That May Be Appropriate for Time-Separated Light Rail Operations

FRA may, after notice and an opportunity for a hearing, grant a waiver of a federal safety rule ''if the waiver is in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103. This document lists each of FRA's railroad safety rules and provides FRA's early thinking on whether the operator of a light rail system that shares trackage with a conventional railroad should expect to comply with the rule on the shared track or may receive a waiver. This chart assumes that the operations of the local rail transit agency on the general railroad system are completely separated in time from conventional railroad operations, in accordance with guidance issued by FRA, and that the light rail operation poses no atypical safety hazards. FRA's procedural rules on matters such as enforcement (49 CFR parts 209 and 216), and its statutory authority to take emergency action to address an imminent hazard of death or injury, would apply to these operations in all cases.

Where waivers are granted, a light rail operator would be expected to operate under a system safety plan developed in accordance with the FTA state safety oversight program. The state safety oversight agency would be responsible for the safety oversight of the light rail operation, even on the general system, with regard to aspects of that operation for which a waiver is granted. FRA will actively participate in partnership with the state agency to address any safety problems. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

Title 49 CFR part	Subject of rule	Likely treatment	Comments
		Track, Structures, and Signals	
213	Track Safety Standards	Comply (assuming light rail operator owns track or has been assigned responsibility for it).	*If the conventional RR owns the track,* light rail will have to observe speed limits for class of track.
233, 235, 236	Signal and train control	Comply (assuming light rail operator or its contractor has responsibility for signal maintenance).	*If conventional RR maintains signals,* light rail will have to abide by operational limitations and report signal failures.
234	Grade Crossing Signals.	Comply (assuming light rail operator or its contractor has responsibility for crossing devices).	*If conventional RR maintains devices,* light rail will have to comply with sections concerning activation failures and false activations.
213, Appendix C	Bridge safety policy	Not a rule. Compliance voluntary.	
		Motive Power and Equipment	
210	Noise emission	Waive	State safety oversight.
215	Freight car safety standards.	Waive	State safety oversight.
221	Rear end marking devices.	Waive	State safety oversight.
223	Safety glazing standards.	Waive	State safety oversight.
229	Locomotive safety standards.	Waive, except perhaps for alerting lights, which are important for grade crossing safety.	State safety oversight.
231*	Safety appliance standards.	Waive	State safety oversight; see note below on statutory requirements.
238	Passenger equipment standards.	Waive	State safety oversight.
		Operating Practices	
214	Bridge Worker	Waive	OSHA standards.

Title 49 CFR part	Subject of rule	Likely treatment	Comments
214	Roadway Worker Safety.	Comply.	
217	Operating Rules	Waive	State safety oversight.
218	Operating Practices	Waive, except for prohibition on tampering with safety devices related to signal system.	State safety oversight.
219	Alcohol and Drug	Waive if FTA rule otherwise applies	FTA rule may apply.
220	Radio communications	Waive, except to extent communications with freight trains and roadway workers are necessary.	State safety oversight.
225	Accident reporting and investigation.	Comply with regard to train accidents and crossing accidents; waive as to injuries.	Employee injuries would be reported under FTA or OSHA rules.
228**	Hours of service recordkeeping.	Waive (in concert with waiver of statute); waiver not likely for personnel who dispatch conventional RR or maintain signal system on shared use track.	See note below on possible waiver of statutory requirements.
239	Passenger train emergency preparedness.	Waive	State safety oversight.
240	Engineer certification ..	Waive	State safety oversight.

*Certain safety appliance requirements (*e.g.,* automatic couplers) are statutory and can only be waived under the conditions set forth in 49 U.S.C. 20306, which permits exemptions if application of the requirements would ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations.'' If consistent with employee safety, FRA could probably rely on this provision to address most light rail equipment that could not meet the standards.

**Currently, 49 U.S.C. 21108 permits FRA to waive substantive provisions of the hours of service laws based upon a joint petition by the railroad and affected labor organizations, after notice and an opportunity for a hearing. This is a ''pilot project'' provision, so waivers are limited to two years but may be extended for additional two-year periods after notice and an opportunity for comment.

[FR Doc. 99–13038 Filed 5–24–99; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5681]

American Transportation Corp., Receipt of Application for Decision of Inconsequential Noncompliance

American Transportation Corporation (AmTran) has determined certain air brake systems on AmTran buses were built with air tank volumes that are not in full compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 121, ''Air brake systems,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' AmTran has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

FMVSS No. 121 establishes the performance and equipment requirements for the braking systems on vehicles equipped with air brake systems. Paragraph S5.1.2.1. of FMVSS No. 121 states that the combined volume of all service reservoirs and supply reservoirs shall be at least 12 times the combined volume of all service brake chambers.

From October 27, 1995 through November 5, 1998, AmTran produced 122 units with an air reservoir combined volume of 3,630 cubic inches or 11.6 times the combined volume of all service brake chambers. AmTran supports its application for inconsequential noncompliance by stating the following:

''The combined air reservoir capacity of 3,630 cubic inches is only 114 cubic inches under the required volume of the system to meet FMVSS [No.] 121 S5.1.2.1. The 12 times formula was established at a time when automatic slack adjusters were not common in the industry. Today, they are standard [and provide] improved brake adjustment. Properly adjusted brakes require less air volume for application. A driver of a unit with a volume shortage of 114 cubic inches more than likely would never experience any difference in braking capability. [A] previous test conducted by NHTSA indicated that the 12 times volume provided sufficient reserve volume to stop an air-braked vehicle equipped with antilock brakes even under the worst-case conditions. The table below adds further credibility when theoretical calculations supporting our statement that [a] driver would not experience any significant effect on stopping distance due to air pressure differentials. The calculations were based on SAE J1911, a test procedure for air reservoir capacity. SAE J1609 gives the criteria that after the eighth brake application, the pressure in the air reservoir shall not be less than 45 psi. The calculations also assume no split between the wet, secondary and primary for simplicity. [Note: For the Hard Stop—full application in traction limited condition] Pressure in the system assumes worst case of full on, full off eight times. Somewhat simulates a crude antilock system.''

Type of stop	Initial reservoir pressure (psi)	Pressure in system (psi)	
		Compliant reservoir volume (3,744 in^3)	Non-compliant reservoir volume (3,630 in^3)
Normal Application (30 psi or less)	120	117.5	117.4
	110	107.5	107.4
Hard Stop (Full application in non-traction limited condition)	120	110.8	110.5
	110	101.5	101.3
Hard Stop (Full application in traction limited condition)	120	63.3	62.0
	110	58.0	56.9

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 24, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 19, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–13160 Filed 5–24–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 730

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 730, Tax on Wagering.

DATES: Written comments should be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax on Wagering.

OMB Number: 1545–0235.

Form Number: 730.

Abstract: Form 730 is used to identify taxable wagers under Internal Revenue Code section 4401 and collect the tax monthly. The information is used to determine if persons accepting wagers are correctly reporting the amount of wagers and paying the required tax.

Current Actions: Form 730 has been reformatted to be scannable. New entry boxes have been added for a daytime telephone number, and to indicate a final return. Lines 4a and 4b each have a new entry to allow for the separate computation of tax amounts for wagers authorized under state law (line 4a) and for all other wagers (line 4b).

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Responses: 51,082.

Estimated Time Per Response: 7 hrs., 25 min.

Estimated Total Annual Burden Hours: 378,518.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 13, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13102 Filed 5–24–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 843

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 843, Claim for Refund and Request for Abatement.

DATES: Written comments should be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund and Request for Abatement.

OMB Number: 1545–0024.

Form Number: 843.

Abstract: Internal Revenue Code sections 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 545,500.

Estimated Time Per Respondent: 1 hr., 32 min.

Estimated Total Annual Burden Hours: 834,615.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13103 Filed 5–24–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–A.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–A, Acquisition or Abandonment of Secured Property.

DATES: Written comments should be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Acquisition or Abandonment of Secured Property.

OMB Number: 1545–0877.

Form Number: 1099–A.

Abstract: Form 1099–A is used by persons who lend money in connection with a trade or business, and who acquire an interest in the property that is security for the loan or who have reason to know that the property has been abandoned, to report the acquisition or abandonment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 386,356.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 61,817.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: May 12, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13104 Filed 5–24–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–R

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

DATES: Written comments should be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

OMB Number: 1545–0119.

Form Number: 1099–R.

Abstract: Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by the IRS to verify that income has been properly reported by the recipient.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, not for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Responses: 56,518,218.

Estimated Time Per Response: 18 min.

Estimated Total Annual Burden Hours: 16,955,465.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 14, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13105 Filed 5–24–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8404

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8404, Interest Charge on DISC-Related Deferred Tax Liability.

DATES: Written comments should be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Interest Charge on DISC-Related Deferred Tax Liability.

OMB Number: 1545–0939.

Form Number: 8404.

Abstract: Shareholders of Interest Charge Domestic International Sales Corporations (IC–DISCs) use Form 8404 to figure and report an interest charge on their DISC-related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly figured and paid the interest charge on a timely basis.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Responses: 2,000.

Estimated Time Per Response: 8 hrs., 48 min.

Estimated Total Annual Burden Hours: 17,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 18, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13106 Filed 5–24–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8840

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8840, Closer Connection Exception Statement for Aliens.

DATES: Written comments should be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Closer Connection Exception Statement for Aliens.

OMB Number: 1545–1410.

Form Number: 8840.

Abstract: Form 8840 is used by an alien individual, who otherwise meets the substantial presence test, to explain the basis of the individual's claim that he or she is a nonresident of the United States by reason of the closer connection exception described in Reg. section 301.7701(b)–2.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 350,000.

Estimated Time Per Respondent: 2 hrs., 25 min.

Estimated Total Annual Burden Hours: 843,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 11, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13107 Filed 5–24–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–4P

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently,the IRS is soliciting comments concerning Form W–4P, Withholding Certificate for Pension or Annuity Payments.

DATES: Written comments should be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information copies of the form and instructions should be directed to Fay Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Withholding Certificate for Pension or Annuity Payments.

OMB Number: 1545–0415.

Form Number: W–4P.

Abstract: Form W–4P is used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, so that the payer can withhold the proper amount.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 12,000,000.

Estimated Time Per Respondent: 2 hrs., 4 min.

Estimated Total Annual Burden Hours: 24,720,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 13, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13108 Filed 5–24–99; 8:45 am]

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Federal Register

Tuesday
May 25, 1999

Part II

Environmental Protection Agency

40 CFR Part 52

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6336–9]

RIN 2060–AH88

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with section 126 of the Clean Air Act (CAA), EPA is taking final action on petitions filed by eight Northeastern States seeking to mitigate what they describe as significant transport of one of the main precursors of ground-level ozone, nitrogen oxides (NO_X), across State boundaries. Each petition specifically requests that EPA make a finding that NO_X emissions from certain stationary sources emit in violation of the CAA's prohibition on emissions that significantly contribute to ozone nonattainment problems in the petitioning State. If EPA makes such a finding, EPA is authorized to establish Federal emissions limits for the sources. The eight Northeastern States that filed petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

Today, EPA is making final determinations that portions of six of the petitions are technically meritorious. The technically approvable portions of the petitions will be automatically deemed granted or denied at certain later dates pending certain actions by the States and EPA regarding State submittals in response to the final NO_X State implementation plan call (NO_X SIP call). This rule describes the schedule and conditions under which applicable final findings on the petitions would be automatically triggered.

The EPA intends to implement the section 126 control remedy through a Federal NO_X Budget Trading Program. The trading program would apply to sources in the source categories for which a final finding is ultimately granted. In today's rule, EPA is finalizing the general parameters of the trading program. The EPA is committing to promulgate the details of the trading program by July 15, 1999. The EPA is including interim final emissions limitations for affected sources which would apply only if EPA fails to promulgate the trading program prior to a section 126 finding.

Mitigation of the transport of ozone and its precursors is important because ozone, which is a primary harmful component of urban smog, has long been recognized, in both clinical and epidemiological research, to adversely affect public health.

DATES: The final rule is effective July 26, 1999.

ADDRESSES: Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, 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 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action should be addressed to 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, e-mail at oldham.carla@epa.gov. Please refer to **SUPPLEMENTARY INFORMATION** below for a list of contacts for specific subjects discussed in today's action.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

The official record for this rulemaking, as well as the public version, has been established under docket number A-97–43 (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 confidential business information, is available for inspection from 8:00 a.m. to 5:30 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. In addition, the **Federal Register** rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/126.

The EPA has issued a separate rule on NO_X transport entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone'' (see related rulemakings included in the docket for this rulemaking). The rulemaking docket for that rule (Docket No. A–96–56), hereafter referred to as the NO_X SIP call, contains information and analyses that are relied upon in the section 126 rulemaking. Documents related to the NO_X SIP call rulemaking are available for inspection in docket number A–96–56 at the address and times given above. In addition, the NO_X SIP call and associated documents are located at http://www.epa.gov/ttn/otag/sip/index.html. Modeling and air quality assessment information can be obtained in electronic form at http://www.epa.gov.scram001/regmodcenter/t28.htm. Information related to the budget development can be found at http://www.epa.gov/capi.

Additional information relevant to this section 126 rulemaking concerning the Ozone Transport Assessment Group (OTAG) is available on the web at http://www.epa.gov/ttn/otag/otag/index.html. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC. The OTAG's technical data are located at http://www.iceis.mcnc.org/OTAGDC.

For Additional Information

For additional information related to air quality analysis, please contact Carey Jang, Office of Air Quality Planning and Standards; Emissions, Monitoring, and Analysis Division, MD–14, Research Triangle Park, NC 27711, telephone (919) 541–5638. 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 regarding the NO_X cap-and-trade program, please contact Sarah Dunham, Office of Atmospheric Programs, Acid Rain Division, MC–6204J, 401 M Street SW, Washington, DC 20460, telephone (202) 564–9087. For questions regarding regulatory cost analyses for electricity generating sources, please contact MaryJo Krolewski, Office of Atmospheric Programs, Acid Rain Division, MC–6204J, 401 M Street SW, Washington, DC 20460, telephone (202) 564–9847. For questions regarding regulatory cost analyses for other stationary sources, please contact Larry Sorrels, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5041.

Outline

I. Background and Summary of Rulemaking

A. Summary of Rulemaking and Affected Sources

In August 1997, eight northeastern States (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania, and Vermont) submitted petitions to EPA under section 126 of the Clean Air Act (CAA) seeking to mitigate what they describe as significant transport of NO_X, one of the main precursors of ozone. Each petition requests that EPA make a finding that certain major stationary sources or groups of sources in upwind States emit NO_X emissions in violation of the CAA's prohibition on amounts of emissions that contribute significantly to ozone nonattainment or maintenance problems in the petitioning State. All the petitioning States directed their petitions to the 1-hour ozone standard. Originally, only three of the States (Massachusetts, Pennsylvania, and Vermont) also directed their petitions at the 8-hour ozone standard.

In rulemakings dated September 30, 1998 and October 21, 1998, EPA proposed action on the petitions. The October notice of proposed rulemaking (NPR) is the longer, more detailed version of the proposal. In aggregate across all the petitions and for both ozone standards (to the extent a petition applied to both standards), EPA proposed to find that sources in 19 States and the District of Columbia are significantly contributing to nonattainment problems in one or more of the petitioning States. The October NPR also proposed a Federal NO_X budget trading program as the control remedy for sources that would be subject to any section 126 findings.

In the NPR, EPA proposed action under the 1-hour and 8-hour standards as specifically requested in each State's petition. At that time, the Maine and New Hampshire petitions were only directed at the 1-hour standard. On November 30, 1998, both Maine and New Hampshire requested that EPA also evaluate their August 1997 petitions under the 8-hour standard. These requests, in effect, constitute new petitions. In a supplemental notice of proposed rulemaking (SNPR) dated March 3, 1999 (64 FR 10342), EPA proposed action on the new Maine and New Hampshire 8-hour petitions. The SNPR did not affect any sources beyond those already affected by the NPR with respect to the Maine and New Hampshire 1-hour petitions and/or other petitions. The SNPR did not propose any additional control requirements beyond what were

proposed in the NPR. The EPA is taking final action on both the NPR and the SNPR in this rule.

In today's action, EPA is making final affirmative technical determinations that certain major stationary sources and source categories identified in the section 126 petitions are significantly contributing to nonattainment in, or interfering with maintenance by, one or more petitioning States with respect to one or both of the national ambient air quality standards for ozone (hereafter referred to as affirmative technical determinations). On the basis of these affirmative technical determinations, the petitions naming these sources and source categories will be finally granted (i.e, the section 126 findings will be deemed made) or denied at certain later dates pending certain actions by the States and EPA regarding State submittals in response to the final NO_X SIP call. The schedule and conditions under which the applicable final findings on the petitions would be triggered are discussed below in Section I.E. The EPA's analysis of significant contribution is discussed in Section II below.

Under the 1-hour ozone standard, EPA is making final affirmative technical determinations as to a subset of sources or source categories named in the petitions from Connecticut, Massachusetts, New York, and Pennsylvania. The source categories for which EPA is making this affirmative technical determination of significant contribution are discussed in Section II. The States where these sources are located are listed in Table II–1.

The EPA is also partially denying the 1-hour petitions from Connecticut, Massachusetts, New York, and Pennsylvania, and fully denying the 1-hour petitions from Maine, New Hampshire, and Rhode Island for on one of three reasons described below. First, for some sources or source categories in some States named in these petitions, EPA has information demonstrating these sources and States are not significantly contributing to nonattainment in the relevant petitioning State with respect to the 1-hour ozone standard. Second, for sources in some States EPA does not have adequate information to show that the sources do or do not significantly contribute (see Section III.A). Third, based on air quality monitoring data from 1996 through 1998, EPA believes preliminarily that certain areas in Maine, Massachusetts, New Hampshire, Pennsylvania, and Rhode Island have now achieved the 1-hour standard. Therefore, EPA is not making affirmative technical determinations of significant contribution for any upwind sources with respect to these areas (see Section II.F). The EPA is fully denying the 1-hour petition from Vermont because the 1-hour standard no longer applies in that State (See 63 FR 31014).

Five of the petitioning States, Maine, Massachusetts, New Hampshire, Pennsylvania, and Vermont, also directed their petitions at the new 8-hour ozone standard. Under the 8-hour ozone standard, EPA is making final affirmative technical determinations as to a subset of sources named in the petitions from Maine, Massachusetts, New Hampshire, and Pennsylvania. The source categories for which EPA is making the affirmative technical determinations of significant contribution are the same as for the 1-hour standard and are discussed in Section II. The EPA is also denying portions of the petitions either because EPA has information demonstrating that some of the sources or source categories named in these petitions are not significantly contributing to nonattainment in the relevant petitioning State with respect to the 8-hour ozone standard or because EPA does not have adequate information to show that the sources are significantly contributing (see Section III.A). The EPA is denying the Vermont petition in full with respect to the 8-hour ozone standard because Vermont has no current 8-hour ozone nonattainment problems and no future projected nonattainment (i.e., maintenance) problems based on available analyses.

In aggregate for all petitions and both ozone standards, the sources and source categories for which EPA is making final affirmative determinations of significant contribution to nonattainment or interference with maintenance (hereafter simply significant contribution) with respect to one or more of the petitioning States are located in the following States: Alabama, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, and West Virginia.

Some of the sources that EPA is determining do not significantly contribute to the petitioning States are located in States that are affected by a separate rule on NO_X transport, the NO_X SIP call. Specifically, EPA is determining that sources in Georgia, South Carolina, and Wisconsin are not significantly contributing to any of the petitioning States that name those States. However, EPA has determined in the NO_X SIP call that sources in these three States do significantly contribute to nonattainment problems in other downwind States. In acting on these section 126 petitions, EPA can only consider the impacts on downwind nonattainment problems in the petitioning States, which are all located in the Northeast. In the NO_X SIP call, EPA considered impacts on nonattainment problems throughout the eastern half of the United States. Therefore, a determination that sources in certain States are not significantly contributing to any petitioning State for purposes of this action on the section 126 petitions does not alter EPA's conclusions on significant contribution with regard to other States under the NO_X SIP call.

The section 126 petitions varied with regard to the control requirements they recommend for mitigating the interstate transport. While EPA considered the recommendations, section 126 does not limit EPA to the recommended controls in determining an appropriate remedy. In Section II.J., EPA discusses the emissions limitations that would be necessary to ensure that the affected sources do not or would not emit in violation of the applicable statutory prohibition on significant contribution by upwind States to downwind air quality problems. The control remedy is based on the uniform application of highly cost-effective controls (as determined based on cost per ton of NO_X reduced for each type of source). In selecting the control measures, EPA considered the recommendations made by OTAG on July 8, 1997 and the analyses for the NO_X SIP call.

In today's action, EPA is establishing a section 126 control remedy for sources that would be subject to a future section 126 finding. The EPA intends to implement the control requirements through a Federal NO_X cap-and-trade program. The EPA believes a trading program is the most cost-effective approach for achieving emissions reductions from large stationary sources. The EPA envisions that there would be an interstate trading program among section 126 sources, NO_X SIP call sources in States that choose to participate in the interstate trading program administered by EPA, and sources subject to a Federal implementation plan under the NO_X SIP call.

As discussed in Section IV below, EPA is today promulgating the general parameters of the remedy, including, among others, the decision to implement a NO_X cap-and-trade program as the control remedy, the control levels the trading program would be based on, the definition of the

types of sources that would be subject to the trading program, and the compliance date. By July 15, 1999, EPA will finalize the details of the Federal NO_X Budget Trading Program for the section 126 sources (as new 40 CFR part 97). The combined list of existing sources affected by an affirmative technical determination with respect to at least one petition, along with the more specific emissions limitations in the form of tradable allowance allocations, will be provided in the July notice of final rulemaking (NFR). The EPA intends to include new sources in the source categories that are significantly contributing with respect to the petitions from Connecticut, Maine, New Hampshire, New York, and Pennsylvania. The petition from Massachusetts does not cover new sources.

In accordance with section 126, sources must comply with the control requirements no later than 3 years from a final positive finding on the petitions. The EPA believes the full 3 years is necessary for compliance. As discussed below, the portions of the petitions for which EPA is making an affirmative technical determination could be deemed granted (the finding deemed made) on November 30, 1999 or May 1, 2000, depending on certain actions by States and EPA regarding implementation plans required in response to the NO_X SIP call. As discussed in Section III.C., both of these trigger dates would result in an emission reduction deadline of May 1, 2003.

B. Ozone Transport, Ozone Transport Commission NO_X Memorandum of Understanding (OTC NO_X MOU), OTAG, the NO_X SIP Call, the Revised Ozone National Ambient Air Quality Standard (NAAQS), and Ozone Effects

Today's action occurs against a background of a major national effort, spanning more than 10 years, to analyze and take steps to mitigate the problem of the transport of ozone and its precursors across State boundaries. This effort has grown more intensive in the past several years with the approval of the OTC NO_X MOU by 11 of the Northeastern States and the District of Columbia included in the Northeast Ozone Transport Region (OTR), the completion of the OTAG process (described below), and the promulgation of EPA's NO_X SIP call. In addition, on July 18, 1997, EPA issued a revised NAAQS for ozone, which is determined over an 8-hour period (the 8-hour standard) (62 FR 38856). In establishing the 8-hour standard, EPA set the standard at 0.08 parts per million and defined the new standard as a ''concentration-based'' form, specifically the 3-year average of the annual 4th-highest daily maximum 8-hour ozone concentrations. This has resulted in more areas and larger areas with monitoring data indicating nonattainment. Thus, it is even more important to implement regional control strategies to mitigate interstate pollution in order to assist downwind areas in achieving attainment. This new 8-hour standard must now be taken into account, along with the pre-existing 1-hour standard, in resolving transport issues. These issues and events are detailed in the proposed NO_X SIP call (62 FR 60318). The 8-hour standard is intended to ultimately replace the 1-hour standard. However, the 1-hour standard will continue to apply to areas not yet in attainment to ensure an effective transition to the new 8-hour standard. In many areas of the country, the 1-hour standard has been revoked because the areas are attaining that standard (63 FR 31013; June 5, 1998 and 63 FR 39432; July 22, 1998). A State may petition under section 126 for both the 1-hour standard, to the extent that it still applies in the petitioning State, and the 8-hour standard.

The 1990 CAA set forth many requirements to address nonattainment of the 1-hour 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 4 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 included the 37 eastern-most States and the District of Columbia. 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. Based on information generated by OTAG and other available data, EPA determined that twenty-two States and the District of Columbia in the OTAG region are significantly contributing to nonattainment problems in downwind States. Therefore, EPA issued the NO_X SIP call (63 FR 57356, October 27, 1998) requiring these jurisdictions to revise their SIPs to include NO_X control measures to mitigate the ozone transport.

The EPA's response to the section 126 petitions differs from EPA's action in the NO_X SIP call rulemaking in several ways. In the NO_X SIP call, where EPA concluded that NO_X emissions from a State are significantly contributing to nonattainment problems in downwind States, EPA is requiring the State to submit SIP provisions to prohibit an amount of NO_X emissions which represents the significant contribution. The State has the discretion to select the mix of control measures for their sources to meet the required statewide NO_X emissions reductions. If the State does not make the required SIP submission, or submits an inadequate SIP, EPA is required to promulgate a Federal implementation plan (FIP) within 2 years of EPA's finding of the State failure. In the November 7, 1997 NO_X SIP call proposal, EPA announced that it intended to expedite the FIP promulgation in order to assure that the downwind States receive the air quality benefits of regional NO_X reductions as soon as practicable. Therefore, the EPA proposed FIPs for all the States affected by the NO_X SIP call in conjunction with EPA's issuance of the final NO_X SIP call (63 FR 56394).

By comparison, section 126 petitions are limited to addressing emissions from upwind stationary sources named in the petitions and not other sectors of the inventory. If EPA grants the petitions, it is EPA, not the States, that promulgates control requirements for the sources. The control remedy for sources named in the petitions that would be subject to future findings under section 126 is consistent with the control assumptions EPA used for these sources in determining the final statewide NO_X budgets for States subject to the NO_X SIP call. In addition, the Federal NO_X Budget Trading Program that EPA intends to promulgate in July for the section 126 sources is the same trading program that EPA proposed to use to achieve reductions from large electric generating units (EGUs) and large non-EGUs if it promulgates a FIP in any State. It is also the same trading program in which States can choose to participate to achieve the majority of the required emissions reductions under the NO_X SIP call.

Because the NO_X SIP call process and the section 126 petition process both address NO_X transport in the eastern United States, EPA believes it is important to coordinate the two actions

as much as possible. As discussed below in Section I.E., EPA and the petitioning States agreed to a proposed consent decree on the rulemaking schedule for the petitions that takes into consideration the NO_X SIP call rulemaking. The court entered a slightly modified consent decree on October 26, 1998.

All of the States that submitted section 126 petitions are included in the OTR and participated in the OTAG process. In addition, all of the upwind sources identified in the petitions are located in the OTAG region. All eight petitions rely, in part, on the OTAG analyses for technical justification. The OTAG process concluded in June 1997 prior to the promulgation of the new 8-hour ozone standard and, therefore, the OTAG analyses focused on the 1-hour standard. All the petitions request relief under the 1-hour standard. Five of the petitions also request relief under the new 8-hour standard. In acting on the section 126 petitions, EPA believes that it can only consider 8-hour nonattainment problems for the petitioning States that expressly requested relief under that standard. Under the NO_X SIP call, EPA considered both 1-hour and 8-hour nonattainment problems throughout the OTAG region.

Ground-level ozone, the main harmful ingredient in smog, is produced in complex chemical reactions when its precursors, volatile organic compounds (VOCs) 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, and
- 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 8-hour 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).

C. Section 126

As discussed below in Section II.A., section 126 of the CAA authorizes a downwind State to petition EPA for a finding that major stationary sources or groups of sources upwind of the State emit in violation of the prohibition of section 110(a)(2)(D)(i) because, among other reasons, their emissions contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in the State. If EPA grants the requested finding, the existing sources must shut down in 3 months unless EPA directly regulates the sources by establishing emissions limitations and a compliance period extending beyond 3 months but no later than 3 years from the finding.

D. Summary of Section 126 Petitions

As discussed in detail in the NPR, the petitions vary as to the type and geographic location of the source categories identified as significant contributors. All the petitions identified source categories; some petitions also provided lists of sources within the specified categories. The source categories include electric generating plants, fossil fuel-fired boilers and other indirect heat exchangers, and certain other related stationary sources that emit NO_X. All the petitions target sources in the Midwest; some also target sources in the South and Northeast. The geographic area covered by each petition is shown in Figures F2-F9 of appendix F of part 52.

The petitions also vary as to the level of controls they recommend be applied to the sources to mitigate the transport problem. Several recommend EPA establish a 0.15 lb/mmBtu NOx emission limitation and several recommend that controls be implemented through a cap-and-trade program.

All of the petitions rely, in part, on OTAG analyses for technical support. In addition, the States submitted a variety of other technical analyses which include computerized urban airshed modeling, wind trajectory analyses, results of a transport study by the Northeast States for Coordinated Air Use Management, and culpability analyses.

Table I–1 shows, by petitioner, the named source categories, the named geographic areas, and the requested remedy sought by the petitioning States. The named source categories are worded as they appear in the petitions. A map of the OTAG Subregions is provided in part 52, Appendix F, Figure 1, promulgated as part of this rule.

TABLE I–1. EPA'S SUMMARY OF SECTION 126 PETITIONS

State	Named source categories	Named States	Requested remedy
CT	Fossil fuel-fired boilers or other indirect heat exchangers with a maximum gross heat input rate of 250 mmBtu/hr or greater and electric utility generating facilities with a rated output of 15 MW or greater.	Sources in OTAG Subregions 2, 6, and 7 and portion of OTR extending west and south of CT. Includes all or parts of IN, KY, MI, NC, OH, TN, VA, WV. And OTR States DC, DE, MD, NJ, NY, PA.	Establish, at a minimum, emission limitations and a schedule of compliance consistent with the OTC NO_X MOU[a], and a cap-and-trade program. Does not request remedy for OTR States because of OTC NO_X MOU.
ME	Electric utilities and steam-generating units with a heat input capacity of 250 mmBtu/hr or greater.	Sources within 600 miles of Maine's ozone nonattainment areas. Includes all or parts of NC, OH, VA, WV, and OTR States CT, DE, DC, MD, MA, NJ, NY, NH, PA, RI, VT.	Establish compliance schedule and emissions limitation of 0.15 lb/mmBtu for electric utilities and the OTC NO_X MOU level of control for steam generating units, in a multi-state cap-and-trade NO_X market system.
MA	Electricity generating plants	Sources in region within 3 counties on either side of the Ohio River in IN, KY, OH, WV.	Establish emissions limitation of 0.15 lb/mmBtu or 1.5 lb/MWh and a compliance schedule.

TABLE I–1. EPA'S SUMMARY OF SECTION 126 PETITIONS—Continued

State	Named source categories	Named States	Requested remedy
NH	Fossil fuel-fired indirect heat exchange combustion units and fossil fuel-fired electric generating facilities which emit ten tons of NO_X or more per day.	Sources in OTR States and OTAG Subregions 1 through 7. Includes all or parts of IL, IN, IA, KY, MI, MO, NC, OH, TN, VA, WV, WI. Also OTR States CT, DE, DC, MD, MA, ME, NJ, NY, PA, RI, VT.	Establish compliance schedule and emission limitations no less stringent than: (a) Phase III OTC NO_X MOU reductions; and/or (b) 85% reductions from projected 2007 baseline; and/or (c) An emission rate of 0.15 lb/mmBtu.
NY	Fossil fuel-fired boilers or indirect heat exchangers with a maximum heat input rate of 250 mmBtu/hr or greater and electric utility generating facilities with a rated output of 15 MW or greater.	Sources in OTAG Subregions 2, 6, and 7 and portion of OTR extending west and south of NY. Includes all or parts of IN, KY, MI, NC, OH, TN, VA, WV. And OTR States DC, DE, MD, NJ, PA.	Establish, at a minimum, emission limitations and a schedule of compliance consistent with the OTC NO_X MOU, and a cap-and-trade program. Does not request remedy for OTR States because of OTC NO_X MOU.
PA	Fossil fuel-fired indirect heat exchange combustion units with a maximum rated heat input capacity of 250 mmBtu/hr or greater, and fossil fuel-fired electric generating facilities rated at 15 MW or greater.	AL, AR, GA, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, OH, SC, TN, VA, WV, WI.	Establish emission limitations and a compliance schedule for a cap-and-trade program requiring: (a) Seasonal reductions of the less stringent of 55% from 1990 baseline levels, or 0.20 lb/mmBtu, beginning by May 1999; (b) If necessary, seasonal reductions of the less stringent of 75% from 1990 baseline levels, or 0.15 lb/mmBtu, beginning by May 2003; (c) Such additional reductions as necessary beginning in 2005.
RI	Electricity generating plants	Sources in region within 3 counties on either side of Ohio River in IN, KY, OH, WV.	Establish emissions limitation of 0.15 lb/mmBtu or 1.5 lb/MWh and a compliance schedule.
VT	Fossil fuel-fired electric utility generating facilities with a maximum gross heat input rate of 250 mmBtu/hr or greater and potentially other unidentified major sources.	Sources located within a geographic area extending 1000 miles southwest from Bennington, VT. Includes all or parts of IL, IN, KY, MI, NC, OH, TN, VA, WV. Also AL, GA, IA, MO, SC, WI. Also OTR States CT, DE, DC, MD, MA, NJ, NY, PA.	Establish emissions limitation of 0.15 lb/mmBtu or 1.5 lb/MWh and a compliance schedule. Does not request remedy for OTR States because of OTC NO_X MOU.

[a] The OTC NO_X MOU is an agreement among the States in the Ozone Transport Region to reduce ozone season NO_X emissions from large utility and industrial combustion sources through implementation of a phased-in regionwide cap-and-trade program. It is described in detail in the NPR.

Section 126 allows States to petition EPA for a finding against sources and groups of sources that ''emit'' or ''would emit'' pollution in violation of the section 110(a)(2)(D) prohibition on emissions that significantly contribute to nonattainment problems in the petitioning State. Thus, a finding could potentially apply not only to existing sources within a particular source category, but also to sources that would be built in the future. In the NPR, EPA stated it believed the section 126 petitions are ambiguous as to whether the requested findings are intended to include new sources. For the reasons discussed in the NPR, EPA proposed to interpret all eight section 126 petitions to encompass both existing and new sources. Therefore, if any final findings were triggered for source categories in a particular geographic area, new sources in those source categories locating in that area would also be subject to the section 126 control remedy. The EPA requested that if any of the petitioning States disagreed with this interpretation of its petition, the State submit clarifying comments on this issue. New York and New Hampshire submitted comments that EPA had correctly interpreted their petitions to cover both existing and new sources. The State of Massachusetts commented that it was not seeking a finding with respect to new sources. Therefore, in today's rule, the EPA is concluding that all of the petitions, except the petition from Massachusetts, cover both existing and new sources.

E. Litigation on Rulemaking Schedule

As discussed in the NPR, on February 25, 1998, the eight petitioning States filed a complaint in the U.S. District Court for the Southern District of New York to compel EPA to take action on the States' section 126 petitions. *State of Connecticut* v. *Browner,* No. 98–1376. The EPA and the eight States filed a proposed consent decree that would establish a schedule for EPA to act on the petitions. Pursuant to CAA section 113(g), the EPA solicited comments on the proposed consent decree, by notice dated March 5, 1998 (63 FR 10874). The comment period closed April 6, 1998. On August 21, 1998, after considering the comments received in the section 113(g) process, EPA requested the Court to enter a slightly modified version of the consent decree. The Court entered the slightly modified consent decree on October 26, 1998.

The schedule in the consent decree requires EPA to take final action on at least the technical merits of the petitions by April 30, 1999. The schedule requires the full disposition of the petitions by that date or an alternative final action by that date that would defer the granting or denial of the petitions to certain later dates extending to as late as May 1, 2000.

In formulating the consent decree, EPA developed the alternative approach to harmonize the section 126 and NO_X SIP call actions. Specifically, paragraphs 5.b. and c. state that:

b. Unless EPA takes the final action described in paragraph 6, as to each

individual petition, EPA's final action will be to—

(i) Grant the requested finding, in whole or part; and/or

(ii) Deny the petition, in whole or part.

c. Unless EPA denies a petition in whole, its final action will include promulgation of a remedy under CAA section 126(c) for sources to the extent that a requested finding is granted with respect to those sources.

Then paragraph 6 states:

6. EPA shall be deemed to have complied with the requirements of paragraph 5(a) if it instead takes a final action by April 30, 1999, that—

a. makes an affirmative determination concerning the technical components of the ''contribute significantly to nonattainment'' or ''interfere with maintenance'' tests under CAA section 110(a)(2)(D)(i), 42 U.S.C. section 7410(a)(2)(D)(i);

b. further provides that:

(i) If EPA does not issue a proposed approval of the relevant Upwind State's SIP revision (submitted in response to the NO_X SIP call) by November 30, 1999, then the finding will be deemed to be granted as of November 30, 1999, without any further action by EPA;

(ii) If EPA issues a proposed approval of said SIP revision by November 30, 1999, but does not issue a final approval of said SIP revision by May 1, 2000, then the finding will be deemed to be granted as of May 1, 2000, without any further action by EPA;

(iii) If EPA issues a final approval of said SIP revision by May 1, 2000, EPA must take any and all further actions, if necessary to complete its action under section 126, no later than May 1, 2000; and

c. Promulgates a remedy under CAA section 126(c) for sources to the extent that an affirmative determination is made with respect to those sources.

As discussed in the NPR, EPA believes that sources in an upwind State should not be considered to be emitting an air pollutant in violation of the section 110 prohibition, and hence EPA should not grant a petition naming such sources, if the State is adhering to the NO_X SIP call rule's schedule for submission of an approvable SIP revision, and EPA is acting speedily to approve the SIP—or, failing that, if EPA has promulgated a SIP for the State. After all, if EPA's rule provides a particular path for the development of a plan calling on sources to reduce interstate pollution by May 1, 2003, and under that rule either the upwind State or EPA is moving forward to develop, take action on or promulgate a satisfactory plan meeting that rule and achieving attainment as expeditiously as practicable, it would be difficult to conclude that an affected source in the upwind State ''emits or would emit in violation'' of the prohibition that the plan is not yet required to contain.[1]

For these reasons, EPA is following the alternative described in paragraph 6 of the consent decree. Thus, EPA is structuring its final action to contain: (1) A series of ''technical determinations'' as to which sources in which States named in the petitions would emit in violation of the section 110 prohibition if the State or EPA were to fall off track in putting a timely and satisfactory plan in place; (2) determinations that the petitions will automatically be deemed granted or denied on the basis of the events set forth in paragraph 6; and (3) the remedial requirements that will apply to the sources receiving affirmative technical determinations if a petition naming those sources is ultimately deemed granted.

The EPA received comments on the NPR that the section 126 petitions were inappropriately driving the timetable for submission of the SIPs required under the NO_X SIP call; that is, that upwind States were not given adequate time to develop and submit their SIP revision, but that if they failed to do so on the mandated schedule, a section 126 finding would be deemed to be made. For the reasons discussed below, EPA does not believe that the link between the section 126 petitions and the NO_X SIP call SIPs is inappropriate. Further, as stated in the final NO_X SIP call, while EPA believes it is advantageous to coordinate the section 126 and NO_X SIP call actions, EPA disagrees that this constrained EPA from being responsive to public comments and considering alternative compliance dates.

F. Advance Notice of Proposed Rulemaking on Petitions

In accordance with the schedule in the then proposed consent decree, on April 30, 1998, EPA published in the **Federal Register** (63 FR 24058) an advance notice of proposed rulemaking (ANPR) on the section 126 petitions. The ANPR provided EPA's preliminary identification of source categories named in the petitions that emit NO_X in amounts that significantly contribute to nonattainment problems in the petitioning States, provided EPA's preliminary assessment of the types of recommended emissions limitations and compliance schedules, provided EPA's preliminary assessment of the remedy the Agency would propose for approvable petitions, discussed legal and policy issues raised under section 126, and outlined the rulemaking schedule for the petitions. The ANPR solicited comment on all of the issues and preliminary assessments. The EPA received a number of comments on the ANPR from industry, States, and environmental groups. These comments covered the full spectrum of issues discussed in the ANPR and were carefully considered in the development of the section 126 NPR. The EPA indicated in the ANPR that it would respond to the ANPR comments, if any response were appropriate, when EPA responded to comments on the section 126 NPR.

The EPA established the informal comment period for the ANPR to solicit information that would be helpful in the deliberative process for the rulemaking proposal. The EPA appreciates the early, thoughtful input from the commenters. In the NPR, EPA noted that its proposed positions superseded the preliminary positions taken in the ANPR. The majority of commenters on the ANPR submitted new comments on the NPR to specifically address EPA's detailed proposal. The EPA has responded to all significant comments on the proposal either in this preamble or in the Response to Comments document that accompanies this rulemaking.

G. Comment Periods and Availability of Key Information

The EPA provided a 60-day comment period on the NPR and a 40-day comment period on the SNPR. As discussed below, in response to commenter's requests, EPA reopened the NPR comment period on two occasions, to take further comment on source-specific emissions inventory data and on the impacts of the proposed revocations of the 1-hour standard on the section 126 rulemaking. Some commenters requested that the NPR comment period be extended on all issues. The very limited amount of time allowed in the consent decree between the deadline for the proposed rule and the deadline for the final rule constrained EPA from providing longer comment periods for every issue. However, EPA received a number of comments after the close of the comment periods which EPA considered in developing the final rule.

Commenters representing the interests of upwind sources and States stated that they had not been given a meaningful opportunity to comment on various aspects of today's rulemaking, either because important documents had not been made available to them, or

[1] Moreover there does appear to be tension between section 110(a)(2)(D), which does not establish the timing as to when the SIP prohibition needs to be effective against sources (i.e., when sources need to implement controls to reduce emissions) and the timing in section 126, which requires implementation no later than 3 years following a section 126(b) determination. The EPA does not believe that Congress intended section 126 to be used to shorten timeframes for action that EPA has previously determined are approvable for purposes of eliminating significant contribution to nonattainment areas in other States.

because, in the commenters' view, EPA has not been open-minded to the perspective of the upwind sources and States. For the reasons described in the Response to Comments document, EPA believes that the appropriate information was timely made available to the public, and that EPA has been open-minded to the views of, and has carefully reviewed the comments of, all commenters concerning today's rulemaking.

The major issues raised in the comments are responded to throughout the preamble of this final rule. A comprehensive summary of all other significant comments, along with EPA's response, is provided in the Response to Comments document, that has been placed in the docket for this rulemaking (Docket No. A–97–43).

1. Emissions Inventory Corrections

By action dated January 13, 1999 (64 FR 2416), EPA reopened the comment period on source-specific emission inventory data. This comment period was established in conjunction with the extended period for the public to submit emissions inventory revisions for the purpose of the NO_X SIP call. The EPA received numerous requests to allow more time to submit revisions to the source-specific data used to establish each State's base inventory and budget in the NO_X SIP call. By action dated December 24, 1998, (63 FR 71220), EPA extended the opportunity for submitting emission inventory corrections for the NO_X SIP call until February 22, 1999. Because the section 126 action and the NO_X SIP call rely on the same emissions inventory information, EPA extended the comment period for the section 126 action as well. The EPA committed to revise the emissions inventory to reflect the new data, as appropriate, by the end of April 1999. The EPA will use the revised inventory in identifying the individual sources subject to today's affirmative technical determinations and in assigning their NO_X allowance allocations for purposes of the Federal NO_X Budget Trading Program. This information will be provided in the July notice of final rulemaking.

2. Impacts of 1-Hour Standard Revocation

By action dated March 2, 1999 (64 FR 10118), EPA reopened the NPR comment period to allow comment on how the proposed section 126 action may be affected by a separate proposed action by EPA (63 FR 69598, December 17, 1998) to revoke the 1-hour ozone standard for certain areas in States that had submitted section 126 petitions. The affected areas are Boston-Lawrence-Worcester, Massachusetts-New Hampshire; Portland, Maine; Portsmouth-Dover-Rochester, New Hampshire; and Providence, Rhode Island. The comment period was reopened in response to two requests. In that notice, EPA indicated its position that if EPA promulgates a final determination that the 1-hour standard no longer applies for those designated nonattainment areas, the contributions from sources in upwind States to those areas would no longer constitute a basis for EPA to approve the petitioning States' requested findings as to the 1-hour standard for those areas. The EPA is finalizing action on the revocation notice in the same timeframe as today's final action. In addition, EPA is in the process of proposing to revoke the 1-hour standard in another area in one of the petitioning States, Pittsburgh, Pennsylvania, because the area has achieved clean air based on 1996–1998 monitoring data. In today's rulemaking, EPA confirms its position that the areas in the petitioning States for which EPA is revoking the 1-hour standard no longer provide a basis for EPA to make positive findings under section 126 for the 1-hour standard.

3. Timing of Petition for Review

Commenters stated that if EPA takes action to approve the technical merits of a section 126 petition by April 30, 1999, but findings on the petitions are not deemed made until some later date, then the April 30 action should be deemed ''final action'' reviewable by a court of law regardless of the fact that EPA would not be making findings on the petitions until some later date.

Section 307(b) of the CAA identifies which court has venue to hear a petition for review of final agency action and the timing by which any such petition must be filed. For the reasons described in section VI of this preamble, EPA is determining that final action regarding the section 126 petitions is nationally applicable and of nationwide scope or effect for purposes of section 307(b)(1). Therefore, venue lies with the U.S. Court of Appeals for the D.C. Circuit. With respect to timing, section 307(b)(1) generally provides that any petition for review must be filed within sixty days of publication of agency final action in the **Federal Register**. Whether a petition to review the decisions in this rule would be properly reviewable at this time by the Court of Appeals is a question to be addressed and decided by the court, not EPA.

H. Summary of Major Changes Between Proposals and Final Rule

This summary describes the major changes that have occurred since publication of the NPR and SNPR.

Section 126 Control Remedy

In the NPR, EPA proposed to implement as the section 126 remedy a new Federal NO_X Budget Trading Program. That program would consist of a capped, market-based trading system applicable to all sources for which a final affirmative finding is ultimately granted. The Agency intended to finalize all aspects of the section 126 remedy by April 30, 1999. In today's notice, EPA finalizes the general parameters of the remedy—including the decision to implement a capped, market-based trading program, identification of the sources subject to the program, specification of the basis for the total tonnage cap, and specification of the compliance date. The details of the trading program, including unit-by-unit allocations, will be finalized in a separate action no later than July 15, 1999. As part of today's action, the EPA is also establishing interim final emissions limitations that will be imposed in the event a finding under section 126 is made and the Administrator does not promulgate the Federal NO_X Budget Trading Program regulations before such finding.

1-Hour Standard Attainment

In the section 126 NPR, EPA proposed which upwind States contain sources of emissions named in the petitions that contribute significantly to nonattainment problems in the petitioning States under the 1-hour ozone standard, and where petitions were based on it, the 8-hour ozone standard.

After publication of the section 126 NPR on October 21, 1998, EPA preliminarily determined that proposed to determine that the 1-hour ozone standard no longer applied to certain nonattainment areas, including several areas in the petitioning States based on 1996–1998 air quality monitoring data. These areas, however, continue to monitor violations of the 8-hour standard.

Because EPA believes, preliminarily, that these areas no longer have 1-hour nonattainment problems based on the 1996–1998 data, they can no longer provide a basis for EPA to make affirmative findings under section 126 that upwind sources are significantly contributing to nonattainment with respect to the 1-hour standard. Therefore, EPA is denying portions of

the 1-hour petitions related to these areas. The determination to delete these areas as 1-hour receptor areas has no impact on the determinations of which sources are significantly contributing to downwind nonattainment.

Maine's 8-Hour Petition and North Carolina Sources

In the section 126 NPR, the upwind States that were named by the petitioners and which were proposed to contain sources that make a significant contribution to 8-hour nonattainment problems in the petitioning States were based on the upwind-downwind linkages found to be significant in the NO_X SIP call. The exception to this in today's rule is Maine's petition for relief from emissions sources in North Carolina. In its petition, Maine requested relief from large stationary sources within a 600-mile radius of the southwestern-most nonattainment area in Maine. This radius includes several counties in the extreme northeastern portion of North Carolina that do not contain sources of the type and size identified in Maine's petition. Thus, even though EPA found in the NO_X SIP call that emissions in North Carolina contribute significantly to 8-hour nonattainment in Maine, EPA is denying Maine's petition relative to North Carolina because there are no section 126 sources located in the portion of North Carolina covered by Maine's petition.

II. EPA's Analytical Approach

The EPA described its analytical approach in the NPR, (63 FR 56299). The EPA received numerous comments on various aspects of its approach. After considering these comments, EPA has determined to maintain the principal elements of its approach. The major comments are summarized below.

A. EPA's Interpretation of Section 126: Authorization of the Petitions

This section lays out EPA's legal interpretation of sections 126 and 110(a)(2)(D), the key statutory provisions that authorize today's action. First, EPA describes how these provisions authorize EPA to address interstate transport problems and how they relate to sections 176A and 184, which are the other two main interstate transport provisions under the Act. Second, EPA explains its interpretation that the reference in section 126 to section 110(a)(2)(D)(ii) is a scrivener's error and the correct reference is to section 110(a)(2)(D)(i). Third, EPA discusses its interpretation of the phrase ''emits in violation of the prohibition'' of section 110 and explains how this interpretation provides direction for coordinating EPA's actions on the section 126 petitions and the NO_X SIP call.

1. Relationship Among Sections 110(a)(2)(D), 126, and 176A/184

Subsection (a) of section 126 requires, among other things, that SIPs require major proposed new (or modified) stationary sources to notify nearby States for which the air pollution levels may be affected by the fact that such sources have been permitted to commence construction. Subsection (b) provides:

> Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii) * * * or this section.

Subsection (c) of section 126 states that—

> [I]t shall be a violation of this section and the applicable implementation plan in such State [in which the source is located or intends to locate]—
>
> (1) For any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) of this section to be constructed or to operate in violation of the prohibition of section 110(a)(2)(D)(ii) * * * or this section, or
>
> (2) for any major existing source to operate more than three months after such finding has been made with respect to it.

However, subsection (c) further provides that EPA may permit the continued operation of such major existing sources beyond the 3-month period, if such sources comply with EPA-promulgated emissions limits within 3 years of the date of the finding.

Section 110(a)(2)(D) provides the requirement that a SIP contain adequate provisions—

> (i) 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—
>
> (I) Contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to [any] national * * * ambient air quality standard, or
>
> (II) Interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility.
>
> (ii) Insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement) * * *

In the 1990 Clean Air Act Amendments, Congress added section 184, which 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. At the same time, Congress added section 176A, which authorizes the formation of transport regions for other pollutants and in other parts of the country.

In the NPR, EPA proposed the view that, with respect to existing stationary sources, sections 126(b)-(c) and 110(a)(2)(D), read together, authorize a downwind State to petition EPA for a finding that major stationary sources or groups of sources upwind of the State emit in violation of the prohibition of section 110(a)(2)(D)(i) because, among other reasons, their emissions contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in the State. If EPA grants the requested finding, the existing sources must shut down in 3 months unless EPA directly regulates the sources by establishing emissions limitations and a compliance period extending beyond 3 months but no later than 3 years from the finding. In accordance with section 302(j) of the CAA, the term major stationary source means ''any stationary facility or source which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant. . . .'' For the purpose of this rulemaking the relevant pollutant is NO_X emissions.

The EPA received numerous comments arguing that section 126(b) should not be read to authorize the petitions, which ask EPA to implement controls on upwind sources on grounds that, under section 110(a)(2)(D), they contribute significantly to nonattainment problems downwind. According to these commenters, Congress, in the 1990 Clean Air Act Amendments, dealt with interstate ozone transport by establishing sections 176A and 184 as the key provisions, and revising section 110(a)(2)(D) to assure that it did not apply outside the context of section 184.

For the reasons discussed below, EPA believes that following the 1990 Clean Air Act Amendments, section 126(b) and 110(a)(2)(D) retain independent effect and authorize the petitions. Please note that the discussion below assumes that the references in section 126 to section 110(a)(2)(D)(**ii**) are a scrivener's error and instead should be read to refer to section 110(a)(2)(D)(**i**). See section II.A.2. below for further explanation of the error.

Background: The CAA, as amended in 1990, has four key provisions that relate to the issue of interstate transport of air pollution and air pollution precursors:

sections 110(a)(2)(D), 126, 176A, and 184. In attempting to resolve disputes over specific interpretations of these provisions, it makes sense to consider these provisions together as the set of statutory requirements that carry out Congress' desired approach to the problem of interstate transport. The provisions should be read in a manner that will best bring meaning to each provision and allow it to fit rationally into the overall statutory context.

A stated purpose of the CAA is ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' CAA, section 101(b)(1). To understand how the interstate transport provisions interact with one another and fit into the CAA's overall scheme to achieve its clean air purposes, it is useful to step back and consider how these provisions came into being in their current forms. Relevant information includes earlier draft and adopted versions of the provisions themselves, statements by Congress regarding the provisions, and judicial rulings on EPA interpretations of the provisions. It is also useful to recognize the larger factual context in which Congress was operating while developing these provisions, both in terms of the current understandings of the environmental problems that Congress was attempting to remedy and of the political context for Congressional action. The relevant legislative history is largely that of the 1970, 1977 and 1990 CAA Amendments, although the pre-1970 provisions are useful to indicate the approach that Congress rejected in adopting the first version of the current section 110(a)(2)(D).

As with most environmental policy issues, our understanding of the problem of interstate transport of pollutants and pollution precursors, our ability to measure it, and the legal means employed to address it have become increasingly sophisticated over time. Prior to the adoption of the 1970 CAA, conflicts between states over air pollution most frequently concerned the relatively local air quality effects inflicted on inhabitants of one state by a facility located on the other side of the state border. The 1970 CAA contained an interstate pollution provision that could potentially have been applied to long distance transport disputes, but those did not appear to be Congress' main concern. See S. Comm. on Public Works, National Air Quality Standards Act of 1970, S. Rep. No. 91–1196, 91st Cong., 2d Sess., 13 (1970) reprinted in 1 Committee on Public Works, 93d Cong., 2d Sess., A Legislative History of the Clean Air Act Amendments of 1970, 413 (1974) (hereinafter 1970 Legislative History). By the time Congress passed the 1977 Amendments, however, both the federal and state governments and the general public had become increasingly aware that a significant portion of certain air pollution problems in some states likely derived from activities in other states, including more distant states. In fact, the provisions of the 1970 CAA, as implemented, had exacerbated long-range interstate transport problems by implicitly encouraging dispersion through tall smoke stacks as a remedy for local air quality problems. By 1990, our increasing awareness of the long-range transport problem was bolstered by more sophisticated measurement and modeling techniques.

As understanding of the problem became more sophisticated over time, so did Congress' approach to ameliorating the problem. From 1970 to 1990, Congress steadily increased the number and power of the tools available to both EPA and the states to address interstate pollution transport. This expansion of authority under the CAA was driven by an ongoing situation in which increased recognition of the problem was accompanied by no actual reduction in transport over a 20-year period. In fact, the set of actions comprised by the NO_x SIP call and the proposed FIP is EPA's first significant attempt to require reduction of interstate transport of pollutants. While certain downwind states affected by the problem have made serious attempts to impel reductions by upwind states, none of these attempts has been effective to date. This factual context, both in terms of the extent of the effects of interstate pollutant transport on downwind states' citizens' health, environments, and economies, and in terms of the continued failure of the federal or state governments to have any direct effect on the problem, is critical to understanding Congress' intent in adopting the 1990 CAA provisions on interstate transport.

In addressing interstate pollution transport, there are several central issues with which Congress has had to grapple. In its simplest form, interstate transport raises questions of how to provide recourse for a state experiencing health or welfare impacts from sources beyond the state's control. To the extent that we have decided that there are certain minimum national standards for air pollutants that must be met to protect health and welfare, this first issue is a matter of creating a mechanism for the downwind state to impel emission reductions in the upwind state. The issue becomes more complicated in the more common situation where both the upwind and downwind states contribute pollutants causing the exceedance of the national standards. This situation adds the need to allocate responsibility (and therefore cost) for making the reductions necessary to meet the standards, which involves both economic and equity aspects. Where the air in the downwind area is cleaner than the standards require, it also raises the issue of the extent to which the downwind state can ''reserve'' its cleaner air either for environmental purposes or to provide a margin for future economic growth. All of these questions are further complicated where there are multiple upwind and downwind states contributing to and experiencing an air pollution problem. With each of these situations, there is also the continuing question of the extent to which these issues should be resolved by the states involved and the extent to which solutions may or must be imposed by the federal government.

Pre-1970 Provisions: The Clean Air Act of 1963 and the Air Quality Act of 1967 both included provisions to address interstate air pollution, but neither had much effect on the problem. See generally, Clean Air Act, Public Law 88–206, 77 Stat. 392, (1963); Air Quality Act of 1967, Public Law 90–148, 81 Stat. 485 (1967). These early statutes generally provided for far less of a federal role in pollution control than the 1970 CAA. On interstate pollution, they took the approach that it was an issue between states, and hence that states needed to cooperate to develop a solution. See Vickie L. Patton, The New Air Quality Standards, Regional Haze, and Interstate Air Pollution Transport, 28 Envtl. L. Rep. 10155, 10157–10160 (1998); Geoffrey L. Wilcox, New England and the Challenge of Interstate Ozone Pollution Under the Clean Air Act of 1990, 24 Boston College Envtl. Affairs L. Rev. 1, 13–14 (1996). The federal government would facilitate such cooperation, but would not force it and would rarely step in to impose a solution in the absence of state resolution. Over time, as the approach of state cooperation has consistently failed to produce reductions from upwind states, Congress has given more authority to the federal government to break the deadlock between upwind and downwind states, although a strong political and policy interest in letting states solve state problems has produced continued attempts at driving consensus solutions.

The CAA of 1963 provided that either a downwind state or Department of Health, Education, and Welfare (HEW) could convene an intergovernmental

conference on a particular interstate pollution issue. Section 5(c)(1)(A), (c)(1)(C), 77 Stat. at 396. The conference would make findings, and HEW could recommend on that basis that the upwind state take certain actions to reduce emissions. Section 5(d), 77 Stat. at 397. If the upwind state failed to act, HEW could hold a public hearing to decide whether to recommend abatement measures again. Section5(e), 77 Stat. at 397. Finally, if the upwind state failed again to implement the recommended measures, HEW could refer the issue to the U.S. Attorney General who could bring an enforcement action. Section 5(f), 77 Stat. at 397–398. While they produced progress on a few interstate pollution problems, the provisions were generally criticized as ineffectual, particularly due to the long burdensome process required before the upwind state could be forced to act. Patton, supra at 10157. The Air Quality Act of 1967 added a regional air quality planning approach, which was appropriate for addressing interstate pollution issues, but still lacked a mechanism to force action. See Air Quality Act of 1967, Public Law 90–148, 81 Stat. 485 (1967).

1970 Clean Air Act: In the face of a widespread lack of progress addressing the nation's air pollution problems, Congress significantly changed its approach in adopting the 1970 CAA. Congress moved from a decentralized approach dependent on state action to a cooperative federalism approach, with uniform minimum standards and federal authority to step in where the states failed to act. In the 1970 CAA, in then section 110(a)(2)(E), Congress first adopted language embodying the concept that sources located in one state should not be allowed to interfere with attainment or maintenance of a NAAQS in another state. See Clean Air Act Amendments of 1970, Public Law 91–604, 84 Stat. 1676. EPA was to approve a state implementation plan if, among other requirements, ''it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region.'' Public Law 91–604 section 110(a)(2)(E). While the final statutory language and the Senate Committee Report (discussing almost identical language) emphasized intergovernmental cooperation as the mechanism, the intent was that states develop air quality programs that ''at the minimum must prevent facilities in one State from contributing to the violation of ambient air quality standards in an adjacent State * * *.'' S. Rept. No. 91–1196 at 13, reprinted in 1970 Legislative History at 413. Although the statutory language was sufficiently broad to encompass the long-range transport issues that have emerged as the more difficult problem, it appears that Congress initially conceptualized the problem as more of a short-range transport issue, with pollution from a facility on one side of a state border affecting a community on the other side.[2]

The EPA implemented sections 110(a)(2)(E) of the 1970 CAA through regulations focusing on information exchange rather than requirements to control emissions. Patton, supra, at 10162; Wilcox, supra, at 15–16. The regulations required only that the SIP assure that the state will transmit information to other states regarding factors, such as construction of new plants, that may significantly affect air quality in the same or adjoining air quality regions. 40 CFR 51.21(c) (1977) (superseded). In a challenge by NRDC, the Eighth Circuit upheld the regulations as a ''legitimate means to attain ''intergovernmental cooperation'' as contemplated by Congress in the statute.'' Wilcox, supra, at 15, quoting NRDC v. EPA, 483 F.2d 690, 692 (8th Cir. 1973). The result of EPA's approach was that the states made virtually no progress on control of interstate pollution under the 1970 Act. See Patton, supra, at 10161, 19; Wilcox, supra, at 18; S. Comm. on Envt. and Public Works, Clean Air Act Amendments of 1977, S. Rept. 95–127, 95th Cong., 1st, Sess. 41 (1977), reprinted in S. Comm. on Envt. and Public Works, 95th Cong. 2d. Sess., 3 A Legislative History of the Clean Air Act Amendments of 1977, 1415 (1978) (hereinafter 1977 Legislative History) (noting that the 1970 Act failed to specify any abatement procedure if a source in one state emitted air pollutants that adversely affected another state, and ''[a]s a result, no interstate enforcement actions have taken place, resulting in serious inequities among several States, where one State may have more stringent implementation plan requirements than another State.'').

1977 Clean Air Act: In developing the 1977 Amendments to the CAA, both Houses of Congress focused on interstate pollution as a major area of concern, and the 1977 Amendments made significant changes to the statute intended to address the problem. See S. Rept. 95–127 at 41, reprinted in 3 1977 Legislative History at 1415. The Report of the House Committee on Interstate and Foreign Commerce provided an extensive discussion of the interstate pollution problem, a portion of which ran as follows:

> In the committee's view, however, the existing law (as interpreted by the Administrator) is an inadequate answer to the problem of interstate air pollution. This is so for five basic reasons. First, an information exchange without adequate procedures to act on that information is simply insufficient. Second, an effective interstate air pollution control program must include not only prevention of interstate air pollution from new sources but also abatement of pollution from existing sources. Third, an effective program must also be designed to prevent significant deterioration * * * of air quality and to protect visibility under section 116 of the bill from interstate air pollution. Fourth, an effective program must not rely on prevention or abatement action by the State in which the source of the pollution is located, but rather by the State * * * which receives the pollution and the harm, and thus which has the incentive and need to act. Fifth, an effective program must include a Federal mechanism for resolving disputes which cannot be decided through cooperation and consultation between the States or persons involved * * *. The problem of interstate air pollution remains a serious one that requires a better solution * * *.
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> H. Comm. on Interstate and Foreign Commerce, 95th Cong., 1st Sess., Clean Air Act Amendments of 1977, H. Rept. 95–294, 330 (1977) reprinted in 4 1977 Legislative History at 2797.

The Senate Committee on the Environment and Public Works also viewed the 1970 provisions as inadequate, particularly in their failure to ''specify any abatement procedure'' if a source in one state emitted air pollutants that ''adversely affected the air quality control efforts of another State.'' S. Rept. 95–127 at 41 reprinted in 3 1977 Legislative History at 1415. The Committee noted that ''[a]s a result,

[2] See, e.g., H.R. 17255, which would have amended section 108(c) of the CAA to provide that state plans should contain ''adequate provisions for intergovernmental cooperation, including, in the case of any area covering part or all of more than one State and designated as an air quality control region . . . appropriate provisions for dealing with interstate air pollution problems, . . .'' (limiting the interstate pollution provisions to states that are part of a single air quality control region). H.R. 17255, 91st Cong., 2d Sess. § 4(a)(1) (1970), reprinted in 2 1970 Legislative History at 914. Note also that most of the abatement conferences held at that time, which addressed the more contentious interstate air pollution issues, concerned conflicts between adjacent states. See Air Pollution—1970: Hearings Before the Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works, 91st Cong., 2d Sess. (March 17, 1990), reprinted in 2 1970 Legislative History at 1098–1103.

no interstate enforcement actions have taken place, resulting in serious inequities among several States, where one State may have more stringent implementation plan requirements than another State.'' Id. This put plants in the states with more stringent control measures ''at a distinct economic and competitive disadvantage.'' Id. at 42, 1416. The revisions were ''intended to equalize the positions of the States with respect to interstate pollution by making a source at least as responsible for polluting another State as it would be for polluting its own ''State.'' Id.

To address the interstate pollution problem, the 1977 Amendments modified section 110(a)(2)(E) and added a new section 126. See Clean Air Act Amendments of 1977, Public Law 95–95, 91 Stat. 685. The House Committee Report discussed how these provisions together incorporated ''the five elements for an effective program for control of interstate pollution.'' H. Rept. 95–294 at 330, reprinted in 4 1977 Legislative History at 2797. The most critical strengthening elements were a direct requirement that SIPs prohibit emissions in amounts that would prevent attainment or maintenance by any other state of a NAAQS, and a mechanism for downwind states to petition EPA to bar emissions from any major source in violation of that prohibition. The revised section 110(a)(2)(E) required SIPs to contain:

Adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 126, relating to interstate pollution abatement.

Public Law 95-95. While overall this made the SIP requirements for interstate pollution more stringent, the provision was limited to emissions from stationary sources, and Congress later removed this limitation in the 1990 Amendments.

The new section 126 included both notification requirements and a petition process. First, each SIP had to require notice to all nearby States in which the air pollution levels might be affected of each major existing or proposed new source that ''may significantly contribute to levels of air pollution in excess of the national ambient air quality standards in any air quality control region outside the State.'' Public Law 95–95. Second, section 126 provided that a state could petition EPA for a finding that any new or existing ''major source emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(E).'' Public Law 95–95. EPA had to act on the petition within 60 days, and if EPA made the finding, it would be a violation of the SIP for the source either to be constructed or operate in violation of section 110(a)(2)(E) or for the source to operate for more than three months after the finding. The EPA could allow the source to continue to operate beyond that period if it complied with ''such emission limitations and compliance schedules'' set by EPA ''to bring about compliance with * * * section 110(a)(2)(E) as expeditiously as practicable,'' but the source would have to comply by three years from the date of the finding, at the latest. Public Law 95–95.

Congress made clear that it intended section 126 to provide an additional means of attacking interstate pollution that would supplement, not replace, the SIP requirement under section 110(a)(2)(e).

This petition process is intended to expedite, not delay, resolution of interstate pollution conflicts. Thus, it should not be viewed as an administrative remedy which must be exhausted prior to bringing suit under section 304 of the act. Rather, the committee intends to create a second and entirely alternative method and basis for preventing and abating interstate pollution. The existing provision prohibiting any stationary source from causing or contributing to air pollution which interferes with timely attainment or maintenance or [sic] a national ambient air standard (or a prevention of significant deteriorating [sic] or visibility protection plan) in another State is retained. A new provision prohibiting any source from emitting any pollutant after the Administrator has made the requisite finding and granted the petition is an independent basis for controlling interstate air pollution.

H. Rep. 95–294 at 331, reprinted in 4 1977 Legislative History at 2798.

A commentator summarizes the significance of and inter-relationship between these two provisions in the following manner:

New section 126 had several remarkable features. Importantly, it enabled downwind states to initiate action against interstate pollution. While section 126 required upwind states to identify sources potentially contributing to interstate pollution thereby informing potential petitions, the petitions themselves were not dependent on the cooperation of the upwind state. States suffering from interstate pollution could independently obtain information and petition EPA for abatement action.

Section 126 also provided a powerful federal remedial tool. It authorized direct, expeditious federal abatement of pollution. Additionally, it allowed objection to and corresponding remediation of transported pollution at any time, not just when EPA was reviewing an upwind state plan for compliance with the transport prohibition.

The petition process together with the SIP prohibition on transport provided reinforcing checks on interstate transport. The section 110 provisions restricted the source state from adopting, and prohibited EPA from approving, state plans allowing interstate air pollution. Section 126 provided a backstop in the event prohibited pollution nevertheless occurred. It created a formal process for downwind states to enforce the section 110 prohibition by bringing interstate pollution concerns to EPA's attention and thereby enabling injured states to safeguard their interests.

Patton, supra, at 10165–10166.

Despite Congress' provision of significantly improved tools to address interstate pollution, in implementing these 1977 CAA provisions EPA did not require reduction of interstate pollution. While EPA has received a number of petitions under section 126, it has granted none of them prior to this action. Nor had the Agency found a SIP inadequate on the basis of interstate transport, until the OTC LEV SIP call. See 60 FR 4712 (January 24, 1995). See Patton, supra, 10166–10172; Wilcox, supra, at 21–27 for detailed discussion of EPA's rejection of downwind states' efforts to obtain relief under these provisions.

Clean Air Act Amendments of 1990: Congress adopted the CAA Amendments of 1990 in the context of our continued failure to make significant progress on several air pollution fronts, including tropospheric ozone and acid rain, both of which are caused at least in part by interstate transport of pollutants. See Lieberman, S. Debate on H. Conf. Rep. 101–952, 101st Cong., 2d Sess., 10/27/90, reprinted in S. Comm. on Envt. and Public Works, I A Legislative History of the Clean Air Act Amendments of 1990, 103d Cong., 1st Sess., 1055 (1993) (hereinafter 1990 Legislative History) (''In the years since the Clean Air Act was amended—back in 1977—the air has become dirtier and more dangerous. Our uphill climb against the ravages of pollution has turned into a downhill fall, and only now are we realizing the real impact of our failure to act.''). By 1990, there was also a greater awareness that problems such as ozone pollution of the eastern U.S. were unlikely ever to be successfully addressed without controlling interstate pollution transport. As stated in the Senate Committee Report, ''[a]reas in some States may be unable to attain the ozone

standard despite implementation of stringent emissions control because of pollution transported into such areas from other States * * *. The transport problem in the northeast, and perhaps other regions as well, is serious enough that additional efforts must be made on an interstate basis to control emissions, including emissions from attainment areas.'' S. Comm. on Env't and Public Works, Clean Air Act Amendments of 1989, S. Rep. 101–228, 101st Cong., 1st Sess., 48 (1989) reprinted in V 1990 Legislative History at 8388. See also Lautenberg, S. Debate on H. Conf. Rep. 101–952, 101st Cong., 2d Sess., 10/26/90, reprinted in I 1990 Legislative History at 1106 (''In New Jersey, the Department of Environmental Protection says that on some days even if we shut down the entire State, we would be in violation of some health standards because of pollution coming over from other states.''); S. Rep. 101–228, 101st Cong., 1st Sess. at 49 (1989), reprinted in V 1990 Legislative History at 8389 (''The model suggests that even if all emissions sources were eliminated within the tri-state area [New York, New Jersey and Connecticut], violations of the ozone standard would still occur. This means substantial reductions in emissions from areas upwind from the New York metropolitan area must be achieved if this area is to attain the air quality standards.'').

The CAA Amendments of 1990 are widely viewed as one of the most detailed, complex, and prescriptive pieces of environmental legislation yet adopted. See Wilcox, supra, at 27. In light of EPA's lack of progress on several major air pollution problems under the 1977 provisions, including interstate pollution, Congress responded by strengthening existing federal tools and adding new ones that could be used to achieve emissions reductions, and by establishing numerous new mandates and deadlines to force action by states and EPA. See, e.g., sections 169B, 172, 174, 175A, 176, 176A, 179, 181, 182, 183, 184, 185, 186, 187, 188, 191, 192, and 401–416. See also, Lieberman, Senate Debate on S. 1630, 1/31/90, reprinted in IV 1990 Legislative History at 5077 (''Indeed, it is in part the lack of support of EPA which in the past has prevented the effort to institute regional controls from being successful.''). The provisions that were either new or strengthened included several targeting interstate pollution—the acid rain provisions, the regional haze provisions, the eastern ozone transport commission provisions, and general provisions for interstate transport. Congress strengthened the existing interstate pollution transport provisions in sections 110(a)(2)(D) (the successor to section 110(a)(2)(E)) and 126, and added two new interstate pollution provisions in sections 176A and 184. See H. Debate, 5/21/90, Clean Air Facts, reprinted in II 1990 Legislative History at 2558 (''Stronger interstate transport provisions.—The Swift/Eckart amendment includes stronger provisions for emission controls in interstate ozone transport regions, as sought by many Northeast and Mid-Atlantic states.''). All of the descriptions of the amendments in the legislative history refer to the changes made to strengthen and supplement the provisions. See discussion below.

Congress made several changes to sections 110(a)(2)(E) and 126 to overcome EPA's limiting interpretations under the 1977 language, making them easier to apply and more effective in controlling interstate pollution. The Chafee-Baucus Statement of Senate Managers states that the bill ''amends section 126 and section 302(h) of the Clean Air Act to strengthen to [sic] prohibitions on emissions that result in interstate pollution.'' Chafee-Baucus Statement of Senate Managers reprinted in I 1990 Legislative History at 886. In describing the changes to section 110, the Senate Committee Report states that ''[p]rovisions in existing law requiring SIPs to take into account the effect of emissions on other States are strengthened.'' S. Comm. on Envt. and Public Works, Clean Air Act Amendments of 1989, S. Rept. 101–228, 101st Cong., 1st Sess. 19 (1989), reprinted in V 1990 Legislative History at 8359. The Senate Committee Report further states ''[s]ection 110(a)(2)(E) is replaced by new section 110(c)(4), which, together with changes made to section 126 * * *, improve the effectiveness of the Act as a means of dealing with interstate air pollution.'' [3] Id. at 21, 8361.

One significant change to section 110(a)(2)(E), which became section 110(a)(2)(D), was that Congress extended the prohibition beyond stationary sources to cover other emissions activities, thereby allowing downwind states to obtain relief from an upwind state's pollution emanating from any source. The 1977 version of section 110 required the SIP to contain adequate provisions ''prohibiting any *stationary source* within the State * * *,'' (emphasis added) which was replaced with ''prohibiting, consistent with the provisions of this title, any source *or other type of emissions activity within* the State * * *'' (emphasis added). Congress also changed the language of the criteria for showing that the downwind state is harmed by pollution transport. Rather than barring emissions of air pollutants ''in amounts which will (I) *prevent* attainment or maintenance by any other State'' (emphasis added), Congress modified section 110(a)(2)(D) to bar emissions of air pollutants ''in amounts which will— (I) *contribute significantly to* nonattainment in, or *interfere* with maintenance by, any other State'' (emphasis added). Finally, Congress expanded the prohibition to require SIPs to insure compliance with international pollution abatement requirements under section 115, as well as interstate pollution abatement requirements under section 126. In describing the amendments to section 110(a)(2)(E), the Senate Committee Report stated:

> Where prohibitions in existing section 110(a)(2)(E) apply only to emissions from a single source, the amendment includes ''any other type of emissions activity,'' which makes the provision effective in prohibiting emissions from, for example, multiple sources, mobile sources, and area sources. For interstate pollution to violate current law, it must ''prevent attainment.'' Since it may be impossible to say that any single source or group of sources is the one which actually prevents attainment, the bill changes ''prevent attainment or maintenance'' to ''contribute significantly to nonattainment or interfere with maintenance by,'' thus clarifying when a violation occurs.

Id. at 21, 8361. The only other change discussed in the Report was an additional strengthening provision that was not included in the adopted amendments.

Congress also made it easier for downwind states to use section 126 by allowing downwind states to petition based on pollution derived from ''any major source *or a group of stationary sources*'' (emphasis added), not just from a major source, as under the previous version. As there are usually multiple sources in the upwind state contributing to transported pollution, it is far more difficult to prove that any one particular source, rather than the entire set of contributing upwind sources, prevents attainment or maintenance (or contributes significantly to nonattainment or interferes with maintenance) in the downwind state. In describing the amendment to section 126 contained in H.R. 3030, which was identical to the adopted language, the House Committee

[3] Section 110(c)(4) was largely identical to the final version of section 110(a)(2)(D), except that it contained one additional provision and did not contain the clause ''consistent with the provisions of this title.'' See S. 1630, 101st Cong., 2d Sess. § 101(c) (1990), reprinted in III 1990 Legislative History at 4140–4141.

Report mentions only the strengthening effect of the changes. ''Section 126 of the Clean Air Act, concerning interstate air pollution, is amended to provide that when evaluating the impact of one State's emissions on another State under this section, it is not necessary to focus only on the impacts of a single major source. The evaluation of whether pollution from one State is having a greater than permissible impact on another State is to extend as well to a group of stationary sources.'' H. Comm. on Energy and Commerce, Clean Air Act Amendments of 1990, H. Rept. 101-490, 101st Cong., 2d Sess. 274 (1990), reprinted in II 1990 Legislative History at 3298.[4]

Congress also strengthened section 126 by adding ''this section'' in several places in section 126(b) and (c). This addition explicitly allowed a finding that a source would emit or is emitting in violation of section 126, in addition to a finding that the source would emit or is emitting in violation of the prohibition of section 110(a)(2)(D). The amendments also made continued operation after a section 126 finding a violation of section 126 itself, in addition to being a violation of the applicable SIP.

In addition, Congress adopted changes to the definitions of ''air pollutant'' and ''welfare'' that made the interstate transport provisions clearly applicable to emissions of precursors to air pollution, not just emissions of the NAAQS pollutants. This overrode EPA's previous limiting interpretation that when reviewing a SIP revision, EPA could only consider the impacts on interstate pollution of the particular pollutant controlled under the SIP, not any other pollution impacts that result from transformation of the pollutant. See, e.g., *Connecticut* v. *U.S. EPA*, 696 F.2d 147, 162 (2d Cir. 1982); *Connecticut Fund for the Env't* v. *U.S. EPA*, 696 F.2d 169, 177 (2d Cir. 1982); Patton, supra, at 10166.

Congress also adopted provisions to establish interstate transport commissions, giving states and EPA a new tool to use to tackle the intractable interstate pollution problem. Section 176A provides general provisions for the creation and functioning of interstate transport regions and interstate transport commissions, while in section 184 Congress directly established the Northeast Ozone Transport Region. The transport commission approach is based on a recognition that regional problems require regional, rather than state-by-state, solutions, and a good way to achieve regional solutions may be for the affected states to develop them and the federal government to require their implementation. This maximizes information for decision-making, generates political support for the outcome, and increases the likelihood that states will implement identified solutions.

Under section 176A(a), EPA may establish by rule a transport region for a pollutant whenever the interstate transport of air pollutants from one or more states contributes significantly to a violation of a NAAQS in one or more other states. The transport region would include both the contributing and affected states. EPA may establish the transport region on its own, or may act upon a petition from a Governor of any state. Section 176A(b) requires establishment of a transport commission for each transport region. The commission is to be comprised of a representative of the Governor and an air pollution control official from each state in the transport region, an EPA Headquarters representative, and a representative of each affected EPA Region. The transport commission is to assess interstate pollution transport throughout the region, assess strategies for mitigating the transport, and recommend to EPA measures necessary for SIPs to meet the requirements of section 110(a)(2)(D). Under section 176A(c), the transport commission may request EPA to find under section 110(k)(5) that the SIPs for one or more of the states in the region are inadequate to meet the requirements of section 110(a)(2)(D). The EPA must act to approve, disapprove or partially approve and partially disapprove the recommendations within eighteen months of receipt.

Section 184 contains additional provisions applicable specifically to ozone transport regions and establishes the northeastern ozone transport region by operation of law. Section 184(b) requires each state in an ozone transport region to adopt SIP revisions containing specified control measures related to motor vehicle inspection and maintenance programs, reasonably available control technology for control of VOCs, and vehicle refueling controls. Section 184(c) lays out a process for an ozone transport commission to develop and EPA to act on recommendations for additional control measures necessary to bring any area in the region into attainment. EPA must approve, disapprove, or partially approve and partially disapprove the recommendations within nine months of their receipt. Upon full or partial approval of the recommendations, EPA must issue a SIP call under section 110(k)(5) requiring the relevant states to revise their SIPs to include the recommended measures to meet the requirements of section 110(a)(2)(D). If EPA disapproves the recommendations, EPA must explain why the disapproved measures are not necessary to bring any area in the region into attainment and must recommend equal or more effective actions that the commission could take to conform the recommendations to the section 184 requirements. Section 184(d) requires EPA to promulgate criteria requiring that the best available air quality monitoring and modeling techniques be used to determine the contribution of sources in one area to concentrations of ozone in a nonattainment area.

Comments: A number of commenters argue that Congress modified section 126 and section 110(a)(2)(D) in the 1990 Amendments to eliminate EPA's authority to take action against upwind sources, except upon a recommendation from a transport commission established under section 176A or section 184. They argue that the adoption of sections 176A and 184, combined with the addition of the language ''consistent with the provisions of this title'' in section 110(a)(2)(D) and the amended cite to section 110(a)(2)(D)(ii) in section 126, eliminates EPA's authority to act under section 126(b) and (c), except with respect to failures to notify under section 126(a). One commenter also cites section 110(k)(5) to support the argument that EPA may not act to address interstate transport problems except upon the recommendation of an interstate transport commission established under section 176A or section 184.

Response: Congress viewed the creation of interstate transport commissions as a valuable new approach to resolving interstate pollution problems that would encourage the affected states to help design a solution. As stated by Senator Lieberman, ''[t]he creation of a regional air quality commission is an important and creative part of the bill. It recognizes that it is impossible to put a cleanup bubble over an individual State. It puts some responsibility on the States to be good neighbors.'' S. Debate on H. Conf. Rep. 101–952, 10/27/90, reprinted in I 1990 Legislative History at 1053. Commenters argue that these new interstate transport commission provisions are the exclusive means for

[4] Note that this is the sum total description of the section 126 amendment in the House Committee Report. This version of the House bill also contained in the 176A and 184 provisions, which the House Committee Report did not describe at all. See H. Rep. 101–490, 101st Cong., 2d Sess. at 274, reprinted in II 1990 Legislative History at 3298.

EPA to address interstate pollution transport. However, nothing in the structure or language of the interstate pollution provisions themselves, their discussion in the legislative history, or the historical development of the statutory authorities to address interstate pollution through successive versions of the CAA, supports the assertion that the new provisions were intended to replace, rather than supplement, EPA's existing authority to address interstate pollution problems under section 110(a)(2)(D) and section 126.

First, a straightforward interpretation of the CAA language and structure leads to the conclusion that there are four fully effective provisions providing multiple tools for EPA and states to use to address interstate pollution problems. It is a canon of statutory construction that statutes should be interpreted, if possible, to give full effect to all of the statutory language. See *Alabama Power Co.* v. *EPA*, 40 F.3d 450, 455 (D.C. Cir. 1994) (a statute ''is to be interpreted to give consistent and harmonious effect to *each* of its provisions.'') (Emphasis added, citation omitted). The simplest interpretation of the inter-relationship of these four provisions addressing interstate transport is that each one plays a role in a rational system for upwind states, downwind states and EPA to work together to develop and implement solutions for interstate pollution transport.

Section 110(a)(2)(D) establishes one of the basic requirements that each state must address in its air pollution planning efforts—the SIP must contain adequate provisions prohibiting emissions that contribute significantly to nonattainment in, or interfere with maintenance by, any other state. This provision places the primary responsibility to prohibit such emissions on the upwind state, but requires EPA to evaluate the adequacy of a state's SIP submission in this respect and potentially to disapprove the SIP on these grounds. A SIP disapproval will eventually trigger sanctions against the state if it does not revise the submission to contain adequate provisions for control of interstate transport. While the downwind states are the parties with the greatest incentive to obtain emissions reductions upwind, section 110(a)(2)(D) only provides a limited role for downwind states. They may object to EPA's proposed approval of a SIP submission on the grounds that it fails to control interstate transport as required by section 110(a)(2)(D), but cannot initiate action on interstate pollution transport under this provision.[5] See, e.g., *State of New York* v. *U.S. EPA*, 710 F.2d 1200 (6th Cir. 1983) (upholding EPA's approval of a SIP revision for Tennessee and rejecting New York's claim that the revision violated the requirements of section 110(a)(2)(E)).

Congress adopted section 126 to give downwind states a stronger tool to impel action by EPA and upwind states. First, section 126(a) gives downwind states access to emissions information that may be necessary for them to identify the upwind sources of their nonattainment or maintenance problems. Second, section 126(b) and (c) allows downwind states to petition EPA directly to make a finding that upwind sources are emitting air pollutants in violation of the section 110(a)(2)(D)(i) prohibition on emissions that contribute significantly to nonattainment in, or interfere with maintenance by, any other state. If EPA makes a finding under section 126, EPA must directly regulate the sources of the upwind emissions. Relief does not depend upon any action by the upwind states, as is necessary for a SIP revision. Thus, where currently approved SIPs do not contain adequate provisions protecting downwind states from pollution transport, section 126 provides powerful recourse to the entities most motivated to reduce transport. It allows the downwind states to initiate action and gives EPA authority to implement a solution directly, without requiring additional state response.

The sections 176A and 184 provisions on interstate transport commissions supplement this scheme in two key respects. These sections provide a stronger action-forcing tool for a situation where a majority of upwind and downwind states have developed a compromise solution to pollution transport in a region, but EPA has not acted to support implementation of that solution. *See* S. Rep. 101–228, 101st Cong., 1st Sess. at 51 (1989), Leg. Hist V. at 8391 (''A regional ozone transport commission is one important way to address these problems identified by modeling and monitoring. State air quality directors in the northeast have been cooperating for several years to develop a regional solution to the ozone problem. Lack of support by EPA and lack of authority to institute needed regional controls (both in attainment and nonattainment areas) have prevented this effort from being more successful.'') The transport commission approach contemplates that all affected states in an interstate transport region will come together with EPA and identify emission control measures supported by at least a majority of the states. Under the more specific provisions of section 184, the transport commission will forward the recommended emission control measures to EPA, which then must take action to approve or disapprove the recommended measures pursuant to criteria contained in section 184.

Establishment of an interstate transport commission also may help improve the political viability of potential solutions to interstate transport problems, and hence increase the likelihood that such solutions will be implemented through state and EPA actions. Bringing the states together as a body to develop solutions emphasizes the shared responsibility for the problem and the need to address it through compromise and mutual agreement. Access to a shared body of information increases the likelihood of reaching similar conclusions, although, of course, the same information will always be analyzed somewhat differently in light of different state interests. Participation in a formal analysis and decision-making process increases the parties' investment in the outcomes, thereby enhancing political support for the recommended actions. Finally, enhanced political support for the recommendations makes it easier for EPA to require implementation of those recommendations. See Section I.B. for discussion of how the OTAG process has fulfilled some of these functions in this proceeding.

While Congress clearly saw the opportunities provided by a state process for developing regional solutions, the process is designed to promote consensus solutions where those are possible, but has no mechanism for forcing action where states remain strongly divided. Recommendations may only be made by vote of the majority of the states represented. Where the transport commission approach works and produces recommendations to EPA, the solutions developed may well be optimal in terms of effectiveness and acceptability. However, there is simply no forcing function to ensure that the transport commission process will ever identify any, let alone an adequate, solution to any particular interstate

[5] Under section 553(e) of the Administrative Procedure Act, a downwind state could petition EPA to issue a SIP call under section 110(k)(5) on the grounds that an upwind state's SIP failed to meet section 110(a)(2)(D). See 5 U.S.C. 553(e). However, EPA would have discretion to decide when to act on the petition, subject only to a lawsuit for unreasonable delay under section 304(a) of the CAA. In contrast, section 126 establishes a nondiscretionary duty and deadlines for EPA to act on a petition under that section, which a state may enforce through a citizen suit under section 304.

transport problem. In fact, the northeast ozone transport commission established by operation of law under section 184 has produced only one recommendation to EPA, which was approved by EPA but overturned in litigation. Moreover, apart from the establishment of the northeast ozone transport commission by operation of law, EPA has discretion as to whether even to establish a transport region, and hence transport commission, to address a given interstate transport problem. See CAA, section 176A (''Whenever, on the Administrator's own motion or by petition from the Governor of any State, the Administrator has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, the Administrator *may* establish, by rule, a transport region * * *.'') (emphasis added). Thus, the regional transport commissions provide a potentially useful tool, but by no means a panacea, for the interstate pollution problem.

Despite the inherent limitation in the transport commission approach—a structure that builds in a significant possibility that it may never actually act to reduce any interstate pollution—commenters argue that Congress intended to rely solely upon this one potential approach and strip from EPA and downwind states the existing alternative tools to address the problem that Congress had so carefully developed in the 1970 and 1977 Amendments. It is hardly logical to presume from the adoption of these transport commission provisions (in the absence of any statutory language to that effect) that Congress intended them also to divest EPA of authority to act at all in the absence of a formal recommendation from a majority of affected states. Such a presumption is inconsistent with both Congress' expressions of concern about the effect of interstate transport on downwind states and Congress' support for unilateral federal action if states continued to fail to address the problem. *See*, e.g., Lieberman, S. Debate on H. Conf. Rep. 101–952, 101st Cong., 2d Sess., 10/27/90, reprinted in I 1990 Legislative History at 1053 (''Another provision of the bill which is an important part of our effort to control air pollution transported from other areas is the requirement that the Federal Government intervene and promulgate a plan of emission controls in an area where the State fails to act. This provision guarantees that if States sending pollution to Connecticut are not doing their jobs in controlling pollution, Connecticut will be assured that the Federal Government will step in and do the job.'')

Commenters claim that allowing EPA to act on interstate transport problems without a recommendation from a transport commission reads section 176A and 184 out of the CAA. This is nonsense. The transport commission provisions provide a structure, authority and incentive for state-driven solutions to regional pollution problems. The EPA has strong legal and policy-based reasons to encourage such consensus-based solutions and implement them where they emerge. Providing EPA independent authority to act in the absence of a transport commission or where the commission has failed to produce any recommendations does not undermine the transport commission's authority, much less render those provisions meaningless. Rather, by increasing the likelihood of some action even in the absence of a recommendation, EPA's authority may well encourage states to develop their own consensus-based solutions in preference over imposition of requirements developed by EPA. The logical interpretation of the structure of the Act is that the transport commission provisions complement, but do not replace, the other interstate pollution provisions contained in section 110(a)(2)(D)(i) and section 126 specifying requirements for SIPs and providing for direct reductions from sources, even in the absence of any regional agreement.

Second, the language of the provisions simply does not support the commenters' arguments. Section 126 states that ''[a]ny state * * * may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(ii) or this section.'' Sections 176A and 184 provide authority to establish, and for the northeastern ozone transport region directly establish, transport regions and transport commissions. There is no language in either section 126, or the sections that supposedly largely negate section 126(b) and (c), suggesting that section 126 is superseded by sections 176A and 184 or that all three provisions do not remain in effect.

Moreover, in the 1990 legislation, Congress amended section 126 to strengthen its effectiveness by broadening its scope without any indication that it intended to simultaneously dramatically curtail EPA's authority under that provision. *See* Chafee-Baucus Statement of Senate Managers, reprinted in I 1990 Legislative History at 886 (stating that the bill ''amends section 126 and section 302(h) of the Clean Air Act to strengthen to [sic] prohibitions on emissions that result in interstate pollution.''). The amendments made it a prohibition of section 126 itself, as well as of the applicable SIP (as the previous version provided), for a source to continue to operate for more than three months after EPA makes a finding under section 126. They also explicitly allowed a finding that a source would emit or is emitting in violation of section 126, in addition to the pre-existing language allowing a finding that the source would emit or is emitting in violation of the prohibition of section 110(a)(2)(D).

Under the commenters' interpretation of the amended version of section 126, Congress strengthened the petition process while limiting its applicability to violations of notification requirements. This interpretation necessarily presumes that Congress intended to enhance EPA's power to enforce through source shut-downs a requirement with no direct environmental impacts, while removing EPA's pre-existing independent authority to reduce the actual emissions. The commenters claim that the petition process under section 126(b) and (c) is now limited to petitions claiming that an upwind state has violated section 126(a) by failing to provide information to a downwind state regarding certain sources of emissions in the upwind state. Section 126(a) requires a SIP to include a requirement to provide information to downwind states for each major new or existing source regarding emissions ''which may significantly contribute to levels of air pollution in excess of the national ambient air quality standards' in those downwind states. Commenters are arguing that EPA could shut down a source under section 126 because it had failed to comply with the notification requirements, but could not shut down such a source because it was emitting prohibited quantities of air pollution. Moreover, the notification requirement applies to each major proposed new or modified source that (a) is subject to part C of title I (relating to prevention of significant deterioration of air quality) or (b) *may* significantly contribute to levels of air pollution in excess of the NAAQS downwind. Thus, under the commenters' interpretation, the notification requirement, and hence the shut down remedy for its violation, potentially applies to sources that do not actually significantly contribute to downwind air pollution, while no

longer applying to sources because they do so contribute. The language of the statute does not indicate that Congress intended this result, and its inherent irrationality strongly suggests the contrary.

Commenters also rely on the revised language of section 110(a)(2)(D) and the new section 110(k)(5) to argue that sections 176A and 184 are now the sole authorities for addressing interstate pollution transport. The commenters point to the new language in section 110(a)(2)(D)(i), which requires SIPs to prohibit, *''consistent with the provisions of this title''* (emphasis added), emissions that contribute significantly to nonattainment or interfere with maintenance. They also note that section 110(k)(5), which Congress added in the 1990 Amendments, gives EPA authority to call for a SIP revision when a plan fails ''to mitigate adequately the interstate pollutant transport described in section 176A or section 184.'' The commenters argue that together, these provisions bar EPA from acting under section 110(k)(5) and section 110(a)(2)(D)(i) (whether or not in conjunction with section 126) in the absence of recommendations from an interstate transport commission established under section 176A or section 184.

The revision to section 110(a)(2)(D)(i) adds a general clause requiring adopted SIP provisions to be consistent with title I requirements. Nowhere in the statute is there language indicating that sections 176A and 184 provide the sole mechanisms to address interstate pollution transport. In the absence of such language, it is unclear how the requirement for consistency with other provisions can be bootstrapped into establishing the supremacy of certain provisions over others. Since nothing in sections 176A or 184 states that those provisions override other statutory provisions which establish other means of addressing interstate pollution transport, it is perfectly consistent with the language sections 176A and 184 for EPA to exercise the authority directly established under sections 126 and 110(a)(2)(D)(i).

Under EPA's interpretation, the language ''consistent with the provisions of this title'' serves the purpose of ensuring that in requiring a SIP to contain adequate provisions for interstate transport, EPA may not require states to take, and states may not take on their own initiative, actions that are barred by or in conflict with other requirements under title I. Title I establishes a multitude of detailed requirements for states to adopt and submit SIP revisions adequate to achieve and maintain each of the NAAQS in different areas on various timetables. The 1990 Amendments greatly increased the detail and complexity of the state planning requirements in title I. Thus, it is perfectly reasonable that, in strengthening the section 110(a)(2)(D)(i) interstate transport requirements, Congress wanted to make certain that these new more stringent requirements would not override or interfere with other title I provisions. This is what the language on its face requires. Had Congress intended to allow EPA to act under section 110(a)(2)(D)(i) only upon the recommendation of an interstate transport commission, it presumably would have said that instead.

The legislative history supports EPA's interpretation that the language ''consistent with the provisions of this title'' was intended to be a catch-all safety clause, rather than a significant substantive change. The language was introduced in H.R. 3030 as approved by the House Committee on Energy and Commerce, and was included in the version approved by the House. The version approved by the full Senate did not contain the language, but it was retained in the Conference Committee version approved by both Houses. In all of the discussions of the changes made to sections 110(a)(2)(D)(i) and 126 and the addition of sections 176A and 184 by both Houses, there is no mention of this language. It is implausible that Congress intended the language to dramatically reduce the scope of section 110(a)(2)(D)(i) without mention, while discussing all of the strengthenings of these provisions.

The language of section 110(k)(5) also does not limit EPA's authority to act under section 110(a)(2)(D)(i) only upon the recommendations of a transport commission. Section 110(k)(5) allows EPA to call for a SIP revision ''to otherwise comply with any requirement of this Act.'' The fact that section 110(k)(5) also identifies two specific instances where a SIP would be inadequate does not narrow the scope of the last catch-all clause. In adopting the interstate transport commission provisions in the 1990 Amendments, Congress established an entirely new additional mechanism for addressing interstate pollution, which did not depend solely on EPA action. Concurrent with establishing a new mechanism under the statute, it makes sense that Congress would specifically identify a SIP call under section 110(k)(5) as a key element in implementing that mechanism. It does not follow, however, that Congress intended to remove EPA's authority to call for a SIP revision in other circumstances related to interstate transport. *See* also 63 FR at 57368, NO_X SIP Call Response to Comments Document, 39–43.

Third, the legislative history supports EPA's interpretation that all four provisions remain fully effective. The legislative history contains numerous descriptions of the amendments as strengthening the authority to address the problem of interstate pollution. See, e.g., Chafee-Baucus Statement of Senate Managers, reprinted in I 1990 Legislative History at 886 (stating that the bill ''amends section 126 and section 302(h) of the Clean Air Act to strengthen to [sic] prohibitions on emissions that result in interstate pollution.''); S. Rep. 101–228, 101st Cong., 1st Sess. at 19 (1989), reprinted in V 1990 Legislative History at 8359 (in describing the changes to section 110, states that ''[p]rovisions in existing law requiring SIPs to take into account the effect of emissions on other States are strengthened.''); House Committee on Energy and Commerce, H. Rep. 101–490, 101st Cong., 2d Sess. at 274 (1990), reprinted in II 1990 Legislative History at 3298 (full text of the description of the amendments to section 126 follows: ''Section 126 of the Clean Air Act, concerning interstate air pollution, is amended to provide that when evaluating the impact of one State's emissions on another State under this section, it is not necessary to focus only on the impacts of a single major source. The evaluation of whether pollution from one State is having a greater than permissible impact on another State is to extend as well to a group of stationary sources.'').

In addition to the specific discussions in the legislative history identified above, the legislative history is informative through what it does *not* mention. The substantive changes to section 110(a)(2)(D) are discussed in the Senate Committee Report, and the House Committee Report. The substantive changes to section 126 are discussed in both Committee Reports and the Chafee-Baucus Statement of Senate Managers. The addition of sections 176A and 184 are discussed in all of these sources plus statements on the House and Senate floors. None of these discussions states or implies that in addition to the strengthening changes identified, Congress also intends to sharply restrict EPA's pre-existing authority under sections 110(a)(2)(D)(i) and 126 and to establish sections 176A and 184 as the sole sources of authority to address interstate pollution transport. Rather, the references in the legislative history to sections 176A and 184 suggest

that interstate transport commissions provide one, rather than the only means by which to address the problem. *See*, S. Rep. 101–228, 101st Cong., 1st Sess. at 51 (1989), reprinted in V 1990 Legislative History at 8391 (''A regional ozone transport commission is *one* important way to address these problems identified by modeling and monitoring.'' (emphasis added); Baucus, S. Debate on H. Conf. Rep. 101–952, 101st Cong., 2d Sess., 10/27/90, reprinted in I 1990 Legislative History at 1003 (''We believe that the transport commissions can play a vital role in abating interstate air pollution control problems.'')

Fourth, as discussed extensively above, Congress adopted the 1990 Amendments in the context of continued lack of progress on the interstate pollution problem and the failure of many areas affected by interstate pollution transport to meet the NAAQS, and with the goal of strengthening the CAA to produce results in the form of cleaner air. The commenters argue that Congress intended to remove a primary mechanism for reducing interstate transport and leave downwind states with no recourse should upwind states fail to agree to recommend a solution. They claim that Congress recognized ''that the adversarial approaches of the past—pitting one state against another and pitting EPA against one of those states—had not worked and would not work.'' Therefore, they argue that Congress ''restricted EPA's authority to create the kind of confrontation and controversy that had existed in the past.'' This is revisionist history, uninformed by the historical development of the CAA and the factual and political context in which Congress acted. The legislative history contains numerous references to the problem of interstate pollution, the failure to make progress in reducing pollution transport, and the effects on downwind states.[6] The legislative history expresses concern about the lack of EPA and state action, but nowhere evinces a concern about conflict between the states or adversarial relationships. (Note that commenters do not cite any support for their characterization of Congress' motivations).

The commenters' interpretation is that Congress made section 126(b) and (c) no longer effective for petitions against sources of pollution. For this interpretation to be correct, Congress must have revised the CAA to drastically limit section 126(b) and (c): (1) Without repealing the provisions; (2) without explicitly overriding them elsewhere in the CAA; (3) while adding language to strengthen those provisions; (4) without mentioning the change in the legislative history discussions of any of these provisions; and (5) while pursuing a forcefully stated intent to compel EPA and the states to make more progress on reducing interstate pollution. The EPA finds this argument profoundly unconvincing.

For further discussion of EPA's position on these issues please see the section 126 proposed rule, the NO_X SIP Call final rule and the NO_X SIP Call Response to Comments Document. 63 FR 56292; 63 FR 57356.

[6] See, e.g., Lieberman, S. Debate on H. Conf. Rep. 101–952, 101st Cong., 2d Sess., 10/27/90, reprinted in I 1990 Legislative History at 1055 (''In the years since the Clean Air Act was amended—back in 1977-the air has become dirtier and more dangerous. Our uphill climb against the ravages of pollution has turned into a downhill fall, and only now are we realizing the real impact of our failure to act.''); S. Rep. 101–228, 101st Cong., 1st Sess. at 48 (1989), reprinted in V 1990 Legislative History at 8388 (''[a]reas in some States may be unable to attain the ozone standard despite implementation of stringent emissions control because of pollution transported into such areas from other States. . . . The transport problem in the northeast, and perhaps other regions as well, is serious enough that additional efforts must be made on an interstate basis to control emissions, including emissions from attainment areas.''); Lautenberg, S. Debate on H. Conf. Rep. 101–952, 101st Cong., 2d Sess., 10/26/90, reprinted in I 1990 Legislative History at 1106 (''In New Jersey, the Department of Envirionmental Protection says that on some days even if we shut down the entire State, we would be in violation of some health standards because of pollution coming over from other states.''); Lieberman, S. Debate on S. 1630, 1/31/90, reprinted in IV 1990 Legislative History at 5077 (''Indeed, it is in part the lack of support of EPA which in the past has prevented the effort to institute regional controls from being successful.''); H. Debate, 101st Cong., 2d Sess., 5/21/90, Clean Air Facts, reprinted in II 1990 Legislative History at 2558 (''Stronger interstate transport provisions.—The Swift/Eckart amendment includes stronger provisions for emission controls in interstate ozone transport regions, as sought by many Northeast and Mid-Atlantic states.''); Lieberman, S. Debate on H. Conf. Rep. 101–952, 101st Cong., 2d Sess., 10/27/90, reprinted in I 1990 Legisltive History at 1053; Baucus, S. Debate on H. Conf. Rep. 101–952, 101st Cong., 2d Sess., 10/27/90, reprinted in I 1990 Legislative History at 1004 (''[] EPA bears a heavy burden on demonstrating that the additional control measure(s) is not necessary to bring any area of the region into attainment by the dates provided and to recommend equal or more effective actions that could be taken designed [sic] to replace the recommendation. Any recommendations by EPA under this section, designed to replace the recommendations of the Commission, shall not place an unfair burden on any state which is the victim of the transported air pollution.''); Lieberman, S. Debate, 101st Cong., 2d Sess., 1/31/90, reprinted in IV 1990 Legislative History at 5076 (''So there is a basic point here that Connecticut cannot clean its air itself because so much of its problems comes from outside of the State of Connecticut, and therefore if we are going to have clean air in Connecticut [sic] in so many other States in the country, but particularly in the Northeast, we need help from the Federal Government.'').

2. Scrivener's Error

Section 126(b) provides that a State may petition EPA for a finding that specified sources or groups of sources in other States emit or would emit air pollutants ''in violation of the prohibition of section 110(a)(2)(D)(ii) of this title or this section.'' In turn, section 110 (a)(2)(D) requires that a SIP:

> Contain adequate provisions:
> (i) 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—
> (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to [any] national ambient air quality standard, or
> (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,
> (ii) ensuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

The EPA has concluded that the cross-reference in section 126(b) to section 110(a)(2)(D)(ii) is a scrivener's error and that Congress intended to refer to section 110(a)(2)(D)(i). Simply stated, the Agency believes that Congress in the 1990 CAA Amendments meant to make a conforming change in section 126(b) by replacing the pre-existing cross-reference to section 110(a)(2)(E)(i) with the renumbered section 110(a)(2)(D)(i), but inadvertently referenced section 110(a)(2)(D)(ii). As explained in greater detail below, this interpretation is based on the statute's logic and structure, as well as the legislative history. First, the reference to ''the prohibition of section 110(a)(2)(D)(ii)'' is ambiguous at best, and arguably nonsensical, since section 110(a)(2)(D)(ii) contains no prohibition, yet section 110(a)(2)(D)(i) does. Second, the statutory cross-reference contained in section 126(b), if taken on its face, would render section 126(b) largely meaningless. Finally, the legislative history of the CAA Amendments supports this interpretation. The EPA's interpretation is consistent with the reading of the CAA prior to the 1990 Amendments and Congress expressed no indication that it meant to substantively revise this provision of the statute at the time it administratively renumbered the provision.[7]

[7] The 1990 CAA Amendments revised section 110(a)(2)(D) by dropping certain provisions not relevant here, and incorporating other provisions previously contained in section 110(a)(2)(E). See CAA Amendments of 1990, Pub. L. 101–549, 101(b), 104 Stat. 2404 (1990); S. Rep. No. 101–228, 101st

Continued

Many commenters agreed with EPA's interpretation (presented in the proposal at 63 FR at 56299) that the cross-reference is a scrivener's error and should be read as section 110(a)(2)(D)(i). However, the Agency also received numerous comments taking exception to this view. Such commenters argued that section 126(b) should be read literally, such that the provision does not authorize EPA to issue a finding that new or existing sources contribute significantly to nonattainment downwind or interfere with measures to prevent significant deterioration of air quality or to protect visibility. For the reasons described below, EPA continues to believe that the cross-reference in section 126(b) should be interpreted as referring to section 110(a)(2)(D)(i).

The doctrine of scrivener's error recognizes that typographical and other drafting errors occasionally occur in the legislative process. The U.S. Supreme Court therefore has determined that such errors may be corrected where the statute ''can't mean what it says,'' *Green* v. *Bock Laundry Machine Co.*, 490 U.S. 504, 511 (1989) (internal quotation marks omitted), and that courts should ''repunctuate, if need be, to render the true meaning'' of a statute. *U.S. Nat'l Bank* v. *Independent Ins. Agents*, 508 U.S. 439, 462 (1993) (quoting from *Hammock* v. *Loan & Trust Co.*, 105 U.S. 77, 84–85 (1882)). Courts have applied this doctrine when the literal text ''would lead to unintended and absurd results.'' In re Chateaugay Corp., 89 F.3d 942, 954 (2nd Cir. 1996) (holding that courts are empowered to correct an erroneous statutory cross-reference that inadvertently results from legislative changes). The EPA's specific authority to apply this doctrine was recently upheld in a case involving other aspects of the Clean Air Act's SIP provisions. *Environmental Defense Fund* v. *EPA*, 82 F.3d 451 (D.C. Cir. 1996) (affirming EPA's authority to depart from the literal reading of section 176(c) of the Clean Air Act where it would frustrate congressional purposes).

Some commenters argued that the cross-reference in section 126(b) is not ''one of those rare cases where the statute as written will produce a result demonstrably at odds with the intentions of the drafters.'' *Demarest* v. *Manspeaker*, 498 U.S. 184, 190 (1991) (internal quotations and citations omitted). At best, however, the cross-reference in section 126(b) is ambiguous. First, section 126(b) authorizes EPA to find that any major source or group of stationary sources emits or would emit any air pollutant ''in violation of the prohibition of section (a)(2)(D)(ii) of this title or this section'' (emphasis added). However, section 110(a)(2)(D)(ii) contains no prohibition. Rather, it provides that SIPs must ''contain adequate provisions insuring compliance with'' statutory sections relating to interstate and international pollution abatement.

By contrast, section 110(a)(2)(D)(i)—the provision that EPA believes Congress intended to cross-reference in section 126(b)—does contain a prohibition. It requires that SIPs contain adequate provisions ''prohibiting'' any source or other type of emissions activity within the State from emitting any air pollutant in amounts that, among other things, will contribute significantly to nonattainment in, or interfere with maintenance by, another State with respect to the NAAQS. Thus, the textual interplay between sections 126(b) and 110(a)(2)(D) provides strong evidence that the CAA contains a scrivener's error.[8]

As further support, reading section 126(b) as cross-referencing section 110(a)(2)(D)(ii) essentially renders that provision redundant and meaningless. Section 126(b) allows a party to petition EPA with respect to a ''violation of the prohibition in section 110(a)(2)(D)(ii) or this section.'' Section 110(a)(2)(D)(ii) states that SIPs must contain adequate provisions to insure compliance with sections 126 and 115. To the extent section 110(a)(2)(D)(ii) cross-references back to section 126, the statute is redundant. Reading the two provisions together, section 126(b) would provide an opportunity for parties to file a petition claiming that a major source violates the prohibition of section 110(a)(2)(D)(ii) (i.e., section 126) or this section (i.e., section 126).

Moreover, to the extent that section 110(a)(2)(D)(ii) references section 115, the provision is meaningless. There is no relief that can be provided under section 126(b) for violations of section 115. Rather, sections 126 and 115 create separate processes for different parties to petition the Agency for a finding that a SIP is inadequate. Under section 115, the Administrator may issue a SIP call to a State based on a request by an international agency or the Secretary of State that an air pollutant or pollutants emitted in the United States ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country.'' In contrast, only ''States'' or ''political subdivisions''—entities under the jurisdiction of the United States—may request relief under section 126(b). If Congress intended to provide States or political subdivisions in the United States with the opportunity to seek relief for pollution transported to foreign countries, Congress could have provided so in a much clearer fashion in section 115. It is highly doubtful that Congress would have used such a cryptic reference to grant political entities within the United States the power to address pollution being transported out of the country from other States.

Further textual evidence that section 126(b) contains a scrivener's error is found by examining section 126(c). Amended at the same time as section 126(b), Congress modified section 126(c) by replacing the two references to the original State petition process, section 110(a)(2)(E)(i), with the renumbered section ''110(a)(2)(D)(ii) or this section.''[9] As amended, the new cross-references are ambiguous because they conflict with the structure and text of section 126(c). Read literally, section 126(c) would provide for enforcement of violations of section 110(a)(2)(D)(ii), which requires SIPs to insure compliance with section 126 (the interstate pollution provisions) and section 115 (the international pollution abatement provisions). As discussed above, these cross-references are redundant with respect to section 126 and meaningless with respect to section 115. In addition, section 126(c) again refers to the non-existent ''prohibitions'' of 110(a)(2)(D)(ii). There is also no legislative history indicating that Congress intended to make such substantive legal changes. In contrast, the interpretation that Congress meant to renumber section 110(a)(2)(E)(i) as 110(a)(2)(D)(i) avoids these ambiguities and restores the section 126 State petition process to the structure and manner in which it was intended to function prior to the 1990 CAA Amendments. As such, EPA believes that the text, structure and legislative history of section 126(c) bolsters the

Cong., 2d Sess. 20 (1989), reprinted in 1990 U.S.C.A.A.N. 3385, 3406.

[8] One commenter argued that Congress, in referring to sections 126(b) and 110, used the words ''prohibition'' and ''requirements'' interchangeably. Based on the provisions' text, structure and legislative history, EPA disagrees. Nevertheless, the fact that reasonable people can disagree on this issue confirms that section 126(b) is, at the very least, ambiguous.

[9] As amended, section 126(c) states that it shall be a violation for any major proposed new or modified source ''to be constructed or to operate in violation of the prohibition of section 110(a)(2)(D)(ii) of this section.'' 42 U.S.C. 7426(c) (1995). The provision also provides discretion to the Administrator to allow sources to operate beyond three months after a finding of violation where needed ''to bring about compliance with the requirements contained in section 110(a)(2)(D)(ii) or this section.'' Id.

Agency's conclusion that section 126(b) contains a scrivener's error.[10]

The EPA received comments suggesting that there is no ambiguity in section 126(b) because, on its face, it refers to section 110(a)(2)(D)(ii), not 110(a)(2)(D)(i). However, ''[t]he rule that statutes are to be read to avoid absurd results allows an agency to establish that seemingly clear statutory language does not reflect the unambiguously expressed intent of Congress and thus overcome the first step of the Chervon analysis.'' *Mova Pharmaceutical Corp.* v. *Shalala,* 140 F.3d 1060, 1068 (D.C. Cir. 1998) (internal citations omitted). *See also Chemical Manufacturers Association* v. *Natural Resources Defense Council,* 470 U.S. 116, 126–27 (1985) (finding that the word ''modify'' has no plain meaning as used in section 301 of the Clean Water Act and is properly subject to construction by EPA).

The EPA's interpretation that there is a scrivener's error, and that the reference should be to section 110(a)(2)(D)(i), fits with the legislative history on this provision. See *Public Citizen* v. *Department of Justice,* 491 U.S. 440, 454 (1989) (if apparently plain language compels an ''odd result,'' evidence of legislative intent other than the text itself, such as the legislative history, should be considered). The Agency received comments contesting this conclusion and arguing that the legislative history is, at best, inconclusive. The EPA disagrees with this characterization. The Agency's review of the legislative history indicates that Congress' broad aim was to strengthen the section 126(b) State petition process and there is nothing to suggest that Congress meant to substantively revise this process when it administratively renumbered section 110.

Several aspects of the legislative history are worth highlighting. First, prior to the 1990 Amendments, section 126(b) could be used by States to petition EPA for a finding about ''violation[s] of the prohibition of section 110(a)(2)(E)(i),'' which required SIPs to address interstate pollution. 42 U.S.C. 7410(a)(2)(E)(i) (1990). The 1990 Clean Air Act Amendments simply revised the text of former section 110(a)(2)(E)(i) and then renumbered it as section 110(a)(2)(D)(i). Compare 42 U.S.C. 7410(a)(2)(E)(i) (1990) with 42 U.S.C. 7410(a)(2)(D)(i) (1995). In other words, EPA's interpretation that section 126(b) contains a scrivener's error and that Congress intended to cross-reference section 110(a)(2)(D)(i) is consistent with both the structure of sections 126(b) and 110 and the way in which the section 126(b) State petition process was intended to function prior to the 1990 CAA Amendments.

Second, the U.S. Supreme Court has noted that, ''[u]nder established canons of statutory construction, it will not be inferred that Congress, in revising and consolidating the laws, intended to change their effect unless such intention is clearly expressed.'' *Finley* v. *U.S.*, 490 U.S. 545, 554 (1989) (internal quotation marks omitted). Yet there is nothing in the legislative history to even suggest that Congress intended to dramatically limit the State petition process when it renumbered section 110(a)(2)(E)(i).

Indeed, the evidence indicates the opposite. For starters, the sponsors of the Senate legislation never considered restricting the scope of the section 126(b) petition process. As introduced, the Senate bill, S. 1630, maintained the original provision, section 110(a)(2)(E)(i), and section 126(b) without any modifications. S. 1630, as introduced, reprinted in Comm. On Environment and Public Works, U.S. Senate, 103d Congress, 1st Sess., Legislative History of the Clean Air Act Amendments of 1990 (1993) [hereinafter ''Legislative History of 1990 CAAA''], at 9060–61, 9148. The version of S. 1630 that was adopted by the full Senate merely modified and renumbered section 110(a)(2)(E)(i) and changed the section 126(b) cross-reference accordingly. S. 1630, as passed by Senate (April 3, 1990), reprinted in Legislative History of 1990 CAAA,'' at 4139–41, 4270. Likewise, H.R. 3030, as introduced, was intended by its sponsors to simply modify and renumber section 110(a)(2)(E)(i) and make a conforming change in the section 126(b) cross-reference. H.R. 3030, as introduced, reprinted in Legislative History of 1990 CAAA, at 3751–53, 3867.[11]

The cross-reference to section 110(a)(2)(D)(ii) arose relatively late in the congressional debate, as part of the version of H.R. 3030 passed by the House Energy and Commerce Committee. The House Committee bill renumbered section 110(a)(2)(E)(i) as 110(a)(2)D)(i). H. Rep. No. 101–490, Pt. 1, 101st Cong. 2d Sess. 48 (1990), reprinted in Legislative History of 1990 CAAA, at 3030. However, the cross-reference in section 126(b) was amended to read section 110(a)(2)(D)(ii). Id. at 3072. Significantly, the Committee Report's discussion of sections 110 and 126 does not mention the cross-reference or provide any indication that the Committee intended to fundamentally restrict the pre-existing section 126(b) State petition process. Id. at 218, 274, reprinted in Legislative History of 1990 CAAA'' at 3242, 3298.

In contrast, Congress clearly indicated that the Amendments were designed to increase EPA's ability to address interstate air pollution. For example, S. 1630, as passed by the Senate, included various amendments to section 110 that ''strengthened'' provisions in existing law requiring SIPs to take into account the effect of emissions on other States.[12] S. Rep. No. 101–228, 101st Cong. 2d Sess. 19 (1989), reprinted in 1990 U.S.C.C.A.N. 3385, 3405. The House Conference Report notes that the amendments sought to ''enhance the

[10] EPA's interpretation that the cross-reference in section 126(b) is a scrivener's error is further supported by the existence of two clear, non-controversial typographical errors in the same provision. First, section 126(c) refers to ''enforcement orders under section 113(d),'' which was amended by section 701 of the 1990 Clean Air Act Amendments (Pub. L. 101–549, 104 Stat. 2672) without conforming this reference. Similarly, the Clean Air Act Amendments (Pub. L. 101–549, section 109(a)(2)(A), 104 Stat. 2470) amended section 126(c) in the first sentence by inserting ''this section and'' after ''violation of'' without further specification. However, the words ''violation of'' appear in two places in the sentence. Thus, read literally, section 126(c)(1) prohibits construction or operation ''in violation of this section and the prohibition of 110(a)(2)(D)(ii) or this section.'' These errors were noted by the House Energy and Commerce Committee, 103d Congress, 1st Sess., Committee Print 103–B, Compilation of Selected Acts Within the Jurisdiction of the Committee on Energy and Commerce (Feb. 1993), at 124.

[11] The manner in which H.R. 3030, as introduced, changed sections 110 and 126(b) helps clarify the intent of the bill's sponsors. As introduced, H.R. 3030 renumbered section 110(a)(2)(E)(i) as 110(a)(2)(D)(4). H.R. 3030, as introduced, reprinted in Legislative History of 1990 CAAA, at 3752–53. The cross-reference in section 126(b) was modified to refer to section 111(a)(2)(D)(4), a provision (in the section addressing new source performance standards) that was not in existing law nor proposed by the bill. Id. at 3867. EPA believes that the most logical interpretation of the bill's ambiguous cross-reference to section 111(a)(2)(D)(4) is that Congress meant to refer to 110(a)(2)(D)(4). Based on this interpretation, EPA believes that the sponsors of H.R. 3030 did not intend to limit the section 126(b) State petition process.

[12] S. 1630, as enacted by the Senate, expanded section 126(b) by allowing States to petition about ''groups of sources'' in addition to ''any major source.'' Similarly, the bill expanded the scope of section 110 beyond stationary sources to include ''any source or other type of emissions activity.'' The bill also modified the standard for showing that the downwind state is harmed by pollution transport by changing the language from amounts which will ''prevent attainment or maintenance by any other State'' to amounts which will ''contribute significantly to nonattainment in, or interfere with maintenance by, any other State.'' Finally, Congress expanded the prohibition to require SIPs to insure compliance with international pollution abatement requirements under section 115, as well as interstate pollution abatement requirements under section 126. See S. Rept. 101–228 (to accompany S. 1630), 22, reprinted in Legislative History of 1990 CAAA, at 4140, 4270.

enforcement authority of the Federal government under the Clean Air Act,'' including ''EPA enforcement authority regarding violations of State Implementation Plans.'' H. Rep. No. 101–952, 101st Cong. 2d Sess. 347 (1990), reprinted in 1990 U.S.C.C.A.N. 3385, 3879. Similarly, the conference report from the Senate managers states that the bill amends section 126 ''to strengthen to [sic] prohibitions on emissions that result in interstate pollution.'' Chaffee-Baucus Statement of Senate Managers, S. 1630, reprinted in Legislative History of 1990 CAAA, at 880, 886.

Where Congress considered changes to the section 126(b) State petition process, it did so explicitly. For example, Congress specifically amended section 126(b) to add the phrase ''or group of stationary sources'' after the phrase ''major source,'' thereby expanding the scope of the State petition process. Public Law 101–549, section 109, 104 Stat. 2469 (1990) reprinted in Legislative History of CAAA, at 483. In contrast, EPA cannot find—and the commenters do not point to—any discussion of the effect of the cross-reference to section 110(a)(2)(D)(ii). In light of Congress' silence, EPA believes that it is more reasonable to interpret the cross-reference as a scrivener's error than to believe that Congress intended to make such a significant change in the section 126(b) State petition process by surreptitiously altering the cross-reference. See *In re Chateaugay Corp.*, 89 F.3d at 953 (''where it appears plain that an error in drafting has occurred, so that a literal construction would make a dramatic change in long-standing law, it is both sensible and permissible for judges to consider, in conjunction with other factors, Congress' complete silence on the literal effect of the change'').

The EPA received several comments suggesting that other interpretations of section 126(b)'s cross-reference to section 110(a)(2)(D)(ii) were plausible. As discussed below, EPA finds these theories unpersuasive. Nevertheless, even if a possible explanation for the cross-reference could be advanced, EPA retains the discretion to determine what, in fact, Congress intended. See *U.S. Nat'l Bank of Oregon* v. *Independent Insurance Agents of America*, 508 U.S. 439, 461 n.10 (1993) (holding that, although plausible reasons to explain Congress' drafting choices can be developed, ''the best reading of the [Federal Reserve] Act, despite the punctuation marks, is that Congress did something else'').

Some commenters suggested that Congress intended to replace the section 126(b) State petition process with the new interstate transport provisions of sections 176A and 184, or, alternatively, that Congress required EPA to have a recommendation from a transport commission established under sections 176A or 184 before acting on a section 126(b) petition. Proponents of this theory speculate that the cross-reference to section 110(a)(2)(D)(ii) may have been a deliberate step to achieve this result. The EPA believes that the better reasoned view is that Congress intended sections 176A and 184 to supplement the existing authorities provided to address interstate transport in sections 126(b) and 110. As discussed in greater detail above in Section II.A.1, this interpretation gives full effect to all four statutory provisions. See *Alabama Power Co.* v. *EPA*, 40 F.3d 450, 455 (D.C. Cir. 1994) (a statute ''is to be interpreted to give consistent and harmonious effect to each of its provisions''). In addition, there is no statutory language indicating that sections 126(b) and 110(a)(2)(D)(i) are superseded by sections 176A or 184 or that all four provisions do not remain in effect. Rather, the legislative history demonstrates that Congress intended to strengthen EPA's authority to address the problem of interstate pollution and there is nothing to indicate that Congress envisioned sections 176A or 184 as the exclusive mechanism by which to address these issues. See S. Rpt. 101–228 (on S. 1630), Legislative History of 1990 CAAA, at 8391 (''A regional ozone transport commission is one important way to address these problems identified by modeling and monitoring''). As a result, EPA reads section 176A and 184 as supplementing, rather than limiting, the section 126(b) State petition process.

The EPA also received a comment that, if there was a drafting error, it is at least as plausible that Congress intended to refer to section 110(a)(2)(D)(i)(II), which requires SIP provisions to prevent significant deterioration of air quality or to protect visibility. Another commenter argued that the cross-reference was a deliberate statutory change to limit the section 126(b) petition process to implementation of the notification requirements of section 126(a). The legislative history, however, fails to provide any evidence to support either theory. Rather, it is more plausible that Congress was silent on the issue because the change in cross-reference was an unintended scrivener's error. Further, EPA's interpretation that Congress did not intend to limit the pre-existing section 126(b) State petition process is a more narrow statutory interpretation than the theory that Congress intended to limit section 126(b) to either the prevention of significant deterioration and visibility provisions of section 110(a)(2)(D)(i)(II) or the notification requirements of section 126(a). See *Mova Pharmaceutical Corp.*, 140 F.3d at 1068–69 (remanding an FDA rule for a ''more narrow solution'' because, ''when [an] agency concludes that a literal reading of a statute would thwart the purposes of Congress, it may deviate no further from the statute than is needed to protect congressional intent''). Finally, as noted previously, even if either theory were as plausible as EPA's interpretation, the Agency remains responsible for determining what Congress actually meant. See *U.S. Nat'l Bank of Oregon* v. *Independent Insurance*, 508 U.S. at 461 n.10.

Other commenters observed that Congress has chosen to leave the statute as enacted in 1990, rather than amend the cross-reference in section 126(b). However, the post-enactment legislative history sheds no light on whether the 101st Congress intended to restrict the section 126(b) State petition process. There could be a host of potential explanations for congressional inaction, ranging from ignorance of the mistaken cross-reference to concern about reopening the CAA and unraveling the broad compromise reached in the 1990 Clean Air Act Amendments. As a result, EPA finds this argument unpersuasive.

The EPA received comments claiming that the Agency must obtain a judicial ruling before interpreting section 126(b) as a scrivener's error. Other commenters suggested that the only lawful route would be for EPA to request that Congress revise the Act. The EPA does not believe that either approach is required. Rather, based on the doctrine of scrivener's error, courts have repeatedly affirmed interpretations by federal agencies that deviate from a statute's literal text when necessary to effectuate Congress' purpose. See *Chemical Manufacturers Ass'n v. Natural Resources Defense Council*, 470 U.S. 116, 125–26 (1985) (upholding EPA's interpretation that statutory language forbidding EPA to ''modify'' national standards for the discharge of toxic water pollutants did not preclude the Agency from issuing individualized variances because a literalistic reading of the statute would ''make little sense''); *Environmental Defense Fund* v. *EPA*, 82 F.3d at 468 (affirming EPA's interpretation of section 176(c) of the Clean Air Act to avoid ''absurd or futile results'').

The EPA also received comments arguing that the Agency unlawfully prejudged this issue by adopting the

scrivener's error theory as the basis for the consent decree in State of Connecticut v. Browner , No. 98–1376 (S.D.N.Y. 1998), which requires EPA to take final action on at least the technical merits of the section 126(b) petitions by April 30, 1999. However, paragraph 10 of the consent decree expressly leaves open all ''issue[s] regarding the substance and timing of any remedy that EPA may or should require in response to the Section 126 petition,'' including EPA's final interpretation of section 126(b). *State of Connecticut* v. *Browner*, No. 98–1376 (S.D.N.Y. Oct. 27, 1998) (stipulation and order approving consent decree). Thus, under the consent decree, EPA retained the discretion to deny the section 126(b) petitions on the ground that the Agency lacked statutory authority to entertain them in the first place. Accord *Croning* v. *Browner*, 898 F. Supp. 1052, 1062 (S.D.N.Y. 1995) (language in consent decree requiring EPA to take final action on regulations did not preclude EPA from determining that ''regulations are not called for''). The Agency has undertaken a full notice and comment rulemaking process and has appropriately considered the comments submitted in reaching its final decisions. As a result, EPA is entitled to the traditional ''presumption of regularity [that] supports the official acts of public officers.'' *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 14 (1926).

Some commenters suggested that EPA's proposed interpretation is contrary to an Agency policy on typographical errors in the 1990 Clean Air Act Amendments. The commenters cite to statements made during a 1993 rulemaking on acid rain allowance allocations.[13] These statements addressed only a narrow issue involving the statutory interpretation of section 404(e) and did not purport to establish an Agency-wide policy. Furthermore, unlike the issue at hand, EPA determined that section 404(e) was ''clear'' for purposes of the rulemaking. Acid Rain Allowance Allocations and Reserves Final Rule, 58 FR 15,634 15,642 (March 23, 1993). In contrast, EPA believes that the literal text of section 126(b) and 110 is ambiguous and would create absurd results. As a result, EPA's determination that section 126(b) contains a scrivener's error is consistent with all relevant Agency policy.

In sum, the cross-reference to section 110(a)(2)(D)(ii) is ambiguous at best. A literal reading of the cross-reference is impossible since section 110(a)(2)(D)(ii) does not contain a prohibition and such an interpretation would contradict the statute's logic and structure. Further, there is no indication that Congress, in renumbering sections 126(b) and 110, intended to change the section 126(b) State petition process. The evidence indicates, in contrast, that Congress wanted to enhance EPA's ability to address interstate air pollution. As a result, EPA believes that its interpretation is permissible because it resolves the ambiguity in the interplay between sections 126(b) and 110(a)(2)(D) in a manner that harmonizes and gives meaning to all of their provisions and reasonably accommodates the purposes of the provisions. See *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837, 844 (1984).

3. Interpretation of Emits in Violation of the Prohibition of Section 110 and Integration of Section 126 Controls With SIPs/FIPs Under the NO_X SIP Call

a. Interpretation of Emits in Violation of the Prohibition of Section 110

In the section 126 proposed rule, EPA explained its position on how section 126 should be interpreted in coordination with section 110(a)(2)(D), and specifically, how the Agency should act on the section 126 petitions in light of the NO_X SIP call. See 63 FR 56301–56303. As proposed, EPA is structuring its final action to contain: (1) A series of ''technical determinations'' as to which sources in which States named in the petitions would emit in violation of the section 110 prohibition if the State or EPA were to fall off track in putting a timely and satisfactory plan in place pursuant to the NO_X SIP call; (2) determinations that the petitions will automatically be deemed granted or denied on the basis of certain specified events and timing related to state submissions and EPA approvals of SIP revisions submitted in response to the NO_X SIP call, as well as EPA promulgations of federal implementation plan provisions; and (3) the remedial requirements that will apply to the sources receiving affirmative technical determinations if a petition naming those sources is ultimately deemed granted.

Numerous parties have commented on the relationship of the section 126 petitions to the NO_X SIP call. One set of commenters generally argues that action under the NO_X SIP call does not necessarily satisfy the requirements of section 126 and asserts that EPA should not dismiss the section 126 petitions until sources have actually reduced emissions. Several commenters assert that implementation of the NO_X SIP call rule either by the states in their SIPs or by EPA in FIPs precludes a positive finding under § 126. Another commenter argues that it would be inconsistent with the NO_X SIP call for EPA to make any determinations regarding the prohibition of section 110(a)(2)(D)(i) other than a determination that the prohibition is not being violated by any source in any state that is subject to the SIP call. The EPA continues to believe that its approach, and the underlying interpretation of sections 110(a)(2)(D)(i) and 126, is the most appropriate way to interpret and reconcile the two provisions, for the reasons explained in the proposal and further detailed below.

Section 126 calls for relief where EPA finds that sources are emitting ''in violation of the prohibition'' of section 110(a)(2)(D)(i). The language of section 126 on its face, however, is ambiguous as to what it means for a source to emit in violation of the prohibition of section 110(a)(2)(D)(i).

Some commenters argue that there can be no violation of the prohibition of section 110(a)(2)(D)(i) unless the upwind state SIP contains an emission limit that implements the requirement of section 110(a)(2)(D)(i) and the source is violating that limit. In support of this interpretation, the commenters point to section 126(c), which states that ''it shall be a violation of this section and the applicable implementation plan in such State'' for a source to operate in violation of the prohibition of section 110(a)(2)(D) or section 126. The commenters also argue that this interpretation makes sense in light of the short time frame for EPA action under section 126, consistency with section 110 and other provisions, and consistency with the remedy under section 126(c).

Other commenters appear to believe that the existence of an emissions limit in a SIP implementing section 110 is irrelevant. They (either explicitly or implicitly) take the position that EPA may find that a source is emitting in violation of the prohibition of section 110(a)(2)(D)(i) for any source that is contributing significantly to nonattainment or interfering with maintenance downwind if either: (a) the

[13] EPA stated that the Agency ''acknowledged the redundancy in section 404(e) [of the Clean Air Act] as enacted, but believes that the section is clear as to the eligibility requirements. Therefore the Agency must follow the statute as enacted.'' 58 FR 15,634 15,642 (March 23, 1993). In a background document, EPA further stated that ''EPA accepts the statutory text as written and believes that it does not have the authority to make the change suggested by the commenter.'' EPA Response to Public Comment on Proposed Acid Rain Allowance Allocation Rule, EPA Docket No. A–92–06, Doc. No. V–C–1, at 124 (March 1993).

SIP fails to limit those emissions, or; (b) the SIP limits the emissions, but the source is violating those limits.

The EPA does not agree with either of these interpretations. Rather, EPA interprets section 126 to provide that a source is emitting in violation of the prohibition of section 110(a)(2)(D)(i) where the applicable SIP fails to prohibit (and EPA has not remedied this failure through a FIP) a quantity of emissions from that source that EPA has determined contributes significantly to nonattainment or interferes with maintenance in a downwind state. Several commenters support EPA's approach.

The ambiguity of the language of section 126 raises at least three related questions. The meaning of ''emit in violation of the prohibition'' is ambiguous. As a consequence, it is not clear how Congress intended sections 110(a)(2)(D)(i) and 126 to work together under the CAA, and specifically, it is unclear how an approved SIP provision implementing section 110(a)(2)(D)(i) or compliance with a SIP call to implement section 110(a)(2)(D)(i) affects section 126 petitions alleging that sources are emitting in violation of the prohibition of section 110(a)(2)(D)(i).

The EPA believes that there are several key factors to consider in attempting to resolve these questions. First, of course, is the language of the provisions, to the extent that it can be read to support one interpretation over another. A second key consideration is the purpose of section 126 in light of the problem it was designed to solve as indicated by the legislative history. Third, it is appropriate to take into account the existence of other provisions in the CAA and to interpret sections 126 and 110(a)(2)(D)(i) in a manner that gives those sections full force and effect, without creating redundancy with any other provision. Finally, in analyzing the role of direct controls on sources through section 126 findings vis-a-vis controls on sources through SIPs, it is useful to consider how these two different mechanisms fit into the federal-state system for air pollution control established under Title I. Taking all of these considerations into account, EPA believes that the best interpretation of section 126 is that it authorizes a downwind state to petition EPA to control emissions from upwind sources where the upwind SIP is inadequate to comply with the requirements of section 110(a)(2)(D)(i), but that where the SIP establishes adequate controls on interstate transport and a source is violating those requirements, the appropriate remedies are provided in sections 113 and 304 of the Act, not section 126.

Focusing first on the language of the provisions, EPA believes that it is reasonable and appropriate to interpret the prohibition of section 110(a)(2)(D)(i) as a prohibition on emission of a quantity of pollutants that would contribute significantly to nonattainment in or interfere with maintenance by another state. In essence, it is a prohibition on excessive interstate transport of air pollutants. The state is responsible for implementing the prohibition by barring such excessive emissions in the SIP. Thus, EPA believes a reasonable interpretation is that where the state has failed to implement the prohibition, the SIP allows excessive transport of pollutants, the prohibition is violated, and a source emitting such quantities of pollutants is emitting in violation of the prohibition.

Where the state has adopted SIP provisions barring such emissions, but the source is violating those limits, it is less clear whether the prohibition on excessive interstate transport has been violated and hence whether the source is in violation of the prohibition. The EPA believes it is most reasonable to read section 126 not to encompass this situation, for the reasons explained below.

The EPA also rejects the more restrictive interpretation that section 126 only applies where a state has adopted SIP provisions to control interstate transport of pollutants, EPA has approved those SIP provisions, and sources are violating those provisions. Section 110(a)(2)(D)(i) itself does not directly establish any emissions limitations applicable to a particular source. The emissions limitations on which the commenters are focusing are the requirements of the SIP, not of section 110(a)(2)(D)(i). Looking just at the specific language of the two provisions, EPA believes that the better interpretation of the language of section 126 is that it refers to the actual functional prohibition of section 110(a)(2)(D)(i), which bars impermissible interstate transport, rather than the specific provisions through which states implement that prohibition, the emissions limitations for individual sources contained in an approved SIP. As explained above, a source would be in violation of the prohibition of section 110 where the applicable SIP failed to bar excessive interstate transport of air pollutants. EPA believes that its interpretation is a reasonable reading of the reference in section 126 to emitting in violation of the prohibition of section 110, and in light of the ambiguity of the statutory language, EPA's interpretation is subject to deference under Chevron.

The clear purpose of section 126 is to provide a tool for downwind states to achieve reductions in interstate pollution transport. See discussion above in section II.A.1. The history and current manifestation of interstate pollution problems emphasize that such a tool is needed to address the situation where upwind states have not designed their SIPs to account for the effects of emissions from sources in those states on downwind areas. See discussion in Sections II.A.1. and I.B. In short, as Congress recognized in adopting all of the interstate transport provisions in the CAA, the interstate pollution problem stems from inadequate SIPs, not inadequate compliance with adequate SIP requirements. This characterization of the problem is supported by the numerous descriptions of the interstate pollution problem in the 1977 and 1990 legislative histories, all of which explicitly or implicitly refer to the lack of upwind limitations and none of which mentions sources' violation of upwind SIP limits.[14] Furthermore, it is reasonable to assume that Congress intended to create a tool that would attack the problem Congress recognized. This supports the conclusion that Congress intended section 126 to apply where upwind states' SIPs are inadequate, not (and certainly not only) where sources are violating adequate SIP provisions.

The EPA's interpretation is also consistent with Congress' explanation of section 126 in the legislative history. In the course of adopting the 1990 Amendments, the Senate Committee described section 126 as allowing a

[14] *See*, e.g., S. Comm. on Envt. and Public Works, Clean Air Act Amendments of 1977, S. Rep. 95–127, 95th Cong., 1st Sess. 41 (1977), reprinted in 3 1977 Legislative History, 1415 (noting that the 1970 Act failed to specify any abatement procedure if a source in one state emitted air pollutants that adversely affected another state, and ''[a]s a result, no interstate enforcement actions have taken place, resulting in serious inequities among several States, where one State may have more stringent implementation plan requirements than another state;'' H. Rep. 95–294, 95th Cong., 1st Sess. at 331 (1977), reprinted in 4 1977 Legislative History at 2798 (''This petition process is intended to expedite, not delay, resolution of interstate pollution conflicts.''); S. Rep. 101–228 at 48, reprinted in V 1990 Legislative History at 8388 (''The transport problem in the northeast, and perhaps other regions as well, is serious enough that additional efforts must be made on an interstate basis to control emissions, including emissions from attainment areas.''); *id.* at 49, 8389 (''The model suggests that even if all emissions sources were eliminated within the tri-state area [New York, New Jersey and Connecticut], violations of the ozone standard would still occur. This means substantial reductions in emissions from areas upwind from the New York metropolitan area must be achieved if this area is to attain the air quality standards.'').

downwind state to complain about ''a defect in the offending State's SIP.'' Senate Committee Report, 75–76, Leg. Hist. V. 8415–8416. A source's violation of adequate SIP requirements is certainly not synonymous with a defect in the SIP itself.

In addition, there is little or no purpose to establishing a process for downwind states to petition EPA to find that upwind sources are violating their SIP requirements because other sections of the Clean Air Act provide ample authority for states, citizens and EPA to directly enforce approved SIP provisions against sources violating those provisions. This objection applies even more forcefully against the most limited interpretation advocated by some commenters, in which the sole purpose of the petition process under section 126(b) and (c) is to allow states to petition EPA to find that a source is violating its emissions limitations under an approved SIP. Upon making such a finding, EPA could then allow the source up to three years to come into compliance with its emissions limitations. Yet there is no need to have a petition, public hearing, and EPA determination simply to enforce existing SIP limits, as the CAA elsewhere provides a quite sufficient and much simpler set of remedies for violation of an approved SIP provision. Under section 113, upon finding that any person is in violation of any requirement of an approved SIP, EPA has the authority to enforce the requirement by issuing an order to comply, issuing an administrative penalty order, or bringing a civil action. In addition, any person (which includes states) may bring a citizen suit against any person in violation of any requirement of an approved SIP. Section 304(a), (f); see also section 302. These provisions provide more direct and likely quicker recourse against a source that is violating its SIP-imposed emission limits. In bringing suit under the citizen suit provisions, a state could act independent of EPA action. Moreover, these tools for enforcement of SIP requirements were available under the 1977 Clean Air Act, which contained both sections 113 and 304 in substantively similar form to the present versions. In adopting section 126 in 1977 and strengthening it in 1990, Congress clearly intended the petition process to play a significant role in addressing the interstate pollution problem. See discussion above in section II.A.1. To the extent that section 126 is used to enforce SIP violations, the petition process would not be serving such a role. Furthermore, under the commenters' most limited interpretation, the petition process would instead provide no authority at all to address interstate pollution beyond what is already provided elsewhere in the Act through arguably more effective mechanisms. In contrast, using the section 126 petition process where a state has failed to adopt adequate SIP provisions serves the unique role of allowing a downwind state to force EPA consideration of the problem and potentially achieve emissions reductions directly from sources, without the need to depend on action by the upwind state.

In determining how Congress intended section 126 to operate both in the absence of an adequate SIP and when a state is complying with the section 110 SIP requirements, it is also important to consider the role under Title I of state planning and control efforts in the form of SIPs, versus imposition of direct federal controls. In Title I of the Act, Congress has established a cooperative federalism approach in which air pollution planning and control occurs largely at the state level. Under Title I, states are primarily responsible for determining the mix of control measures necessary to achieve the NAAQS, while the federal government sets the uniform national goals and ensures that states act to meet them. *Train* v. *NRDC*, 421 U.S. 60 (1975). Section 126 is somewhat unusual in Title I in that it authorizes EPA to control sources directly, rather than providing a means for EPA to encourage states to control those sources. In that sense, it is similar to the provisions for federal implementation plans in section 110(c). With both of these provisions, Congress provided tools for direct federal action to address serious failures of state action. Nevertheless, Congress' clear preference throughout Title I is that states are to decide and plan how they will control their sources of air pollution, and the mechanism for imposing those controls at the state level is SIPs. As noted above, states, EPA and citizens have the authority to directly enforce violations of an approved SIP. Thus, where a SIP is adequate but a source is violating its provisions, it would be counter to the cooperative federalism structure of the Act and would serve no purpose to essentially replace those adequate SIP limits with redundant direct federal controls on a source. In contrast, where a state has failed to adopt adequate SIP provisions in the first place, it makes sense to provide an alternative mechanism to directly achieve the necessary emissions reductions from the sources. A state would always be free to regulate the sources itself in that instance by revising its SIP to include the necessary emission limits. EPA believes that this understanding of Congress' overall design for air pollution control supports EPA's interpretation that section 126 is intended to be used only to address the situation where the SIP fails to prohibit sources from emitting impermissible amounts of transported air pollutants. Thus, under this view, a source is emitting in ''violation of the prohibition of'' section 110(a)(2)(D)(i) under section 126 when the applicable SIP fails to limit the emissions prohibited under section 110(a)(2)(D)(i).

In support of the most limited interpretation that there is no violation of the prohibition absent an approved SIP provision limiting the source's emissions, commenters point to the language of section 126(c), which states that ''it shall be a violation of this section and the applicable implementation plan in such State'' for a source to operate in violation of the prohibition of section 110(a)(2)(D) or section 126. They claim that the reference to a violation of a SIP supports the interpretation that section 126 only applies where there is an approved SIP provision in place. However, if a source is emitting in violation of an emission limitation in a SIP, there is no question that the source is in violation of the SIP. The language in section 126 stating that ''it shall be a violation of * * * the applicable implementation plan'' for a source to emit in violation of the prohibition of section 110(a)(2)(D) serves no legal purpose where the source is already directly violating a SIP requirement. In contrast, under EPA's interpretation, section 126 deems a source's emissions to be a violation of the applicable SIP (as well as of section 126) where the SIP itself does not bar the source's emissions but the emissions significantly contribute to nonattainment downwind. This interpretation gives legal effect to the language in section 126 and is consistent with Congress' purpose of providing a tool for downwind states and EPA to use to impel upwind sources to reduce transported emissions.

Nor does EPA agree with the commenter's argument that EPA's interpretation is inconsistent with the remedy under section 126(c). The commenter asserts that because a source must comply within three months of a finding or cease operating, the remedy makes no sense in the absence of an approved SIP provision. However, section 126(c) also provides that the three month deadline only applies if

EPA does not establish an alternative schedule for the source to come into compliance. EPA may give a source up to three years to comply with the prohibition in section 110(a)(2)(D), as long as the source meets emissions limitations and compliance schedules containing increments of progress set by EPA. The commenter fails to explain why this scheme ''makes no sense.'' In EPA's view, up to three years for compliance is generally a reasonable amount of time that should not unduly burden sources and is consistent with the timeframes for implementation of many federal and state air pollution requirements. This is a perfectly rational, if potentially stringent, means of assuring continued progress on something that Congress viewed as a serious pollution problem.

Commenters also assert that their interpretation is the only interpretation that is consistent with section 110(a)(2)(D)(i) and other provisions of the Act. They argue that states have the primary responsibility for regulating their sources under section 110, and if the states fail to do so, EPA's recourse is provided in sections 110(k) (allowing EPA to call for revision of an inadequate SIP), 110(m) (allowing EPA to impose sanctions) and 110(c) (allowing EPA to promulgate a Federal implementation plan). EPA emphatically agrees that a SIP call under sections 110(a)(2)(D)(i) and 110(k)(5) is an alternative means for EPA to address interstate pollution transport. However, commenters overlook the unique role of section 126, which is designed to provide recourse to downwind states where both upwind states and EPA have failed to act. As discussed above, no progress had been made on interstate transport problems at the time of enactment of both the 1977 and 1990 Amendments. Section 126 provides a tool for downwind states, the entities with most at stake, to force EPA to confront the issue directly. It also sets up an abbreviated, and hence potentially faster, process to achieve emission reductions. Under the SIP process, EPA must direct a state to revise its SIP to comply with 110(a)(2)(D), and then perhaps find that the state has failed to comply, impose sanctions, and finally promulgate a Federal implementation plan, all of which could potentially stretch out for many years. In contrast Congress required very expeditious EPA action on a petition and from three months up to three years for sources to comply. It is perfectly reasonable for Congress to have established section 126 as an alternative mechanism under the Clean Air Act to address the interstate pollution problem, just as it did again in adopting sections 176A and 184. To provide alternatives, the various interstate transport provisions are necessarily different from each other and from other provisions of the Act, but that does not make them inconsistent with other provisions of the Act.

Finally, commenters argue that their interpretation makes sense because Congress only gave the Agency 60 days after receipt of the petition to hold a public hearing on the petition and act to grant or deny the petition. They assert that this short time frame indicates that Congress anticipated the decision would be a fairly simple administrative task of determining whether a source is violating a SIP requirement. EPA views the significance of these requirements differently. First, the requirement to hold a hearing bolsters EPA's interpretation of section 126 because a hearing would serve no purpose here under the commenter's interpretation. Whether a source is violating an emission limitation is a straightforward compliance determination. EPA makes such determinations on a daily basis without going through a public hearing process, and such a process would provide no benefit. Second, the short time frame for a determination is an indication of Congress' intent to produce action on the interstate pollution issue. In section 307(d)(10) of the Act, Congress expressly provided a generic time extension for EPA action on certain rules listed under section 307 to address the possibility that some of the deadlines under the Act might be too short to allow EPA to complete the rulemaking process. This indicates that Congress did not necessarily link short deadlines for action under section 307(d) with less complex or substantive proceedings, and where a short deadline may threaten the integrity of the rulemaking process, Congress was willing to extend the deadline. A short deadline for EPA action corresponds better with Congress' assessment of the urgency of the problem than the time needed by EPA to carry out the mandate, and thus such a deadline should not be assumed to signal a simple task for the Agency.

A commenter also stated that ''[i]n the NPR, EPA acknowledges that the section 126 language requires a violation of a SIP provision implementing section 110(a)(2)(D)(i) before a section 126 finding can be made. 63 Fed. Reg. at 56302.'' EPA is not certain to which particular statement the commenter is referring. The commenter may be referencing out of context the last clause of a sentence describing EPA's rationale for not granting a petition if either the State is adhering to the NO_X SIP call schedule for submission of an approvable SIP revision and EPA is acting speedily to approve the SIP, or if EPA has promulgated a FIP for the State. EPA's statement regarding whether a source ''emits or would emit in violation of the prohibition'' alluded to how EPA should interpret section 126 in light of the interplay with the NO_X SIP call under section 110(a)(2)(D). EPA rejects the notion that any statement in the NPR constitutes the ''acknowledgment'' claimed by the commenter.

Overall, commenters advocating the most limited interpretation would reduce what is perhaps the most powerful tool in the Clean Air Act to address interstate pollution to a redundant mechanism to enforce limitations that states have already included in their SIPs. Under their interpretation section 126 is a tool to fix a nonexistent problem. No commenter on the NO_X SIP call or this section 126 rulemaking has claimed that the northeastern ozone problem is due in any part to sources' noncompliance with emission limitations contained in upwind states' SIPs. The commenters' interpretation of section 126 does not comport with Congress' aim of establishing and strengthening a means for downwind states to enlist EPA's assistance to require the upwind reductions needed for the downwind states to meet air quality standards.

b. Integration of Section 126 Controls With SIPs/FIPs Under the NO_X SIP Call

EPA's interpretation of ''emitting in violation of the prohibition'' provides direction for how EPA should act on the section 126 petitions in light of the NO_X SIP call, as for both actions EPA is operating on basically the same set of facts regarding the same pollutants and largely the same amounts of upwind reductions affecting the same downwind states. First, it follows that if a state had already adopted a SIP revision in response to the NO_X SIP call providing for sources to reduce their emissions at a future date and EPA had approved the revision as adequate to meet the requirements of section 110(a)(2)(D)(i), EPA would not find that a source in that state was emitting in violation of the prohibition of section 110(a)(2)(D)(i).[15] Similarly, if a state had

[15] Of course, compliance with a SIP call based on section 110(a)(2)(D)(i) only means that a state has adequately prohibited excessive emissions of transported pollutants for the particular set of facts analyzed under the SIP call. For example, if a downwind state that had not been considered a recipient of an upwind state's emissions

failed to adopt a SIP revision in response to the NO_X SIP call and EPA had responded with a FIP, the FIP would bar the excessive emissions of transported pollutants and hence sources in the state would not be emitting in violation of the section 110 prohibition. EPA believes it also follows that if states are currently subject to a schedule for compliance with a SIP call to correct an inadequacy under section 110(a)(2)(D)(i), and states have not yet slipped off track in terms of compliance with the schedule, it is appropriate for EPA to defer making a finding as to whether sources in the state are emitting in violation of the prohibition of section 110(a)(2)(D)(i).

The premise of the NO_X SIP call is that a number of state SIPs fail to limit emissions to prevent the excessive interstate pollution transport prohibited by section 110(a)(2)(D)(i). The purpose of the NO_X SIP call is to require the states to revise their SIPs to comply with section 110(a)(2)(D). Pursuant to the NO_X SIP call, there is an explicit and expeditious schedule for states to meet their section 110(a)(2)(D)(i) obligations. EPA has also proposed a FIP to bar the excessive emissions of transported pollutants for each state that fails to meet the schedule established in the NO_X SIP call, and EPA could finalize the FIP by November 30, 1999. As long as both states and EPA are on track in terms of complying with the substance and timing of the NO_X SIP call, EPA believes it is appropriate to interpret section 126 to allow EPA to defer making a finding with respect to sources in those states.

It further follows that once a state has missed a deadline under the schedule and EPA has not corrected the SIP inadequacy with a FIP, it is reasonable to find at that point that sources in the state are emitting in violation of the prohibition because the applicable SIP fails to limit interstate transport and the state has failed to correct the inadequacy in the timeframe established under the SIP call. It also follows that EPA could not find that sources in the state are not emitting in violation of the prohibition of section 110(a)(2)(D)(i) and deny the petitions now simply because EPA has issued a SIP call, as one commenter suggests. The key criterion under EPA's interpretation of sections 126 and 110(a)(2)(D)(i) is the existence of provisions in an applicable implementation plan to control interstate transport. Issuance of the SIP call with a schedule for correcting the deficiency is sufficient to allow EPA to defer a final decision on granting or denying the petitions as long as the states have not missed a deadline under that schedule. It is not a sufficient basis, however, on which to assume that the required provisions controlling interstate transport will necessarily be adopted by the state or EPA within the required timeframe, and hence to assume that sources are not emitting in violation of the prohibition of section 110.

EPA believes that it is reasonable to make technical determinations at this time that absent timely action under the NO_X SIP call, sources covered by the petitions, which are in states subject to the SIP call, will emit in violation of the prohibition of section 110(a)(2)(D)(i). Hence, if states or EPA fail to act on the schedule established, the petitions will automatically be deemed granted, and if states and EPA meet the schedule established, the petitions will automatically be deemed denied. Specifically, today's action provides that for each source for which EPA has made an affirmative technical determination, EPA will be deemed to have found that the source emits or would emit NO_X in violation of the prohibition of section 110(a)(2)(D)(i) under the following circumstances.[16] First, the finding is deemed to be made for such sources in a state if by November 30, 1999, EPA has not either (a) proposed to approve a state's SIP revision to comply with the NO_X SIP call or (b) promulgated a FIP for the state. Second, the finding is deemed to be made for such sources in a state if by May 1, 2000, EPA has not either (a) approved a state's SIP revision to comply with the NO_X SIP call or (b) promulgated implementation plan provisions meeting the section 110(a)(2)(D)(i) requirements. Upon EPA's approval of a state's SIP revision to comply with the NO_X SIP call or promulgation of a FIP, the corresponding portions of the petitions will automatically be deemed denied. Also, if a finding is deemed to be made, it will be deemed to be withdrawn, and the corresponding portions of the petitions will also be deemed to be denied, upon EPA's approval of a state's SIP revision to comply with the NO_X SIP call or promulgation of a FIP. See Section II.B for further discussion of the basis for EPA's technical determinations.

This coordinated approach to addressing the overlapping section 126 petitions and the NO_X SIP call is also a practical way to implement both of these provisions in the same time period, as the timing of the SIP call and the consent decree have required EPA to do here. Several commenters have suggested that EPA address coordination with the NO_X SIP call through either retaining the section 126 petitions as a backstop until the SIP provisions are implemented (possibly by ''staying'' action on the petitions), or treating timely implementation of the FIP or SIP as alternative ''increments of progress'' under section 126. However, each of these approaches would raise practical problems by subjecting sources to differing emission control requirements—e.g., one set from an approved SIP and the other from the section 126 remedy. This would be particularly problematic for sources in states that choose different control options from those selected by EPA under the section 126 petitions and could potentially significantly increase the overall burden of reducing interstate transport of pollutants under the NO_X SIP call and the section 126 petitions.

The practical problems with the commenters' suggested approaches stem from the fact that the controls adopted by upwind states in their SIPs may well not be identical to the controls identified by EPA under section 126. The SIP may control different sources, and may impose looser, or no, controls on at least some of the sources also covered by section 126. Accordingly, it may not be feasible to treat the SIP controls as increments of progress under section 126. In addition, if the SIP controlled different sources or imposed looser controls on the sources covered by section 126, the section 126 sources would still be obliged to implement the section 126 controls in time for the May 1, 2003 deadline. The section 126 sources would need to take this action because otherwise, if the sources covered under the SIP did not implement their SIP controls, the section 126 sources would be responsible for having their controls in place as soon as the SIP sources were determined not to be in compliance. Under this scenario, the overall burden of achieving the downwind reductions could be significantly higher than necessary because to the extent that the controls required under section 126 and the controls required under a SIP were nonidentical, sources would need to

subsequently brought a petition under section 126, or a downwind state that had been considered a recipient under the SIP call produced new data showing a different level of contribution or other new facts, compliance with the earlier SIP call would not be determinative regarding whether the upwind sources were emitting in violation of the prohibition of section 110(a)(2)(D)(i).

[16] While these findings would be made automatically without further EPA action, EPA would promptly publish a notice in the Federal Register notifying affected sources and other interested parties that the findings had been made.

implement all of the nonidentical controls required by either section 126 or the SIP, even though implementation of either the set of section 126 controls or the set of SIP controls alone would be sufficient to eliminate emissions that contribute significantly to nonattainment or interfere with maintenance in downwind states. Furthermore, this potential inefficiency might be viewed as effectively impermissibly pressuring states to adopt in their SIPs controls identical to the section 126 controls, as states might conclude that identical controls are necessary to minimize the overall compliance burden. As described elsewhere in today's notice, the courts have found that while EPA may specify a quantity of emissions reductions that states must achieve through SIP revisions, EPA may not specify the particular controls that a state must adopt.

A number of commenters have stated that EPA should not dismiss the section 126 petitions unless and until the quantity of transported air pollutants has been reduced, either through implementation of the SIP revisions adopted in response to the NO_X SIP call or through implementation of a FIP. The commenters express the concern that under EPA's approach, if the upwind states, EPA, or sources go off track in terms of compliance with the NO_X SIP call schedule, the downwind states will be unable to enforce the three year deadline for emissions reductions established by section 126.

For the reasons discussed above, EPA believes that the better interpretation of sections 110(a)(2)(D)(i) and 126 is that sources emit in violation of the prohibition of section 110(a)(2)(D)(i) only where the applicable SIP, SIP submission, or federal plan fails to bar the excessive emission of transported pollutants prohibited by section 110(a)(2)(D)(i). Nor does EPA agree that its approach raises the problems cited by the commenters. First, EPA believes that it has carefully structured its actions on the petitions to avoid any problems associated with either the upwind states or EPA going off track with respect to the NO_X SIP call schedule for adoption and approval of SIP revisions. By making technical determinations now and specifying the exact dates and circumstances under which the petitions would be deemed granted, EPA has structured today's action to ensure that if either the upwind states or EPA do not submit or promulgate the necessary plan provisions expeditiously under the NO_X SIP call, the section 126 remedy will automatically be activated without any further action by EPA. Moreover, May 1, 2000 is the deadline for the upwind states and EPA to complete their necessary actions to avoid an automatic granting of the section 126 petitions. This provides ample time for sources subject to the section 126 controls to come into compliance by the May 1, 2003 deadline. Once the SIP revisions are adopted and approved, no further action is needed from the upwind states and EPA—from that point on, the only way that emissions reductions would go off track is if the upwind sources failed to comply with their SIP limitations.

Moreover, the problem of potential bad actors exists regardless of whether EPA grants, retains (and somehow stays action on), or denies the section 126 petitions. Under any approach, it is possible that some sources may not meet the May 1, 2003 deadline for compliance with the SIP limitations, and thus, whether or not EPA has denied the section 126 petitions, there is a possibility that some portion of the upwind emissions will not be reduced within the three year period specified in section 126. If EPA has either retained or denied the petitions, the remedy is the same—enforcement action against the source for failure to comply with a regulatory requirement embodied in an approved SIP. As discussed above, either downwind states or EPA could directly enforce the SIP limits against the source under section 304 or 113, respectively. If EPA grants the petitions, downwind states would additionally be able to enforce against sources for violation of section 126, as well as the SIP limits, but it is not clear that this would make any practical difference. It is not necessary for EPA to use the section 126 petitions as a backstop in case of potential bad actors, and attempting to do so would raise the practical problems discussed above. In addition to this analysis of the practical issues associated with granting or retention versus denial of the petitions upon approval of the SIP revisions, such an approach would be inconsistent with what EPA believes to be the best reading of the statute, as discussed above. Moreover, with respect to the argument that EPA should retain the section 126 petitions as a backstop after approval of a SIP revision or promulgation of a FIP, EPA is uncertain as to what would constitute the statutory authority for such an approach.

c. Petitions Deemed Granted Upon Certain Events

A number of commenters objected to EPA's proposal that the section 126 petitions for which it has made affirmative determinations would be deemed granted under the circumstances specified above. Commenters asserted that EPA should withhold decisions regarding the section 126 petitions until it has had sufficient time to determine the adequacy of the SIPs submitted pursuant to the NO_X SIP call, rather than providing that the section 126 remedy would be automatically triggered by certain dates. Commenters also argued that EPA must conduct a rulemaking to evaluate the technical merits of the section 126 petitions rather than setting up a mechanism whereby failure to take a final action by a deadline, and in particular, EPA's failure to act, constitutes a default to some pre-arranged decision. Commenters opined that EPA might delay its approval of SIP submissions in order to trigger granting of the section 126 petitions without providing for public comment on the section 126 finding in light of a state's SIP submission. As discussed above, EPA is finalizing the proposed approach, which EPA believes is based on the most reasonable interpretation of the relationship between sections 110(a)(2)(D)(i) and 126, and best coordinates actions under the overlapping NO_X SIP call and section 126 petitions.

The EPA has provided ample public notice and opportunity to comment on the Agency's technical and legal determinations underlying today's affirmative determinations on the section 126 petitions. The EPA is determining through rulemaking that the sources subject to the affirmative determinations will emit in violation of the prohibition of section 110, absent timely state compliance with the NO_X SIP call or promulgation of a FIP. Today's rule provides that the petitions will be granted if the Agency does not act to propose approval of and finally approve a SIP revision or promulgate federal implementation plan provisions satisfying the NO_X SIP call. There is no legal requirement for EPA to conduct rulemaking to determine that the Agency has not proposed, approved, or promulgated implementation plan provisions by a given date, and such a rulemaking would serve no purpose. There is no benefit to providing for public comment on whether EPA has published a specified notice by a specified date. EPA has established easily verified, purely objective criteria for triggering the granting of the petitions. Because EPA has provided for notice and comment on every aspect of the finding on the section 126 petitions, including on establishment of an

objective criteria for when petitions are deemed to be granted, EPA has fully complied with the Clean Air Act and the Administrative Procedure Act requirements for notice-and-comment rulemaking.

EPA also rejects commenters' allegations that the Agency may deliberately or inadvertently miss the deadlines for proposed or final approval of SIP revisions submitted under the NO_X SIP call. In the proposal and in the Response to Comments Document for this rule, EPA explains why it believes the schedule for action on the SIP revisions is reasonable and achievable. See 63 FR 56302–56303. Given achievable deadlines, there is no reason why EPA would deliberately miss them to impose the section 126 remedy in preference over states' plans. As discussed above, EPA believes that Congress generally intended states, not EPA, to be primarily responsible for imposing the controls required under Title I of the Act to meet the NAAQS. Moreover, EPA has attempted to coordinate its proceedings on the section 126 petitions and the NO_X SIP call to provide the maximum opportunity, consistent with EPA's interpretation of the statutory provisions, for states to address the interstate transport problem through their SIPs, rather than having EPA impose controls directly through a FIP or under section 126. Commenters argue that the section 126 petitions should not be granted if states have submitted a SIP revision purporting to comply with the NO_X SIP call and EPA has either not acted on the revision, or has proposed approval but not acted to finally approve the revision. Yet such an approach would provide no assurance that there would be timely emission reductions either through an approved SIP, a FIP, or direct controls on sources. EPA's interpretation provides states and EPA a reasonable opportunity to address the interstate transport problem through approved SIP revisions, but ensures that the opportunity is not open-ended. Instead, EPA interprets the interplay of the two provisions to ensure that under one approach or the other, reductions will be achieved as expeditiously as practicable. EPA believes that this interpretation is reasonable and best achieves Congressional intent regarding the purpose and function of sections 126 and 110(a)(2)(D)(i).

B. EPA's Interpretation of Section 126: Significant Contribution

1. Significant Contribution Standard

a. NPR

In the NPR, EPA relied on the same multi-factor, weight-of-evidence test used in the NO_X SIP call final rulemaking for determining whether emissions from upwind sources contribute significantly to nonattainment problems downwind.

As described in the NO_X SIP call final rule, section 110(a)(2)(D)(i)(I)—provides that the SIP must ''prohibit[]'' sources from ''emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State * * * [This provision requires] the elimination of * * * those amounts of [upwind] emissions that, based on a multi-factor test, significantly contribute to downwind air quality problems.
63 FR 57376.[17]

The EPA further stated, in the NO_X SIP call final rule, that the multi-factor test, in turn, weighs together seven factors. The first four were the ''primary components in EPA's consideration,'' and EPA specifically considered them with respect to each upwind State:

- The overall nature of the ozone problem (i.e., ''collective contribution'')
- The extent of the downwind nonattainment problems to which the upwind State's emissions are linked, including the ambient impact of controls required under the CAA or otherwise implemented in the downwind areas
- The ambient impact of the emissions from the upwind State's sources on the downwind nonattainment problems
- The availability of highly cost effective control measures for upwind emissions.

63 FR 57376.

In the NO_X SIP call final rule, in the context of applying the weight-of-evidence test to the New York City nonattainment area as an example, EPA further indicated the manner in which these primary factors were combined and considered:

The extent of New York City's nonattainment problem and the nature of the contributions from upwind States were considered in determining whether the values of the metrics indicate large and/or frequent contributions for individual upwind States. Specifically, additional controls beyond the local and upwind NO_X reductions which are part of the regional NO_X strategy may be needed to solve New York City's 1-hour nonattainment problem. Also, the total contribution from all upwind States is large and there is no single State or small number of States which comprise this total upwind portion. In this regard, the contributions to New York City from some States may not appear to be individually ''high'' amounts. However * * * these contributions, when considered together with the contributions from other States (i.e., the collective contribution) produce a large total contribution to nonattainment in New York City.
63 FR 57392.

In addition, EPA stated, in the NO_X SIP call final rule, that the multi-factor test included three other factors, as follows:

In addition, EPA generally reviewed several other considerations before concluding that upwind emissions contribute significantly to downwind nonattainment. The EPA did not consider it necessary, or did not have adequate information, to apply each these factors with specificity with respect to each upwind State's emissions. In addition, in some instances, EPA did not have quantitative information to assess certain of these factors, and instead relied on qualitative information. These considerations were secondary aspects of EPA's analysis. They include:

- The consistency of the regional reductions with the attainment needs of the downwind areas with nonattainment problems.
- The overall fairness of the control regimes required of the downwind and upwind areas, including the extent of the controls required or implemented by the downwind and upwind areas.
- General cost considerations, including the relative cost-effectiveness of additional downwind controls compared to upwind controls.

63 FR 57376.

b. Final Action

i. General Meaning of the ''Contribute Significantly'' Provision

The significant contribution test of section 126(b)/110(a)(2)(D) represents Congress's effort to determine how the various users of the downwind air basin should share that valuable resource when the air basin has, or may have, a nonattainment problem. The sharing occurs through a determination by EPA that the appropriate upwind entities are

[17] As indicated in the NO_X SIP Call final rulemaking, EPA views the interfere-with-maintenance test to incorporate the same standards as the contribute-significantly-to-nonattainment test.

emitting pollutants in amounts that ''contribute significantly'' to a downwind nonattainment problem, or interfere with maintenance.

Under EPA's favored interpretation of section 110(a)(2)(D)(i) (although, as described below, not the only reasonable interpretation), the amounts of emissions that contribute significantly must be prohibited. The remaining amounts of emissions—those that do not contribute significantly—need not be controlled under section 110(a)(2)(D)(i). Under section 126(c), if EPA grants a petition on grounds that the indicated sources violate the prohibition of section 110(a)(2)(D), EPA may promulgate a remedy that has the effect of requiring the elimination of the amount of emissions that contribute significantly to nonattainment, or that interfere with maintenance, downwind.

The CAA does not define the term ''contribute significantly,'' nor specify any of the factors that should be considered in applying the term. That is, Congress did not provide that a specified amount of contribution from upwind sources to a downwind nonattainment problem should be considered to be ''significant,'' nor did Congress specifically direct EPA to determine that a particular amount of contribution should be considered ''significant.'' Certainly, Congress knew well how to draft the provision to include a specific standard or a set of criteria, had Congress chosen to do so. *Compare* section 183(e) (requiring EPA to establish controls on the set of consumer and commercial products that EPA determines account for at least 80% of VOC emissions in areas that violate the NAAQS) *and* section 107(d)(4)(A)(v) (establishing criteria for EPA to consider in determining whether to grant a State's request to exclude certain portions from ozone or carbon monoxide nonattainment areas classified as serious or higher).

Nor does the statute require the downwind petitioner or EPA to demonstrate that the upwind reductions, with or without other reductions from local, national, or other regional measures, will result in attainment and maintenance of the downwind problem. By comparison, in other provisions, Congress did require the downwind nonattainment area or EPA to specify an attainment plan and demonstration. *See* sections 182(c)(2)(A), 182(d)(flush language at beginning), and section 182(e) (flush language at beginning) (downwind states designated nonattainment for ozone and classified as serious, severe, or extreme, must submit attainment demonstrations on specified schedules); and section 110(c)(1) (EPA must promulgate a Federal Implementation Plan under certain circumstances).[18] Similarly, in other sections, Congress required compliance with SIP requirements before a State with a nonattainment area would be eligible for certain benefits. *See* section 107(d)(3)(E)(ii) and (v) (nonattainment area may be redesignated to attainment only if, among other things, SIP has been approved and State has met applicable requirements); section 181(a)(5)(A) (nonattainment area may receive an extension of attainment date if, among other things, State has complied with all SIP requirements). Congress did not establish such strictures with respect to the downwind State under section 110(a)(2)(D)(i)(I).

Rather, Congress provided simply that upwind contributions must be eliminated if they are ''significant''. According to the dictionary, the term ''significant'' means, among other things, ''(1) ''Having or expressing a meaning; meaningful * * * (3) Having or likely to have a major effect; important; (4) Fairly large in amount or quantity * * *.'' American Heritage Dictionary of the English Language (3d ed. 1992) 1679. Thus, the term appears to permit of various meanings, ranging from the more general ''meaningful'' or ''important,'' which would permit consideration of more factors or circumstances; to a sufficiently large air quality contribution. Under these circumstances, EPA has discretion under *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council*, 468 U.S. 1227 (1984) (*Chevron*), to an interpretation of the statutory test of ''contribute significantly'' that reflects a reasonable accommodation with the purposes of the statute.[19]

[18] It is true that section 110(a)(2)(I) requires SIPs for nonattainment areas to meet the nonattainment requirements found in part D, which include requirements to submit an attainment demonstration. However, failure by a downwind State to submit an attainment demonstration would not have any direct effect on EPA's decision whether to grant the downwind State's section 126 petition.

[19] The term ''contribute significantly'' or variations of that term is found in various other Clean Air Act provisions concerning various pollutants, including, among others section 169B(c)(1) (visibility impairment), section 187(c) (carbon monoxide), and section 189(e) (particulate matter). The term has been defined differently under those various sections. Indeed, in section 188(f), relating to particular matter, the term ''contribute significantly'' is used twice, and EPA has concluded that it should be given a different meaning for each of the two uses. ''Addendum to General Preamble for Future Proposed Rulemakings: State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally,'' 59 FR 419998, 42004 (August 16, 1994).

ii. Varied Circumstances of Air Pollutant Transport

It was wise for Congress to authorize discretion to EPA because defining the significant contribution test amounts to determining how the downwind air basin should be shared among upwind and downwind claimants, a task that necessarily involves making judgments as to the extent and manner in which that basin may be shared under the specific circumstances presented. Because there are many different contexts in which air pollution transport may occur, the basin may be shared differently, and the significant contribution test may be applied differently, in those contexts. For example, the types of pollutants may vary, ranging from direct pollutants such as SO2, to secondary pollutants, such as NO_X. The numbers of areas (both upwind and downwind) may vary. The numbers of sources and amounts of pollutants may vary. The status of both upwind and downwind control implementation efforts, and of air quality planning efforts, may also vary.

To illustrate the practical importance of these variations:

At one extreme, a relatively simpler transport problem may arise involving a direct pollutant, such as SO2, and one upwind State with one or a few sources, and one downwind State with one or a few sources. Under these circumstances, the sharing of the air basin presents important and complex decisions, but it need occur only as among several sources. Moreover, a clear path to attainment may be determined (although choosing among several alternative control schemes to reach attainment may be necessary). This scenario is similar to some of the past EPA rulemakings. *See Air Pollution Control District of Jefferson County, Kentucky* v. *EPA*, 739 F.2d 1071 (6th Cir. 1984).

The opposite extreme is similar to the circumstances of the NO_X SIP call and today's rulemaking. These actions involve the greater technical complexity of a pollution problem caused by a secondary pollutant, ozone. There are numerous downwind areas with nonattainment problems, and numerous upwind sources in numerous upwind States. Upwind sources have varying impacts on the different downwind receptors. Downwind States are at varying stages in ozone planning efforts; some do not yet have approved attainment demonstrations. In addition, varying control levels may have already been implemented by similar sources.

These variables may profoundly affect the type of control efforts on upwind sources that may be considered to be reasonable. For example: Assume that Downwind State exceeds its NAAQS by 10 percent. The amount of pollution is

determined to be created in 90 percent part by sources in Downwind State, and in 10 percent part by sources in Upwind State. In this example, were the Upwind Sources to eliminate their contribution, the Downwind State would experience attainment of the NAAQS.

If the air basin in Downwind State is viewed as the resource of solely the citizens of Downwind State, then the Upwind Sources may be obliged to eliminate 100 percent of their contribution. However, if the air basin is viewed as a resource to be shared in some manner among the citizens of Upwind and Downwind States, then a different pattern of control obligations may emerge.

Further, different results may seem reasonable depending on existing control levels. For example, in Scenario-1, assume that Upwind State has always enjoyed attainment air quality, and Upwind Sources have never implemented any controls, but that Downwind State has long experienced nonattainment air quality, and Downwind Sources have already implemented extensive controls. Under these circumstances, at least some level of controls on Upwind Sources may seem reasonable.

On the other hand, under Scenario-2, assume, that Upwind State is itself a nonattainment area, and that Upwind Sources have already implemented extensive controls to improve air quality in Upwind State. Assume further that Downwind State has long experienced attainment air quality, Downwind Sources have never implemented any controls, and only recently, growth in Downwind State has led to sufficiently more emissions from Downwind Sources to tip air quality into nonattainment. Under these circumstances, a control level on Upwind Sources that is lesser than under Scenario-1, or even a zero control level on Upwind Sources, may seem reasonable.

iii. Definition of the Significant Contribution Test and Legislative History

The EPA believes that Congress provided in section 126/110(a)(2)(D) the flexibility to determine the upwind control obligations under these varying circumstances. As indicated above, the term ''significant[]'' may be construed broadly, to mean ''important'' or ''meaningful''. The Senate Report accompanying the CAA Amendments of 1977, which added section 126, offered the following description of the purpose of the addition of section 126:

> The [1970 version of the Clean Air Act] did not specify any abatement procedure in the event that a stationary source on [*sic*: in] one State did emit air pollutants which adversely affected the air quality control efforts of another State. As a result, no interstate enforcement actions have taken place, resulting in serious inequities among several States, where one State may have more stringent implementation plan requirements than another State. For example, an implementation plan for the State of Ohio was not even proposed until 1976. It has now been challenged and has not yet been effectively implemented. As a result, there are no enforceable control requirements applicable to most of the significant major stationary sources of sulfur oxides in Ohio. The emissions from plants in Ohio are transported across the Ohio River to West Virginia, which must then cope with pollution not generated by a source under its own control; and must require more stringent control of West Virginia sources to attain the ambient air quality standards.

In the absence of interstate abatement procedures, those plants in States with more stringent control requirements are at a distinct economic and competitive disadvantage. This new provision is intended to equalize the positions of the States with respect to interstate pollution by making a source at least as responsible for polluting another State as it would be for polluting its own State. S. Rep. 95–127 (95th Cong. 1st Sess.) at 41–42.

Clearly, the legislative history of section 126 indicates that this provision, which of course relies on the significant contribution test, is intended to take into account relative control requirements upwind and downwind. Congress's focus on this specific factor—which concerns costs and equity, and not air quality—coupled with the fact that the term ''significant'' may be read broadly, has led EPA to conclude that the term should be defined broadly to take account of all the important aspects of the interstate pollution problem. In the context of ozone, EPA applies this approach through a multi-factor formula discussed below.

It should also be noted that the statutory provisions contain no constraint that would indicate that the downwind States must have developed attainment demonstrations before upwind controls may be imposed. On the contrary, section 126(c) establishes a 3-year period for implementation of controls that applies by its terms, without any reference to the timing of attainment needs downwind. This provision indicates that Congress intended section 126 controls to apply even in the absence of downwind attainment demonstrations.

iv. Application of Significant Contribution Test to Ozone Problems

(1) Nature of the Ozone Problem

The ozone transport problem in the part of the United States covered by the section 126 petitions that EPA is considering in today's action may be characterized as follows: There are several downwind areas that have nonattainment air quality under the 1-hour ozone NAAQS, and numerous more that have nonattainment air quality under the 8-hour ozone NAAQS. These ozone problems are caused by the collective emissions from numerous downwind and upwind sources. As EPA stated in the NO_X SIP Rule final rulemaking:

> Unhealthful levels of ozone result from emissions of NO_X and VOCs from thousands of stationary sources and millions of mobile sources and consumer products and other 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 one percent of the inventory of ozone precursors even 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. 63 FR 57375–57376 (quoting NO_X SIP call NPR).

Further, UAM–V air quality models show that the major areas in the northeast, with respect to which section 126 petitions have been submitted, have 1- and 8-hour nonattainment air quality problems that will continue even after all areas implement all controls specifically required under the CAA. These model runs assume that the amount of emissions will continue to grow at certain rates, and that meteorology will recur that replicates the types of weather episodes that since 1988 have been conducive to ozone transport and to a high level of exceedances of the ozone NAAQS.

Further, many States do not yet have SIPs approved as demonstrating attainment for each of the downwind areas at issue that have nonattainment problems.

In addition, the areas with one-hour ozone NAAQS problems have, by and large, implemented more controls over a longer period than have their upwind contributors. While some downwind

nonattainment areas have not yet fully implemented all of their required measures, the UAM–V modeling shows that even when these measures are fully implemented, certain areas with nonattainment problems would continue to show nonattainment.

(2) Reasonable Step in Ameliorating Ozone Nonattainment

Under the circumstances presented concerning the ozone problem, EPA believes it reasonable to interpret section 126(b)/110(a)(2)(D)(i) to authorize a step in the direction of ameliorating the downwind nonattainment problem by achieving cost-effective reductions to eliminate an important component of the upwind contribution. Additional reductions may be necessary from, for example, sources in the downwind area itself or from national measures that EPA may promulgate. However, again, these sections do not require an overall plan for attainment prior to action to eliminate significant upwind contributions.

This interpretation treats section 126(b)/110(a)(2)(D)(i) as a control mechanism that is similar to numerous other provisions in the CAA in which Congress mandated cost-effective or technologically achievable reductions in ozone precursors from a particular group of sources for the purpose of ameliorating ozone nonattainment problems, but without any requirement for some overall attainment plan.

For example, in promulgating various mobile source rules to control ozone precursors, EPA generally examines the need for further reductions of those precursors based on the expected attainment or nonattainment status of areas nationwide. The EPA then examines whether further regulation of the mobile sources is appropriate, based on the amount of emissions from those sources as well as the feasibility and cost-effectiveness of such regulation.[20] The resulting rules are not designed, by themselves, to lead to attainment in all areas; and in promulgating these rules, EPA does not specify any particular strategy for reductions from additional sources designed to reach attainment in all areas. As additional examples, EPA recently promulgated standards for nonroad diesel engines. EPA first noted the level of contribution from such engines to total nationwide NO_X and PM emissions and stated that without further controls, the contribution from these engines would increase. EPA then developed standards based on the feasibility of controls, the amount of emission reductions (in tons of NO_X, VOC and PM reduced), and the cost of the controls or control levels. Although EPA did compare the cost-effectiveness of these standards against that of other standards, EPA did not attempt to integrate these standards into any specific strategy for achieving attainment based on reductions from all sources. 63 FR 56968 (Oct. 23, 1998). *See* 62 FR 54694 (Oct. 21, 1997) (promulgation of standards requiring emission reductions from heavy duty motor vehicles based on feasibility, taking into consideration cost-effectiveness, without specifying any particular overall strategy for overall attainment).

Similarly, under section 183(e), Congress directed EPA to determine the categories of consumer and commercial products that account for at least 80 percent of the VOC emissions from such products in areas that violate the ozone NAAQS. After doing so, EPA must proceed to regulate those categories of sources by requiring ''best available controls.'' Again, the statute does not specify the need for any particular link to demonstrations of attainment downwind.

For these reasons, EPA disagrees with the commenters who argued that EPA should deny the section 126 petitions because a number of nonattainment areas may be brought into attainment without transport controls. Although this may be true, EPA's modeling shows areas with nonattainment problems that are not expected to be brought into attainment even with transport controls.

The EPA also disagrees with the commenters who stated that the section 126 petitions should be denied because implementation of the NO_X SIP call (and, presumably, the section 126 control program) will not by itself achieve attainment. These commenters suggested that this failure to achieve attainment indicates that upwind controls have no use for attainment purposes, and that only local controls should be implemented.

The EPA agrees that regional controls may not by themselves result in attainment in all downwind areas, but modeling shows that these controls ameliorate nonattainment problems. In addition, EPA does not believe that Congress mandated an overall demonstration of attainment as a prerequisite to requiring even initial reductions from upwind States whose emissions clearly are part of the nonattainment problem. All that is necessary is an indication that these reductions ameliorate the nonattainment problem.

(3) Factors in Weight of Evidence Test

Further, EPA believes that the weight-of-evidence test that considers a series of factors is an appropriate means to define the significant contribution standard.

(a) Collective Contribution

One of the principal factors that EPA examined was the collective contribution aspect of ozone formation, described above. That ozone is caused by the collective contribution of numerous sources across a broad geographic area is universally true, and thus is true for each of the downwind receptors. This factor pushes in the direction of recognizing that even relatively small (in an absolute sense) contributions must be recognized as a meaningful part of the problem and thus potentially as part of the solution.

(b) Extent of Downwind Problem

A second principal factor that EPA recognized was the extent of the downwind problems. As noted above, for each downwind area with nonattainment air quality under either or both the 1- and 8-hour NAAQS, EPA used computer modeling to determine that certain of these nonattainment areas would continue to have nonattainment problems in the future, even assuming the implementation by all areas of specifically required CAA obligations. These circumstances indicate that additional controls will be necessary for the downwind areas to attain. This factor also pushes in the direction of recognizing that even relatively small (in an absolute sense) upwind contributions must be recognized as a meaningful part of the problem and thus potentially as part of the solution.

(c) General Factors

EPA also examined some factors more generally, without applying them to each downwind (or upwind) contributor. First, EPA recognized that in general, as part of the Ozone Transport Commission (OTC), the section 126 petitioners have agreed to implement NO_X controls pursuant to a Memorandum of Understanding,—the OTC NO_X MOU—which requires controls similar to those that EPA would mandate were the section 126 petitions approved. Moreover, virtually all of the downwind areas are themselves upwind

[20] Different types of mobile sources are regulated based on different specific sections of the CAA, with some sections placing more emphasis on one or more of the criteria mentioned above. E.g., section 202(i)(3)(c) (Tier 2 light-duty standards based on need for further reductions, availability of technology, and cost-effectiveness); section 202(a)(3)(A) (Heavy-duty on-highway standards reflect greatest reduction achievable through available technology, considering cost, energy, and safety factors).

contributors, and thus would be subject to the controls placed on upwinds. As a result, sources in the section 126 petitioning States may be expected to be subjected to at least the same level of control as upwind sources targeted by those petitions. Indeed, in general, the SIPs in downwind areas with one-hour NAAQS ozone nonattainment problems have already required ozone precursor controls over a longer period of time than have the upwind areas. This factor, which is related to equity, also generally argues in favor of controls on upwind sources. As noted above, the legislative history of the 1977 CAA Amendments notes that one of the purposes of section 126 was to ensure this type of equity.

Moreover, because downwind areas under the one-hour NAAQS are already fairly vigorously controlled, the cost-per-ton removed for additional downwind controls is generally higher than the cost-per-ton removed for upwind controls. As EPA stated in the NO_X SIP call final rule—

[I]n general, areas that currently have, or that in the past have had, nonattainment problems under the 1-hour NAAQS, or that are in the Northeast Ozone Transport Region (OTR), have already incurred ozone control costs. The controls already implemented in these areas tend to be among the less expensive of available controls * * *. EPA has determined that, in general, the next set of controls identified as available in the downwind nonattainment areas under the 1-hour NAAQS would cost approximately $4,300 per ton removed. By comparison, EPA has determined that the cost of the regional reductions required [in the NO_X SIP Call final rule] would approximate $1,500 per ton removed. Thus, it appears that the upwind reductions required by [the NO_X SIP Call final rule] are more cost-effective per ton removed than reductions in the downwind nonattainment areas.

63 FR 57379. This factor of relative cost-effectiveness points towards controls on even relatively small (in absolute terms) upwind contributions.

(d) Air Quality Metrics

The factors described above informed EPA's judgment about the size of upwind contributions that should be considered to be a meaningful part of downwind attainment problems. EPA employed two air quality models—UAM–V and CAMx—which each generated a set of modeling runs to measure the amount of contribution generated by the upwind State's entire inventory of ozone precursors to the downwind area's nonattainment problem. Commenters have questioned EPA's evaluation of the impact of the full amount of the statewide inventory, as opposed to evaluating the impact of only the amount of emissions required to be reduced by the rulemaking. EPA believes it appropriate to evaluate the impact of the entire inventory because this amount causes the upwind State's contribution to ambient ozone levels downwind.

The EPA evaluated this impact on the basis of a set of metrics for the UAM–V modeling runs, and a separate set of metrics for the CAMx modeling runs. The EPA determined that, in light of the collective contribution nature of the ozone problem and the extent of the downwind ozone nonattainment problems, even relatively small (in absolute terms) upwind contributions to those nonattainment problems should be considered to be meaningful components of the problems and thus as potentially subject to controls. Only if the statewide contribution was extremely small did EPA conclude that none of the emissions from the State's sources could be considered to contribute significantly to the downwind nonattainment problems. The EPA's specific evaluation of these metrics, including its response to comments received, is discussed below.

(e) Cost-Effectiveness Factor

After determining which upwind State emissions should be considered part of the downwind nonattainment problem, EPA considered whether the portion of those emissions from section 126 sources could be reduced in a highly cost-effective manner. EPA determined the amounts that could be so reduced to be the amounts that significantly contribute to downwind nonattainment, and that therefore must be prohibited.[21] In theory, if all of the upwind State's emissions came from section 126 sources and could be eliminated through highly cost-effective controls, EPA would conclude that all of those emissions should be considered to contribute significantly to nonattainment downwind, and EPA would require their elimination. On the other hand, in theory, if EPA determined that no highly cost-effective controls were available, EPA would determine that none of the emissions contribute significantly, and therefore than none need be eliminated.

The EPA received comments that it does not have authority to use cost as a factor, or that if EPA could consider cost, EPA did not formulate its consideration of cost in a rational manner. These comments are discussed below. The EPA also received comment that it should not apply a uniform level of control to all affected upwind sources. These comments are also discussed below.

(f) Air Quality Modeling of Amount of Reductions

Finally, as a general consideration, EPA modeled the upwind reductions and determined that they generally were consistent with the attainment needs of the downwind areas with nonattainment problems. That is, the reductions from affected sources in each upwind State, combined with reductions from affected sources in the other upwind States, resulted in meaningful ambient improvement downwind, and did not result in any situation in which upwind sources were required to reduce more than necessary to achieve attainment in each of the downwind areas that they impact. This consideration further supports EPA's determination as to significant contribution.

c. Comments and EPA Responses

i. Vagueness

Some commenters considered the significant-contribution test as EPA defined it in the NPR to be vague or unclear.

Other commenters did not appear to consider the test to be vague, and EPA believes that its discussion of the test in the NO_X SIP Call rulemaking (referenced in the section 126 NPR) adequately explained the Agency's interpretation and methodology. In any event, EPA believes that the description above of the multifactor test further elaborates on the connection of each of the primary and secondary factors to the conclusions drawn.

ii. Collective Contribution

In the NPR, EPA incorporated the determination in the NO_X SIP call that whether the upwind sources' contribution to nonattainment downwind rises to the level of significance is determined, in part, by reference to the ambient impact of all of the ozone precursor emissions in the upwind sources' state, as indicated by the state-by-state UAM–V and CAMx modeling runs. In addition, EPA evaluated the impact of the reductions in emissions by modeling the impact of

[21] Strictly speaking, only the amount of emissions that may be eliminated through highly cost-effective controls should be considered the amount that contributes significantly to downwind nonattainment. For convenience, throughout the notices and supporting documents for today's action, as well as the notices and supporting documents for the NO_X SIP call final rulemaking, EPA occasionally refers to the entire amount of emissions from the upwind State as contributing significantly to nonattainment downwind.

all upwind reductions on downwind receptors.

(1) Comments

Commenters argued that EPA erred in considering collective contribution as a factor in the determination of significant contribution. According to the commenters, EPA employs the collective contribution approach to evaluate the downwind air quality impact of emissions from sources in each upwind State by considering those emissions to be part of the entire set of multi-upwind-state emissions. According to the commenters, EPA then determines that because the entire set of multi-upwind-state emissions collectively contributes significantly to nonattainment downwind, each upwind State's emissions, and emissions from all the targeted sources in each upwind State, should be considered to contribute significantly to nonattainment downwind. According to the commenters, sections 126(b) and 110(a)(2)(D)(i) should be read to require evaluation of the downwind air quality impact of emissions from only the particular sources targeted by the section 126 petitions, or at most from each upwind State on a State-by-state basis, and not on any geographically larger basis. Some commenters stated that the terms of section 126(b), which limit EPA's possible finding to ''any major source or group of sources,'' requires EPA to make the determination of significant contribution on the basis of each source or group of sources targeted by the section 126 petitions, and not on a state-wide basis.

Commenters further stated that reliance on broader modeling results based on collective contribution failed to evidence the precise contribution from the targeted upwind sources or their individual states, and allowed EPA to claim that the small contributions from the targeted sources were in fact larger because they were linked to contributions from other sources. The commenters further expressed concern that the collective contribution approach proves too much because it could be used to combine any particular set of emissions with a much larger set of emissions that have a large impact downwind, and thereby support the claim that the initial set of emissions is partly responsible for that large impact downwind. Similarly, EPA received comments that it should evaluate the petitions on a petition-by-petition basis.

(2) Responses

(a) Petition-by-Petition

The EPA agrees that with respect to each section 126 petition, EPA must make a determination as to whether the sources identified in that petition contribute significantly to nonattainment in the petitioning state. EPA believes that it may rely on the collective contribution factor to inform its judgment as to the level of contribution that it may consider to be significant. That is, as explained above, even relatively small amounts of contribution (in an absolute sense) may be considered to be significant in light of the collective contribution of many sources of the ozone problem.

(b) Statewide Groups of Sources

Further, section 126 authorizes EPA to grant a petition with respect to either ''any major source'' or ''group of stationary sources.'' The EPA believes it is reasonable to treat all section 126 sources in a single upwind State as a ''group[] of sources,'' [22] rather than to treat sources individually or to treat smaller sets of sources as a ''group''. As noted elsewhere, ozone results from emissions of numerous sources over a broad geographic area; in many cases, even the largest source comprises less than 1% of the inventory. Accordingly, attempting to quantify the impact of individual sources, or even small groups, may prove futile.

EPA believes it is reasonable to confine its analysis of the section 126 sources to a state-by-state basis, so that the impact of emissions from sources in one upwind State is analyzed separately from the impact of emissions from sources in another upwind State (except, as described below, for analyzing the impact of the reductions from the section 126 controls). That is, EPA did not combine emissions from more than one upwind State in its UAM-V zero-out or CAMx apportionment modeling. EPA agrees that it is sensible to demarcate sets of upwind emissions along some lines, and evaluate those sets separately.

The EPA believes that in the context of section 126 action, demarcating sources by state lines is reasonable. Although emissions and the ozone they generate of course do not respect state boundaries, those boundaries are important for regulatory purposes.[23] As discussed elsewhere in today's rulemaking, under EPA's interpretation of section 126, sources subject to that provision may not emit in excess of the amounts that would be authorized under SIP provisions that meet the requirements of section 110(a)(2)(D)(i)(I). In the case of ozone precursors, the section 110(a)(2)(D)(i)(I) requirements are applied on the basis of state-wide emissions. If State-wide emissions contribute significantly to nonattainment downwind, then the State's section 126 sources may be subject to SIP controls; if state-wide emissions do not contribute significantly, then the State's section 126 sources would not be subject to SIP controls. For these reasons, it is appropriate to evaluate the impact of State-wide emissions from all source categories in order to determine whether the emissions from the section 126 sources should be considered to contribute significantly.

By the same token, if EPA finds that emissions from a State's section 126 sources contribute significantly to nonattainment downwind because State-wide emissions contribute significantly, the State may promulgate SIP controls that would achieve sufficient emissions reductions so that EPA may conclude that the section 126 sources in that State should no longer be considered to contribute significantly to nonattainment. The State may place these SIP controls on any sources it chooses, and is not limited to imposing controls on the section 126 sources. Under these circumstances, as discussed elsewhere in today's rulemaking, EPA may rescind the section 126 finding. This determination—that in light of the SIP controls, the section 126 sources no longer contribute significantly—is possible if the initial finding that the section 126 sources do contribute significantly was made in the context of examining the emissions from the upwind State itself.

This analysis leads EPA to conclude that in determining whether the sources targeted in each petition make a significant contribution to the petitioning state, EPA may rely on the results of the State-by-State UAM–V zero-out modeling and the state-by-state CAM–X modeling as the primary basis for that determination. These models allow a determination that state-wide emissions do or do not contribute significantly to nonattainment downwind, and therefore—under EPA's interpretation of section 126, as described immediately above—whether the emissions from the section 126 sources contribute significantly to nonattainment.

[22] The term ''group of sources'' is not defined, and does not exclude other reasonable methods of combining sources, such as combining all targeted sources in a particular geographic region.

[23] In general, under the CAA, States are given the primary responsibility for air pollution prevention and control. Section 101(a)(3).

The EPA also believes that the collective contribution aspect of ozone formation provides a separate basis for relying on the determination of whether State-wide emissions contribute significantly as the basis for the determination that emissions from section 126 sources contribute significantly. That is, because an ozone nonattainment results from the emissions of numerous sources across a broad geographic area, and because the State-wide emissions from a particular upwind State contribute significantly to that problem, then the various emitters within the upwind State should be considered to contribute significantly to that problem.

Both of the above bases for relying on State-wide emissions impacts to determine whether section 126 source emissions contribute significantly—EPA's interpretation of the relationship of section 126(b) to section 110(a)(2)(D)(i), and the collective contribution aspect of ozone formation—are consistent with certain facts concerning the NO_X emissions inventories for the upwind States associated with ozone transport problems. Specifically, as discussed below, for each upwind State subject to today's rulemaking, the section 126 sources are a substantial portion of the State-wide NO_X inventory. Thus, it is more readily apparently, that because the entire upwind State emissions contribute significantly, the portion of those emissions from the section 126 sources contribute significantly.

The EPA is well aware that the metrics for determining the air quality component of the significant contribution test are based on the entire set of emissions from the upwind State, not only the emissions from the section 126 sources. It is conceivable that modeling only the emissions from the section 126 sources would result in smaller ambient impacts downwind, and that those smaller impacts, if analyzed on the basis of the metrics and thresholds developed for State-wide emissions, may not exceed those thresholds.

The EPA believes it sensible to link its determinations to the state-by-state modeling of emissions of all ozone precursors in each state. For certain upwind States, this modeling indicates that all ozone precursors in the State contribute significantly to nonattainment downwind. A group of sources that represents a substantial portion of those emissions should be considered to contribute significantly to nonattainment downwind as well. Otherwise, the determination that all of a State's emissions contribute significantly could in effect be defeated by the simple expedient of dividing those emissions among various source categories, and determining that the emissions from each source category are too few to constitute a significant contribution.[24]

Additional data sets support EPA's technical determination that emissions from the section 126 sources contribute significantly downwind. For the NO_X SIP call rulemaking, EPA conducted air quality modeling runs indicating the impact of emissions reductions, comparable to those required today, in certain of the upwind States. These model runs indicate that ambient ozone reductions occur in northeastern nonattainment areas as a result of these reductions. It should be noted that some of the section 126 petitioning States do not target sources in all of the upwind States that EPA determined during the NO_X SIP call rulemaking to contribute significantly to those States. Even so, EPA believes that the sources targeted by the section 126 petitions overlap sufficiently with this NO_X SIP call modeling so that the conclusions of this modeling—that upwind NO_X reductions improve ambient ozone concentrations downwind—apply as well in today's action. This modeling is described in Air Quality Modeling Technical Support Document for the NO_X SIP Call, Docket A–96–56, No. VI–B–11, p. 70.

In addition, the U-runs performed by EPA, described below, confirm that the amount of emissions reductions from each upwind State's section 126 sources has a meaningful downwind impact. Although EPA did not complete these U-runs on a state-by-state basis, the results indicate an impact from each upwind State's sources. In some cases, these impacts are small in an absolute sense, a result that is to be expected when the amount of emissions reductions from sources in a particular upwind State required through the highly cost effective controls is relatively small, and when those sources are distant from the downwind receptors.

However, the reduction in downwind ozone levels is meaningful, and thus supports the affirmative technical determination made today concerning the section 126 sources in that upwind State, because ozone nonattainment problems are caused by emissions from numerous sources over a broad geographic area, and those problems must be solved by achieving emissions reductions from numerous sources over a broad geographic area. Both the U-runs and the modeling described immediately above that EPA conducted for the NO_X SIP call indicate that the ambient impact of the emissions reductions from sources in a particular upwind State are more discernible when they are combined with comparable reductions from sources in other upwind States.

iii. Bright Line

Commenters argued that EPA should have established a bright line test based on air quality impact alone. Under this view, EPA would determine that a specified frequency and/or magnitude of ambient ozone impact would constitute a significant contribution, so that amounts of NO_X emissions that cause an impact higher than the specified amount would have to be reduced to the point where the remaining emissions caused an impact less than the specified amount. Proponents of this approach have pointed out that EPA's approach results in a situation in which Upwind State-1 that is near to a downwind nonattainment area may continue to contribute a substantially higher amount of ozone to the downwind area even after it implements the highly cost effective controls than Upwind State-2 that is further away from the nonattainment area contributes even before Upwind State-2 implements any controls.

The EPA rejected the bright-line approach because EPA considers it reasonable, in the context of the ozone nonattainment problems under both the 1- and 8-hour NAAQS, to interpret the significant contribution standard as mandating the elimination of the portion of NO_X emissions from sources in states upwind of the nonattainment problems that may be eliminated through highly cost-effective controls, when those emissions cause even a relatively small (in an absolute sense) ozone impact. Interpreted and applied in this manner, section 126(b)/110(a)(2)(D) authorize a useful step towards ameliorating ozone nonattainment problems. As discussed

[24] EPA acknowledges that it is theoretically possible for there to be two adjoining upwind States, one of which has a NO_X inventory that contributes significantly downwind, but that has only a few emissions from section 126 sources; and the second of which has a NO_X inventory that does not contribute significantly downwind, but that has a large percentage of emission from section 126 sources. These theoretical circumstances could lead to the anomaly that the relatively few emissions from section 126 sources in State-1 may be subject to section 126 controls, but the greater emissions from section 126 sources in State-2 may not be subject to section 126 controls. These factual circumstances are not present in this or related rulemakings. All the States for which actions are being taken contain both substantial amounts of emissions from utilities and from other sources. No upwind States contain an exceptionally high percentage of emissions from section 126 sources, but do not contribute significantly.

above, in many other instances, Congress has directly mandated, or has authorized EPA to require, a cost-or technology-based control scheme designed to reduce ozone precursors for the purpose of ameliorating nonattainment problems.

The EPA recognizes that this interpretation and application of the significant contribution test diminishes the importance of the fact that ozone precursors have a greater impact the closer they are emitted to the nonattainment problem. However, all of the sources subject to the affirmative technical findings contribute to the nonattainment burdens in an amount that, considering the collective contribution nature of the ozone problem, must be viewed as meaningful. Moreover, nothing in sections 126/110(a)(2)(D) indicate that Congress intended that sources in upwind States closer to a nonattainment problem bear a proportionately larger burden of emissions reduction. Compare by section 211(c)(4)(C) (EPA may approve state fuel controls, and thereby waive Federal preemption of such rules, only after finding that ''no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable;'' this provision indicates Congress knew how to require that control schemes be prioritized).

iv. Other Factors

In addition, some commenters stated that it was unlawful to include certain factors in the significant contribution test, including the secondary factors concerning (1) the overall fairness of the control regimes required of the downwind and upwind areas (including the extent of the controls required or implemented by the downwind and upwind areas), and (2) general cost considerations, including the relative cost-effectiveness of additional downwind controls compared to upwind controls.

The commenters argued that these factors are invalid because section 110 does not by its terms authorize consideration of cost and economic fairness. They further argued that EPA has overlooked the fact that some States in the South and Midwest have already incurred significant control costs and have attained compliance with the 1-hour NAAQS.

As discussed below, EPA believes that the significant contribution test does permit consideration of cost factors. Indeed, the Senate Report explaining passage of section 126 in the CAA Amendments of 1977 made clear that one purpose of the provision was to enable downwind sources that were subject to controls because located in nonattainment areas to assure that their upwind competitors that contributed to the nonattainment problem would not reap the competitive advantages of lighter control burdens. S. Rep. 95–127 (95th Cong. 1st Sess.) at 41–42.

Further, evidence available to EPA indicates that in general, sources in the one-hour nonattainment areas have incurred greater control obligations than sources in the upwind areas.

2. Cost Factor

Summary: In the NPR, EPA proposed to follow the interpretation of the significant contribution test set forth in the SIP Call Final Rule. In particular, EPA proposed to use the cost of available controls in upwind areas as a factor in the significant contribution test.

In today's action, EPA has concluded that the proposed determination of significant contribution is appropriate. Thus, after determining the degree to which NO_X emissions from named source categories contribute to downwind nonattainment or maintenance problems in the petitioning States, the Agency determined whether any amounts of the NO_X emissions from those source categories may be eliminated through controls that are highly cost effective on a cost-per-ton basis. EPA has concluded that the amount of NO_X emissions from named source categories that can be eliminated through application of highly cost-effective control measures contributes significantly to nonattainment or maintenance problems downwind for purposes of sections 110(a)(2)(D) and 126.

The EPA received many comments critical of the use of the availability of cost-effective control measures in any way in the test for determining significant contribution. These comments generally fell into two categories. Commenters in the first category typically asserted that the existence of a ''significant contribution'' to nonattainment should be based merely on the quantitative amount of ozone transported from sources in one State to another and that cost should be irrelevant to the inquiry. These commenters argued that a significant contribution should not be any less significant simply because it is uneconomic to control, and that an insignificant contribution should not become significant simply because it is economical to control. Rather than an element of the significant contribution analysis, the commenters suggested that the cost of controls should only be relevant for purposes of selecting controls once the Agency found that the amount of contribution in fact met some bright line quantitative measurement for significance.

By comparison, commenters in the second category argued that EPA should not utilize the cost of controls as an element of the significant contribution determination because it would unduly limit relief from ozone transport from upwind sources. These commenters suggested that by linking the determination of significant contribution to the availability of highly cost-effective controls, upwind sources could continue to emit NO_X that has an adverse transport impact simply because of the cost of emissions control, whereas the finding of significant contribution should be based simply on the actual amount of ozone transport in the downwind State without regard to the cost of controls upwind.

Response: EPA disagrees with the commenters' assertions that the relative cost of controls has no place in the determination of significant contribution. EPA believes that cost of controls in general, and the consideration of the availability of highly cost-effective controls in particular, is an appropriate factor for consideration in making the determination of significant contribution. The EPA notes that the term ''significant contribution'' is not defined in the statute and that neither the statute nor the legislative history provides meaningful guidance for interpreting the term. As explained elsewhere in this document, EPA contends that Congress modified the Act in the 1990 Amendments to incorporate the concept of significant contribution as applied by the Agency and the courts to provide a *de minimis* exception for pollutant transport across State boundaries. EPA had formerly interpreted section 110(a)(2)(E) of the 1977 Act to include this concept because otherwise the Agency arguably had to reject SIPs that allowed for any amount of cross-boundary transport, no matter how minute. *See, e.g., Connecticut* v. *EPA*, 696 F.2d at 164.

In prior determinations of significant contribution, whether in the context of section 126 petitions or in partial SIP revisions, EPA has generally utilized a multi-factor test to assess the presence or absence of a significant contribution to nonattainment. *See, e.g., Proposed Determination Under Section 126 of the Clean Air Act (Interstate Pollution Abatement)*, 49 FR 34851, 34859 (September 4, 1984). The determinations included consideration

of a variety of factors addressing issues similar to the issues addressed by the factors in the significant contribution test utilized by EPA for today's Section 126 determinations. EPA has previously included the relative cost of controls as one consideration in the determination of the existence of a significant contribution. *Id.*, (including as a factor ''the relative costs of pollution abatement between source that contribute to a violation''). EPA has made these determinations on a case by case basis and has stated that the enumerated factors are not exclusive. *See Final Determination Under Section 126 of the Clean Air Act (Interstate Pollution Abatement),* 49 FR 48152 , _____ (December 10, 1984) (''EPA enumerated a nonexhaustive list of factors which the Administrator may take into account in determining whether a contribution is significant'') . Given the lack of a statutory definition of what emissions ''contribute significantly to nonattainment,'' EPA believes that it has discretion to decide what factors would best accomplish the statutory goal of eliminating upwind emissions that comprise a significant contribution to downwind nonattainment.

Through modeling, EPA has determined that the sources covered by this section 126 action significantly contribute to downwind ambient concentrations of ozone in one or more petitioning States. Because of the pervasive problem of ozone transport across a large geographic area, many upwind sources covered by today's action may be the source of ozone for several downwind States. It does not necessarily follow, however, that EPA should force the sources to halt all emissions activities to eliminate the contribution to downwind States. EPA believes that a definition of significant contribution that required the elimination of all emissions that contribute to downwind nonattainment is not a practical or appropriate method to address the complex overlapping transport problems posed by ozone. Therefore, EPA must utilize a workable method to determine when a contribution is significant for purposes of section 110(a)(2)(D).

EPA has concluded that it is appropriate to utilize a multi-factor approach to assess whether there is a significant contribution and to take into account the availability of highly cost effective control measures to the named sources as one factor in that analysis. EPA believes that whether some amount of emissions is significant depends, in part, upon the availability of highly cost-effective controls.

In 1990 Congress amended section 110(a)(2)(D) to make clear that contribution must be ''significant'', i.e., not de minimis, while remaining silent on the criteria EPA should use to make a determination of significant contribution. Especially in light of EPA's past practice of using a multi-factor approach—including cost—to assess contribution, Congress' action affirms that EPA retains discretion under the CAA to consider factors other than air quality when making a determination of significant contribution.

The EPA's approach is consistent with case law concerning the CAA, as well as other statutes. *See Warren Corp.* v. *EPA,* 159 F.3d 616, ____ (D.C. Cir. 1998), amended on other grounds, 164 F.3d 676 (1999) (deferring to EPA's interpretation that CAA section 211(k)(8) allows EPA to consider economic factors as well as air quality in promulgating gasoline anti-dumping provisions), citing *NRDC* v. *EPA,* 824 F.2d 1146, 1157 (D.C. Cir. 1987) (en banc) (interpreting CAA section 112 and rejecting the view that ''as a matter of statutory interpretation, cost and technological feasibility may never be considered under the Clean Air Act unless Congress expressly so provides''); *International Brotherhood of Teamsters* v. *United States,* 735 F.2d 1525, 1529 (D.C.Cir. 1984) (''In the absence of clear congressional direction to the contrary, we will not deprive the agency of the power to fine-tune its regulations to accommodate worthy nonsafety interests'' under a statute focused on safety); *Grand Canyon Air Tour Coalition* v. *FAA,* 154 F.3d 455, 475 (D.C.Cir. 1998) (FAA properly considered effects of rule on air tourism industry where statute did not forbid such consideration and required not total but only ''substantial restoration of the natural quiet.''). When Congress intends to exclude consideration of all issues other than air quality concerns, it has used decidedly different statutory language than appears in sections 126 and 110(a)(2)(D). See *Lead Indus. Ass'n* v. *EPA,* 647 F.2d 1130, 1148–50 (D.C.Cir. 1980) (Congress' directive to promulgate primary national ambient air quality standards which ''allow [] an adequate margin of safety * * * to protect the public health'' precluded consideration of cost and technology factors). Where, as here, the statute is silent regarding the factors EPA may or may not consider, it is generally permissible for the Agency to consider other relevant factors or policy objectives in carrying out the statutory goal, absent some indication to the contrary in the statutory text, structure or history. *NRDC* v. *EPA,* 824 F.2d at 1157, 1158; *see also International Brotherhood,* 735 F.2d at 1528–29.

Some commenters point to a Supreme Court case, *Union Electric* v. *EPA,* 427 U.S. 246 (1976) for the proposition that EPA may not include costs considerations in the interpretation of ''significant contribution.'' In *Union Electric,* the Supreme Court found that the 1970 version of section 110(a)(2) did not allow EPA to disapprove an attainment sulfur dioxide (SO2) SIP on the ground that the SIP's control measures for complying with the SO2 NAAQS would be so stringent as to be technologically or economically infeasible. Id. at 265. The Supreme Court made it clear that Congress left States free to choose technology forcing measures to achieve attainment within what was then a three-year deadline. Id. at 268–69. This holding is simply inapposite to EPA's interpretation of ''significant contribution.'' With respect to the separate question, whether EPA can take cost into account in interpreting the minimum that State SIPs are required to include, the Supreme Court expressly states that ''the Administrator may consider whether it is economically or technologically possible for the state plan to require more rapid progress than it does.'' Id. at 264, fn. 13. This language from the case supports EPA's interpretation of ''significant contribution'' rather than the views of commenters.

Finally, EPA notes that the 1977 legislative history of the CAA demonstrates that Congress was clearly concerned about the relative cost of pollution control in upwind and downwind states when it added section 126 to the CAA. The Senate Report accompanying the Clean Air Act Amendments of 1977, which added section 126, offered the following description of the purpose of the new section's addition:

> In the absence of interstate abatement procedures those plants in States with more stringent control requirements are at a distinct economic and competitive disadvantage. This new provision is intended to equalize the positions of the States with respect to interstate pollution by making a source at least as responsible for polluting another State as it would be for polluting its own State.

S. Rep. 95–127 (95th Cong. 1st Sess.) at 41–42. This legislative history evinces Congressional concern about economic equity and supports EPA's consideration of cost-effectiveness as a factor in determining significant contribution.

C. EPA's Interpretation of Section 126: 8-Hour NAAQS Summary

In the NPR, EPA proposed to make a finding that certain sources and categories of sources identified in the § 126 petitions significantly contribute to attainment in, or interfere with maintenance by, one or more of the petitioning States. EPA proposed to make this finding based upon evidence that upwind sources contribute significantly to violations of the ozone NAAQS under both the pre-existing 1-hour standard and the new 8-hour standard which EPA recently promulgated. EPA's proposed approach was consistent with that of the NO_X SIP Call in which the Agency concluded that 22 States and the District of Columbia must submit State Implementation Plan (''SIP'') revisions to prohibit specified amounts of NO_X emissions in order to reduce NO_X and ozone transport across State boundaries in the eastern half of the United States. *See*, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Rule,'' 63 FR 57356 (Oct. 27, 1998). In the latter action, EPA extensively discussed the Agency's authority and rationale for finding that violations of the 8-hour ozone standard are appropriate for consideration in the assessment of interstate transport of ozone in violation of CAA section 110(a)(2)(D). *Id.*, 63 FR at 57370–57374. In the NPR for today's action, EPA also proposed to make the finding of significant contribution for purposes of § 126 based, in part, upon violation of the 8-hour standard in full recognition that the Agency has not yet formally designated any areas as nonattainment under the 8-hour standard.

EPA received numerous comments on this issue, either directly or through cross references to earlier comments on the NO_X SIP Call. Those commenters critical of EPA's use of the 8-hour standard raised four specific arguments: (i) that EPA cannot base the finding of significant contribution on violations under the 8-hour standard before the Agency has designated any areas as nonattainment under such standard; (ii) that EPA cannot use modeling to establish nonattainment of the 8-hour standard as a basis for the finding of significant contribution; (iii) that EPA cannot base the finding of significant contribution on the 8-hour standard now and must wait until after completion of SIPs to implement that standard under CAA section 172; and (iv) that EPA's reliance upon violations of the 8-hour standard for purposes of the NO_X Sip Call or this finding under section 126 is inconsistent with President Clinton's stated implementation plan for that standard.

Response: Although EPA has previously replied to these comments in connection with the NO_X SIP Call as noted above, it wishes to reiterate and expand upon those responses here.

(a) *Use of the 8-hour standard before designation of nonattainment areas for that standard.* The commenters noted that EPA will not formally designate nonattainment areas for the 8-hour ozone standard until the year 2000. The commenters argued that until such formal designation, EPA cannot make any determination concerning significant contribution of a pollutant from a State to any such future nonattainment area in another State. According to the commenters, until EPA designates areas for nonattainment under the 8-hour standard, the Agency has no authority either to require SIP submissions under section 110(a)(1) or to make findings of significant contribution under § 126 with respect to the 8-hour standard. The heart of the commenters' argument is that § 110 may empower EPA to rectify interstate pollutant transport, but that EPA must read the term ''area'' into section 110(a)(2)(D)(i)(I) so that EPA has no authority to do so absent formally designated nonattainment areas. As further evidence of their position, the commenters alleged that the new source review requirements and other ozone nonattainment provisions of the 1990 CAA apply only to areas designated as nonattainment.

EPA disagrees that it must have designated 8-hour standard nonattainment areas prior to taking today's action under section 126(b). First, section 110(a)(2)(D)(i)(I) provides, *inter alia*, that a SIP must prohibit emissions that ''contribute significantly to nonattainment in * * * any other State.'' The provision does not, by its terms, indicate that this downwind ''nonattainment'' must already be formally designated under section 107 as a nonattainment ''area.'' Because the provision does not include the term ''area'' in conjunction with the term ''nonattainment,'' EPA believes that the express terms of the statute do not support the claim of the commenters. Similarly, section 126 as a whole also makes no reference to nonattainment ''areas'' and instead pointedly refers only to air pollution which can contribute to violation of the relevant NAAQS. In section 126(a)(1)(B), the provision states, *inter alia*, that States must provide notice of new or modified sources ''which may significantly contribute to *levels of air pollution in excess of the [NAAQS]* in any air quality control region outside of the State'' (emphasis added). Likewise, section 126(c) contains no restrictions upon violations or remedies based upon the existence of nonattainment areas. Most importantly for today's action, section 126(b) provides that any State may petition EPA for a finding that sources in another State are making a significant contribution, but does not tie that finding to the existence of a formally designated ''nonattainment area'' in the petitioning State.

EPA contends that it would be unreasonable to read into section 126 a requirement that States must wait until formal designation of nonattainment areas before they may petition the Agency for relief or before the EPA may take action to alleviate transport. Such an approach would permit upwind States to inundate downwind States with emissions for extended periods of time before downwind States could seek relief. Given that section 126(a) clearly contemplates advance notice of construction or modification of sources *before* they begin to contribute to downwind levels of air pollution, regardless of whether the downwind area is designated nonattainment or not, EPA believes that Congress did not intend to preclude States from seeking recourse through section 126(b) prior to official designation of nonattainment status. As explained elsewhere, EPA contends that the statutory reference in section 126(b) should read ''§ 110(a)(2)(D)(i),'' thereby establishing that Congress intended that States have the right to petition for a finding that sources in a State contribute significantly to nonattainment in, or interfere with maintenance by, another State.

By contrast, EPA notes that other provisions of the CAA do explicitly employ the term ''area'' in conjunction with the term ''nonattainment,'' and that these provisions clearly refer to areas designated as nonattainment. *See, e.g.*, sections 107(d)(1)(A)(i), 181(b)(2)(A), 211(k)(10)(D). Similarly, the provisions to which the commenters appeared to refer, section 172(b) and section 172(c)(5)(new source review) and section 181(a)(1) and section 182 (classified ozone nonattainment area requirements), by their terms apply to a designated nonattainment ''area.'' EPA finds it unremarkable that provisions which explicitly impose requirements on nonattainment areas apply to nonattainment ''areas.'' Rather than supporting the commenters' claim, EPA believes that the difference between the

explicit wording of the provisions illustrates the distinction Congress intended in the statute. The sections at issue, section 110(a)(2)(D) and section 126, do not make reference to nonattainment ''areas,'' but rather to ''nonattainment'' or to levels of air pollution in excess of the NAAQS.

As further evidence of the distinction in the provisions, EPA notes that section 176A(a) authorizes EPA to establish a transport region whenever ''the Administrator has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of a [NAAQS] in one or more other States.'' This reference to ''a violation of a [NAAQS]'' makes clear that EPA is authorized to form a transport region when an upwind State contributes significantly to downwind area with nonattainment air quality, regardless of whether the downwind area is designated nonattainment. EPA also notes that the remedy under section 176A is a SIP call under section 110(a)(2)(D), thereby shedding light on the meaning of section 110(a)(2)(D) and confirming that the Agency may use that provision as a tool to alleviate interstate transport. The EPA believes that section 110(a)(2)(D) and section 126 should be read the same way because of the parallels between those provisions and section 176A(a). All of the provisions address transport and all are triggered when emissions from an upwind area ''contribute significantly'' to air pollutants downwind. EPA believes that it is appropriate in light of these related provisions to apply a consistent approach to interpreting and implementing the provisions. Thus, EPA contends that the term ''nonattainment'' in section 110(a)(2)(D) is synonymous with ''a violation of the [NAAQS]'' in section 176A. Section 126(b), in EPA's opinion, refers to section 110(a)(2)(D)(i), thereby incorporating that standard by reference. None of the three provisions at issue here make reference to nonattainment ''areas,'' and EPA believes that this common fact is significant.

EPA also notes that the CAA contains other provisions that refer to the actual air quality status of a particular area rather than to the area's formally designated status. These provisions include: (i) sections 172(c) and 171(1), the reasonable further progress requirements which require nonattainment SIPs to provide for ''such annual incremental reductions in emissions * * * as * * * may * * * be required * * * for the purpose of ensuring attainment of the [NAAQS]; and (ii) section 182(c)(2), the attainment demonstration requirement, which mandates a ''demonstration that the [SIP] * * * will provide for attainment of the [NAAQS].'' These provisions refer to air quality status rather than to the designated status of the area in question. In a series of notices in the **Federal Register**, EPA has relied on these references to air quality status, rather than designated status, in determining that areas seeking to redesignate from nonattainment to attainment did not need to complete Rate Of Progress SIPs or attainment demonstrations, even though those requirements generally apply to areas designated as nonattainment. EPA took these actions because the air quality for those areas seeking redesignation was, in fact, in attainment notwithstanding their formal designation as nonattainment areas. *See* ''State Implementation Plans: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule,'' 57 FR 13498, 13564 (April 16, 1992); ''Determination of Attainment of Ozone Standard for Salt Lake and Davis Counties, Utah, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Direct Final Rule,: 60 FR 30189, 30190 (June 8, 1995); and ''Determination of Attainment of Ozone Standard for Salt Lake and Davis Counties, Utah, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Final Rule,'' 60 FR 36723, 36724 (July 18, 1995). The EPA's interpretation was upheld by the Court of Appeals for the 10th Circuit in *Sierra Club* v. *EPA*, 99 F.3d 1551, 1557 (10th Cir. 1996).

EPA has concluded that it may take today's action before formal designation of nonattainment areas under the 8-hour standard. EPA believes that it is clear that the reference in section 110(a)(2)(D)(i)(I) to ''nonattainment'' refers to actual air quality, not the formal designation status of an area. EPA believes that it is also clear that section 126(b) is tied to actual air quality rather than to designation status. The explicit terms of section 110(a)(2) and section 126 do not refer to nonattainment ''areas.'' Such a reading would not be reasonable in light of the purpose of the provisions to halt emissions of pollutants which significantly contribute to nonattainment or maintenance of attainment in other States. Accordingly, EPA believes that this issue is controlled by the clear terms of the statute and is resolvable under the first step of *Chevron*. If, however, the provisions were ambiguous on this point, then EPA believes that, under the second step in the *Chevron* analysis, a court should give EPA deference for its reasonable interpretation. EPA contends that interpreting ''nonattainment'' to refer to air quality is reasonable for the reasons described above. Additional arguments based upon the structure of the Act are detailed in EPA's action on the NO_X SIP Call. *See*, 63 FR 57356, 57372.

(b) *Use of modeling to support a finding of significant contribution to nonattainment of the 8-hour standard.* The commenters also argued that EPA cannot use ''modeled nonattainment areas'' for purposes of section 126 to determine whether the emissions of sources in one State contribute significantly to nonattainment of the 8-hour ozone standard in another State. By the commenters' reasoning, EPA must first define such nonattainment areas in accordance with the applicable regulations for determining violations of the ozone standard. Thus, the commenters argued that EPA can only make the determination of significant contribution to nonattainment of the 8-hour standard in accordance with monitoring requirements of 40 CFR 50.10. In particular, the commenters objected to EPA using modeled nonattainment areas in advance of developing a procedure for States to perform attainment demonstration modeling for the new 8-hour standard.

EPA disagrees with the commenters on the appropriateness of using modeling to establish nonattainment. First, EPA disagrees that it may not generally use modeling to assess the likelihood of a future significant contribution to nonattainment or interference with maintenance as contemplated by section 126. The provision does not direct the Agency as to the particular method it must use to make the finding. Historically, however, EPA has used modeling to determine the presence or absence of such an impact. *See, e.g., Air Pollution Control District of Jefferson County*, 739 F.2d at 1077–79 (Agency reliance on modeling); *New York* v. *EPA*, 852 F.2d at 580 (Agency criticism of insufficient modeling). Moreover, EPA notes that section 126 implicitly contemplates that EPA may use modeling to assess significant contribution. In particular, section 126(b) provides that any State may petition for a finding that any source or group of sources ''emits or *would* emit'' in violation of section 110. This construction indicates that EPA may determine whether sources would

violate the provision now or in the future, thereby requiring that the Agency would have to model to determine whether there would be a future significant contribution to nonattainment or interference with maintenance in the petitioning State. This anticipation of prospective significant contribution is likewise implicit in section 126(a) which provides for notice in advance of construction of major new sources or the modification of existing sources that would have the same effect. Thus, section 126 not only does not preclude EPA from modeling to make a finding, it logically requires it in the case of petitions alleging future significant contributions to nonattainment or interference with maintenance. To interpret section 126 to forbid the use of modeling to predict future air quality conditions would be inconsistent with the statute and absurd.

Second, EPA notes that the commenters appear to misunderstand how the Agency did use both monitoring data and modeling to project whether areas will be in nonattainment of the 8-hour standard in the future for purposes of this action. EPA did obtain monitoring data which demonstrated that many areas in the petitioning States are currently violating the 8-hour standard At the outset of the process, EPA thus relied on actual monitored data of the type desired by the commenters. As described in more detail in the NPR, EPA then utilized modeling to determine which areas currently violating the 8-hour standard would be likely to continue to violate the 8-hour standard in 2007, factoring in expected ozone reductions and concomitant air quality improvements from Federal and State control measures. Significantly, EPA used modeling not to add areas to the list of nonattainment areas, but rather to subtract from the list of areas already shown through monitoring data to be in violation of the 8-hour standard at this time. EPA believes that this conservative approach is a reasonable means to anticipate which areas will continue to be in nonattainment of the 8-hour standard unless sources in upwind States undertake additional control measures. By contrast, the commenters imply that EPA cannot possibly determine which areas will be in nonattainment in a future year unless EPA waits until that year for actual monitored data showing that nonattainment. Such an approach would be inconsistent with the provisions of section 126 as discussed above, and would be illogical because it would preclude EPA from encouraging upwind States to obtain emission reductions that the Agency can now reasonably identify through modeling as necessary for downwind States to achieve attainment of the 8-hour standard as expeditiously as practicable.

(c) *Finding of significant contribution to nonattainment under the 8-hour standard before submissions of SIPs in accordance with section 172.* The commenters also argued that EPA cannot make a finding under section 126(b) using the 8-hour ozone standard because of timing issues. In the NO_X SIP Call, EPA concluded that States must submit SIPs for the new 8-hour standard in accordance with the schedule in section 110(a)(1), *i.e.*, within three years after promulgation of a new or revised NAAQS. The commenters claimed that such a timetable is unauthorized under the CAA and that EPA must follow the schedule set forth in section 172(b), which provides that SIPs required to satisfy nonattainment areas are due three years after the designation of an area as nonattainment pursuant to section 107(d). Because EPA has stated that it intends to complete the designation process for nonattainment areas under the 8-hour standard in 2000, the commenters reason that SIPs to address that nonattainment would not be due until 2003. Following that reasoning, the commenters argued that because of the schedule set forth in section 172(b), EPA cannot now use violations of the 8-hour standard in connection with petitions under section 126.

For the reasons detailed in the NO_X SIP Call, EPA disagrees with the contentions of the commenters concerning the timing of the NO_X SIP Call and SIPs to implement the 8-hour standard. *See*, 63 FR 57356, 57372–57374. With respect to today's action under section 126(b), EPA reiterates that sections 110(a)(1) and (2) authorize the Agency to require SIP revisions to address SIP requirements in section 110(a)(2)(D) on the schedule set forth in the NO_X SIP Call.

EPA also notes that section 126 itself contains no reference to section 172 as a timeline for requiring SIP revisions or implementation of necessary emission reduction requirements as a result of a finding under section 126(b). In fact, section 126(c) specifically stipulates that existing sources may not continue to operate longer than three months after a section 126(b) finding unless the source ''complies with such emission limitations and compliance schedules * * * as may be provided by the Administrator.'' If EPA extends the compliance period, section 126(c) provides that the source must comply ''as expeditiously as practicable, but in no event longer than three years after such compliance.'' EPA believes that the explicit provisions of section 126 refute the commenters' implication that the Agency cannot take action under section 126(b) until after the designation of nonattainment areas and submission of SIPs for the 8-hour standard and the ultimate potential compliance date, i.e., potentially as much as ten years after designation. Having established that sources in upwind jurisdictions will significantly contribute to ozone nonattainment or interfere with maintenance in the petitioning States, EPA has authority to take action and to require compliance in the time frame that the Agency believes will allow attainment as expeditiously as practicable.

Although the commenters claimed that it is absurd to grant the section 126 petitions now because this action will require upwind emission reductions prior to forcing downwind areas to implement all statutorily required or necessary controls, EPA disagrees. As explained in connection with the NO_X SIP Call, downwind nonattainment areas have historically borne the brunt of controls designed to reduce ozone and ozone precursors for many years. In spite of these efforts, many areas have had difficulty meeting the 1-hour ozone standard because of the influx of ozone and ozone precursors from upwind jurisdictions. Under the new 8-hour standard, monitoring data indicate that more and larger areas will potentially be in nonattainment. EPA therefore believes that it is even more important to implement regional control strategies to mitigate interstate pollution in order to assist downwind areas in achieving attainment. As such, the granting of the section 126 petitions is not an effort ''to enforce the 8-hour standard'' prematurely as alleged by the commenters, but rather the exercise of appropriate authority to begin to alleviate emissions that are already contributing to ambient air conditions which exceed that standard. This action will help meet the statutory objective of achieving attainment as expeditiously as practicable.

(d) *Finding of significant contribution under the 8-hour standard in light of President Clinton's implementation plan for the standard.* Commenters also claimed that EPA's use of the 8-hour ozone standard for purposes of the proposed section 126 finding was inconsistent with President Clinton's Memorandum of July 16, 1997, entitled ''Implementation of Revised Air Quality Standards for Ozone and Particulate

Matter'' (the ''Implementation Memo''). *See*, 62 FR 38421 (July 18, 1997). That document accompanied EPA's promulgation of the new 8-hour NAAQS for ozone. The commenters noted that the Implementation Memo made explicit reference to the statutory timeline for implementation of the new 8-hour standard and indicated that there would be up to three years to designate nonattainment areas under the new 8-hour standard, up to three more years to develop SIPs for the new 8-hour standard, and up to a total of ten years from designation to comply with the new 8-hour standard. The commenters implied that the presence of the ''general timeline'' in the Implementation Memo precludes EPA from making a finding of significant contribution under section 126 using the 8-hour standard at this time.

EPA disagrees that today's finding is inconsistent with the Implementation Memo. EPA believes that the commenters have overlooked key passages of the Implementation Memo which make clear that the Agency is to take action to alleviate regional transport of ozone and ozone precursors immediately, rather than to wait until formal designation of nonattainment areas under the 8-hour standard.

Contrary to the commenters' implications, the Implementation Memo does not state that EPA is to do nothing to implement the 8-hour ozone standard until after designation of nonattainment areas and submission of SIPs. The document explicitly discussed the need for a regional strategy to address ozone nonattainment and the investigation of strategy options by the Ozone Transport Assessment Group (OTAG) to alleviate interstate transport of ozone. *See*, 62 FR at 38425. In particular, the Implementation Memo stated ''that EPA will propose a rule requiring States in the OTAG region that are significantly contributing to nonattainment or interfering with maintenance of attainment in downwind States to submit SIPs to reduce their interstate pollution.'' *Id*. This was a clear reference to the NO_X SIP Call. The Implementation Memo promised issuance of the NO_X SIP Call final rule in September of 1998, well in advance of designation of nonattainment areas for the 8-hour standard. Significantly, the Implementation Memo did not indicate that EPA would restrict the NO_X SIP Call to nonattainment areas under the old 1-hour standard. To the contrary, the document stated, *inter alia*, that : ''Most important, based on the EPA's review of the latest modeling, a regional approach, coupled with implementation of already existing State and Federal Clean Air Act 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 without additional local controls.'' *Id*. In other words, the Implementation Memo contemplated that control measures under the NO_X SIP Call would help alleviate nonattainment of the 8-hour standard. Rather than suggesting that EPA is to defer any action to ensure reductions in emissions that contribute to regional ozone transport to achieve the 8-hour standard, the Implementation Memo clearly contemplated that EPA should and would take appropriate action in advance of designations.

Similarly, with regard to the ''transitional classification,'' the Implementation Memo provided that: ''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.'' *Id*. The referenced ''regional control strategy'' is the NO_X SIP Call. Again, the Implementation Memo not only does not direct inaction on the 8-hour standard, it specifically presumes that EPA will take action on a regional basis to mitigate ozone transport without regard to whether or not it has formally designated areas as nonattainment for the 8-hour standard.

In short, EPA believes that the Implementation Memo reflected the intention that EPA is to take appropriate advance action to ensure future compliance with the 8-hour standard, and that such action should specifically include a regional strategy to reduce ozone and ozone precursors such as NO_X. It is not reasonable to assume that EPA must wait up to three years for formal designation of nonattainment areas, much less the additional three years for development of nonattainment SIPs or up to twelve years for full compliance, before it may take appropriate action to address interstate transport under section 110(a)(2)(D)(i), whether in the form of the NO_X SIP Call, as specifically contemplated in the Implementation Memo, or otherwise under section 126. At the time of the Implementation Memo, EPA had not yet proposed to take action on the section 126 petitions and thus the absence of references to those petitions is not significant. Like the NO_X SIP Call, EPA's action under section 126 is based upon a finding of significant contribution by sources in upwind States. Like the NO_X SIP Call, EPA's action on the section 126 petitions is premised on the need to achieve regional reductions in ozone and ozone precursors in order to enable all States to achieve the 8-hour standard expeditiously. EPA's finding under section 126 is consistent with the Implementation Memo.

D. EPA's Interpretation of Section 126: Remedy

In the NPR, EPA proposed a set of controls that would apply if any of the petitions were granted. The EPA further proposed the maximum of the 3 years allowed by the statute from the date of the final approval of a section 126 petition to the date that the affected upwind sources must implement controls that EPA may promulgate. The EPA further proposed that if the petitions were granted during the fall of 1999, EPA would grant a maximum of 3 years from the beginning of the next ozone season. The EPA received numerous comments on this aspect of the rulemaking.

1. Three-Year Period

Some commenters sought a longer-than-3-year period, but EPA continues to believe that the section 126(c) provisions that establish this period should be interpreted as establishing a ceiling of no more than 3 years for implementation.

2. Uniform Level of Controls

a. Comments

Commenters argued that EPA has not justified uniform control levels on upwind sources in light of the varying impacts among the different upwind sources and the downwind receptors. These commenters stressed that in general, the greatest part of a downwind area's nonattainment problem results from emissions local to the downwind area; that the next greatest part of the problem results from emissions in adjoining States; and that emissions from further upwind States are a relatively small part of the problem. According to these commenters, it would be more cost-effective in terms of ambient impact to focus more controls on sources in the local and adjoining areas.

The commenters further stated that the fact that the section 126 petitions present fewer downwind receptors (compared to the NO_X SIP call) that are concentrated in the northeast renders the uniform remedy particularly suspect. Commenters added that EPA concerns about the difficulty of establishing a remedy with state-by-state

variations was not a valid reason if state-by-state variations were otherwise justifiable.

b. Response

The EPA's response to these comments is similar to EPA's response to comments that EPA should establish a bright-line approach for determining significant contribution. That is, EPA believes its uniform approach to the remedy is reasonable, regardless of whether other approaches would also be considered reasonable.

Moreover, EPA's approach to the remedy stems directly from its interpretation of the significant contribution test. EPA's interpretation incorporates the application of cost-effective controls to determine the amount of emissions considered to contribute significantly. This application is, by its terms, uniform among all upwind sources.

EPA believes that this approach to the significant contribution determination, and thus to the remedy, is reasonable. As noted above, sections 126(b)/110(a)(2)(D)(i)(I) do not include criteria for defining and applying the significant contribution test. In addition, section 126(c) does not include criteria for determining the level of controls that EPA is authorized to promulgate (except for the general requirement that the controls must be designed to ''bring about compliance with the requirements contained in'' section 110(a)(2)(D)[(i)] as expeditiously as practical, but in no case later than three years after the date of such finding).

In particular, Congress did not provide any requirement that local sources or adjoining sources are obligated to implement reductions sooner, or to a greater degree, than sources further away. Congress has included comparable provisions under other requirements. For example, the Clean Air Act Amendments of 1990 included section 182, which established a five-step set of graduated controls on ozone nonattainment areas. The level of control requirements for nonattainment areas increase with the severity of their nonattainment problem. At the lower and upper boundaries of this scheme, areas with ''marginal'' problems are required to implement a lighter level of controls, section 182(a); and areas with ''extreme'' problems are required to implement a much higher level of controls, section 182(e). By comparison, in sections 126/110(a)(2)(D), Congress did not indicate more stringent sets of controls on upwind areas that immediately adjoin downwind states with nonattainment problems, and a lower level of controls on the further upwind areas.

As an additional example, section 211(c)(4)(C) provides the test for granting a waiver of Federal preemption for State fuel controls. Under this test, EPA may approve the state fuel controls only after finding that ''no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable.'' This provision illustrates that Congress knew how to require that control schemes be prioritized, and Congress chose not to include such a requirement in sections 126/110(a)(2)(D)(i)(I).

As noted above, under these circumstances, EPA believes that it has discretion under *Chevron* to develop a reasonable interpretation that gives effect to the statutory purposes of ameliorating air pollution transport.

For the reasons described above, EPA believes it has a valid basis for establishing controls that are highly cost-effective on section 126 sources in States whose overall NO_X emissions contribute significantly to nonattainment downwind. As noted above, this approach is fully consistent with the approach Congress and EPA have taken in many other instances in which controls have been imposed on other sources. The EPA's approach results in controls on sources whose emissions have a meaningful impact on nonattainment downwind, in light of the collective contribution nature of ozone nonattainment problems.

In addition, as noted above, imposing a lower—or even a zero—level of controls on sources that are further away, yet still emit into the same air basin as the more highly controlled sources, would give the lesser controlled sources a competitive advantage. This competitive advantage runs contrary to one of the purposes of section 126, as expressed by the legislative history, described above, of eliminating the competitive advantages enjoyed by upwind sources at the expense of downwind sources.

Further, for the NO_X SIP call rulemaking, EPA conducted air quality modeling that assumed lower levels of controls on sources in certain upwind States. The results of this modeling generally indicated that lower levels of controls in the further-away upwind States resulted in fewer ozone reductions in the northeast nonattainment areas, compared to a uniform, higher level of control. *See* Air Quality Modeling Technical Support Document for the NO_X SIP call, Docket A–96–56, No. VI–B–11, p. 69.

The EPA believes that the above-described reasons fully justify its decision to adopt, as the remedy, a uniform set of highly cost-effective controls. As additional reasons, EPA notes that a non-uniform remedy would create substantial administrative complexities, as described in the NO_X SIP call rulemaking. In addition, in the NO_X SIP call NFR, EPA determined that emissions in each upwind state—including the section 126 sources in those states—generally contribute to several downwind nonattainment problems under the 1-hour NAAQS, and numerous downwind nonattainment problems under the 8-hour NAAQS. For some of these downwind nonattainment problems, the downwind states have submitted a section 126 petition for which EPA is today granting an affirmative technical determination; for others, the downwind State has recently submitted a section 126 petition; and for others, the downwind States have not submitted a section 126 petition. Regardless, EPA believes that in determining whether a contribution is significant, including assessing the cost-effectiveness of the upwind controls, it is reasonable to recognize that in general, those controls will result in benefits throughout several downwind areas under the one-hour NAAQS, and numerous downwind areas under the eight-hour NAAQS. This issue is further discussed in the NO_X SIP Call final rule, 63 FR 57404–57405. As a result, EPA believes that the controls for each upwind State should be considered as providing benefits for at least several, and in some cases many, downwind areas. As a qualitative matter, the fact that the controls provide benefits in numerous downwind areas significantly improves the efficacy of the controls.

E. Obligations of Downwind States

1. Comments

Numerous commenters representing the interests of upwind sources and States stressed that in many cases, the petitioning States have not completed all of the SIP requirements to which they are subject under the CAA Amendments of 1990. These commenters argued that the section 126 petitions should be denied on this basis.

2. Response

The EPA disagrees that incomplete SIPs would preclude EPA from issuing findings requested by the section 126 petitioners concerning upwind sources.

The EPA responded at length to comparable comments in the NO_X SIP call final rule, 63 FR 57380, and EPA incorporates those responses into

today's action. In addition, EPA has included in the rulemaking docket for today's action a set of tables identifying the SIP submittal requirements applicable to various downwind nonattainment areas under the 1990 CAA Amendments, and summarizing the progress made by the downwind states in completing their requirements. Although the downwind States have not yet complied with some SIP submittal requirements, they have complied with the vast majority of those requirements.

In addition, neither section 126(b)–(c) nor section 110(a)(2)(D) contains any requirements that the section 126 petitioners or other downwind states complete their SIP requirements before they become entitled to the section 126/110(a)(2)(D) protections. By comparison, in other CAA provisions, Congress required compliance with SIP requirements before a State with a nonattainment area would be eligible for certain benefits. *See* section 107(d)(3)(E)(ii) and (v) (nonattainment area may be redesignated to attainment only if, among other things, SIP has been approved and State has met applicable requirements); section 181(a)(5)(A) (nonattainment area may receive an extension of attainment date if, among other things, State has complied with all SIP requirements). Congress did not establish such strictures with respect to the downwind State under sections 126(b)–(c) or 110(a)(2)(D)(i)(I).

In addition, as EPA pointed out in the NO_X SIP call final rule, 63 FR 57380, air quality modeling shows that even if the downwind states were to comply fully with all of the specifically required CAA controls, they would continue to experience nonattainment problems to which emissions from sources in the upwind States are contributing.

F. Effect of 1-Hour Attainment

In the section 126 NPR, EPA proposed which upwind States contain sources of emissions named in the petitions that contribute significantly to nonattainment problems in the petitioning States under the 1-hour ozone standard, and where petitions were based on it, the 8-hour ozone standard that EPA promulgated to replace the 1-hour ozone standard. These linked upwind States, which are identified in Tables II–1 and II–2 in the section 126 NPR (63 FR 56303), were based on determinations made in the NO_X SIP call. After the publication of the section 126 NPR, two additional states, Maine and New Hampshire, submitted petitions under the 8-hour ozone standard. EPA published a supplemental proposal regarding those petitions on March 3, 1999 (64 FR 10342).

After publication of the section 126 NPR on October 21, 1998, EPA preliminarily determined that the air quality data for 1996–1998 for certain areas in the petitioning states indicated that those areas—which were still violating the 8-hour ozone standard—were no longer in violation of the 1-hour ozone standard. These areas were: Boston-Lawrence-Worcester, Massachusetts-New Hampshire; Portland, Maine; Portsmouth-Dover-Rochester, New Hampshire; and Providence, Rhode Island (63 FR 69598, December 17, 1998).[25] In addition, EPA believes that the 1996–98 air quality data for Pittsburgh, Pennsylvania, indicates that Pittsburgh has attained the 1-hour ozone standard. If EPA reaches a final determination that these areas have attained the 1-hour standard, EPA will conclude that the 1-hour standard will no longer apply anywhere in Maine, New Hampshire, and Rhode Island. The 1-hour standard will still apply to certain areas in Massachusetts and Pennsylvania. Moreover, all of these areas currently violate the new 8-hour standard that EPA promulgated to replace the 1-hour standard.

Because EPA has preliminarily determined that these areas no longer have air quality in violation of the 1-hour standard, EPA believes it would not be appropriate for EPA to consider them as downwind receptor areas for purposes of determining whether upwind areas are significantly contributing to 1-hour nonattainment in these areas. While EPA has not yet made a final determination that these areas are attaining the 1-hour standard, EPA believes that, in light of the air quality monitoring data for 1996–98 for these areas, it is prudent to delete them as receptor areas for purposes of this action under section 126.

It is important to note that the more protective 8-hour ozone standard applies in all of these areas. Pennsylvania, Maine, Massachusetts, and New Hampshire all petitioned EPA under both the 1-hour and 8-hour ozone standards. A determination that any of the areas in these States has air quality meeting the 1-hour standard does not affect EPA's significant contribution determinations under the 8-hour standard with regard to 8-hour nonattainment and maintenance problems in these States. Indeed, the deletion of these areas as receptor areas for the 1-hour standard has no impact whatsoever on which States EPA has identified as contributing to ozone problems in the petitioning States. In fact, more upwind States were identified as contributors based on the 8-hour standard than on the 1-hour standard. As no upwind States were identified as contributors based solely on Rhode Island's 1-hour petition, the deletion of Rhode Island as a 1-hour receptor does not affect the conclusions as to the identification of which sources are significant contributors.

The original comment period on the section 126 NPR closed on November 30, 1998, prior to EPA's preliminary determination that these areas had monitored attainment of the 1-hour standard based on 1996–98 monitoring data. As discussed in Section I.G.2, at the request of two commenters, EPA reopened the section 126 NPR comment period to take comment on the impacts of the 1996–98 air quality data on the section 126 rulemaking.

The majority of the commenters agreed that EPA should deny petitions based on the 1-hour standard that seek findings against upwind sources with regard to downwind areas where the 1-hour standard is met.

Several of the petitioning States commented that a determination that an area had attained the 1-hour standard should not alter EPA's proposed findings of significant contribution related to those specific areas. The States argued that such a determination does not guarantee that the 1-hour standard will be maintained in the future. Two of the States suggested that favorable meteorology may have been a large factor in the current attainment conditions and that the upwind sources are still significantly impacting the areas.

As discussed in Section I.B., the 8-hour ozone standard is intended to fully replace the 1-hour standard. However, when EPA promulgated the 8-hour standard, it decided that the 1-hour standard would continue to apply in an area for an interim period until the area achieved attainment of that standard. Once EPA makes a final determination that the 1-hour standard is attained, the standard will be revoked and States are expected to focus their planning efforts on developing strategies for attaining the 8-hour standard. As mentioned previously, attainment of the 1-hour standard does not impact EPA's action on a petition under the more stringent 8-hour standard. To the extent that a State has 8-hour ozone problems, a State may seek a finding under that standard. In this rulemaking, a finding under the 8-hour standard yields the same

[25] Based on these data, EPA published a notice of proposed rulemaking on December 17, 1998 (63 FR 69598), in which the Agency proposed to determine that the 1-hour standard had been achieved in these areas and would no longer apply to those areas.

requirements for upwind emissions reductions as a finding under the 1-hour standard.

Several commenters said that the 1996–98 air quality data indicating attainment of the 1-hour standard in some areas in the Northeast indicates that there is a trend in air quality improvement, even without the section 126 control measures and, therefore, the petitions should all be denied. The EPA agrees that there are general downward trends in ozone concentrations in the Northeast. The EPA has reported the air quality changes over the 10-year period 1988 to 1997 in the document, ''National Air Quality and Emissions Trends Report, 1997'' (Trends Report) (EPA 454/R–98–016). However, EPA cautions that the air quality trends are historical records of what has occurred and alone do not indicate future trends. Ambient ozone trends are influenced by year-to-year changes in meteorological conditions, population growth, VOC to NO_X ratios, and changes in emissions from ongoing control measures. The EPA does not agree that current trends indicate that new NO_X control programs are not necessary. Rather, the data help show that NO_X and VOC controls can be very effective in reducing ozone. Since passage of the CAA Amendments in 1990, States have implemented many new VOC and NO_X emissions control programs which have helped to reduce ozone levels. However, for many areas, these reductions have not been sufficient to provide for attainment of the 1-hour and/or 8-hour standard. In addition, the majority of the areas in the Northeast do not show significant downward trends in emissions (See Trends Report maps, pages 58–59). For example, New York City and Philadelphia show no significant downward (or upward) trends for the 1-hour and 8-hour standards over the past few years (See Trends Report, pages 160 and 162). In order to see future air quality improvements, EPA believes additional control measures are necessary to reduce emissions and offset growth. The section 126 petitions are one way in which States are seeking to ensure that their transported emissions are reduced.

Furthermore, there is no basis for denying all of the petitions on the basis of any such trend. All of the petitioning States contain areas that violate the 8-hour standard and there are many areas in the Northeast that still violate the 1-hour standard.

The EPA received comments that the modeling is flawed because it projects 1-hour nonattainment for 2007 in areas for which the 1-hour NAAQS is proposed to be revoked based on current monitoring data. The most recent three years had meteorological conditions in the Northeast such that the emissions during this time period did not result in nonattainment in the identified areas. The extent to which meteorological conditions are conducive to ozone exceedences in a particular area varies from year to year. As noted above, several commenters suggested that the meteorology during 1996–1998 in the Northeast was not particularly conducive to high ozone. Thus, if meteorological conditions similar to those modeled by OTAG and used for the SIP Call occur in the future, it is expected that ozone concentrations >=125 ppb would recur in these areas, which is consistent with what the modeling predicts. The fact that meteorological conditions vary is one of the reasons EPA relied on both current monitoring and projected future modeled predictions to determine which areas should be considered to be downwind nonattainment receptors to provide a more robust test for that determination.

G–H. Weight of Evidence Determination of Named Upwind States

1. General Approach

The EPA proposed to rely on the conclusions it drew in the final NO_X SIP call rulemaking to determine whether the emissions in named upwind States contribute significantly to the 1-hour and 8-hour nonattainment and maintenance problems in the petitioning States.[26] In the final NO_X SIP call rulemaking, EPA used a weight-of-evidence approach involving various factors, including air quality impacts. To determine this latter factor, EPA relied on three sets of modeling information: the OTAG subregional modeling together with other information such as emission density and transport distance, confirmed by the State-by-State UAM–V zero-out modeling and the State-by-State CAMx source apportionment modeling. The upwind State-to-downwind nonattainment linkages in the final NO_X SIP call rulemaking were used as the basis for the proposed section 126 findings.

The EPA is using this same information and reaffirming these linkages as the basis for the related affirmative technical determinations in today's rulemaking, as well as the denials of parts or all of certain petitions. Specifically, EPA evaluated the petitions in terms of which upwind States named in each petition were found in the NO_X SIP call to contribute significantly to nonattainment in the petitioning State. Separate determinations were made for the 1-hour and 8-hour NAAQS. The technical details of the modeling information are described in the final NO_X SIP call rulemaking. Except as noted below, EPA is today making affirmative technical determinations concerning emissions from identified sources found in upwind States whose overall emissions were determined in the NO_X SIP call final rule to contribute significantly to the petitioning State's nonattainment problems. In making these affirmative technical determinations, and in denying part or all of certain petitions, EPA is reaffirming the findings it made in the NO_X SIP call final rulemaking concerning the upwind-State downwind-nonattainment area linkages related to those determinations, on the basis of the same technical data relied on in that rulemaking. For this, EPA is primarily relying on the UAM–V State-by-state zero-out modeling runs and the CAM_X modeling runs.

The EPA received a number of comments on the modeling and other technical information relied on in the proposal. Those comments which are most relevant to the technical aspects of this rulemaking are addressed below or in the RTC document.

2. Collective Contribution

The EPA received comments that it is inappropriate to use modeling that evaluates the downwind contribution from all manmade emissions in an entire State for the purposes of evaluating the section 126 petitions since these petitions request relief from large stationary sources which are only a portion of the States' total emissions and/or from sources located in only a portion of the upwind State. This comment, and EPA's response, is discussed above.

As noted above, part of EPA's response to this comment refers to the collective contribution approach. Under this approach, if the total NO_X emissions from an upwind State contribute significantly to a downwind petitioning State, then each large stationary source's emissions in the upwind State or portion of the upwind State covered by the petition, is considered to be a significant contributor to nonattainment. The EPA noted above that even though large point sources, like those covered by the

[26] The maintenence standard does not apply in the case of the 1-hour NAAQS because, under the regulation EPA promulgated in connection with the 8-hour NAAQS, once an area attains the 1-hour NAAQS, EPA determines that the area is no longer subject ot it. For convenience, references to nonattainment problems under the 8-hour NAAQS also include the maintenance standard.

126 petitions, are only a portion of the total NO_X emissions in each State, they comprise a sizable portion of the NO_X inventory. For 17 of the 20 jurisdictions (Connecticut, Rhode Island and the District of Columbia are the exceptions) NO_X emissions from electricity generating units and non-electricity generating point sources comprise at least one third of Statewide NO_X emissions. Thus, EPA continues to believe that the full State modeling is appropriate to establish whether the named sources in specific upwind States contribute significantly to nonattainment in the petitioning State.

3. U–Runs

The EPA received comments that it is necessary to specifically evaluate the downwind contributions of large stationary sources. Although, as noted above, EPA does not think this evaluation is critical for today's rulemaking, EPA has performed a set of modeling runs in which emissions from all utility point sources and large non-utility point sources with boilers greater than 250 mmBTU were zeroed out for select groups of States. All four OTAG episodes were modeled. These model runs are referred to as the ''U runs.'' Further details concerning these model runs are contained in the RTC document and in the docket for this rulemaking (see Docket item number VI–D–23).

The EPA has reviewed the results of these runs which indicate that sources covered by section 126 petitions provide meaningful ozone reductions in downwind petitioning States. For example, in model run ''U–10,'' large stationary sources in Michigan, Indiana, Ohio, Kentucky, West Virginia, and Virginia were zeroed-out. These States closely approximate the non-OTR States petitioned by New York. The results for run U–10 show contributions to nonattainment in New York of >= 2 parts per billion (ppb) to 39 percent of the 1-hour exceedances, >= 5 ppb to 14 percent of the 1-hour exceedances, and >= 10 ppb to 1 percent of the 1-hour exceedances.

4. UAM–V and CAMx Modeling and Metrics

A number of commenters said that zero-out modeling was flawed. Several of these commenters submitted modeling based on CAMx. Other commenters said that the CAMx source apportionment technique was flawed and submitted modeling based on zero-out runs. The comments concerning the technical adequacy of these modeling techniques are addressed in the RTC document. The EPA relied on both UAM–V zero-out modeling and CAMx source apportionment modeling in order to identify the significant upwind-downwind linkages. In the evaluation by EPA of contributions for individual linkages, both modeling techniques had to indicate a significant contribution in order for the linkage to be found significant. After reviewing the comments submitted by proponents and opponents of each of these two modeling techniques, EPA has concluded that the most technically credible approach is to continue to rely on both techniques and not base its decisions of the significance of individual linkages on one technique or the other. This is discussed in further detail in the RTC document.

Several commenters submitted a technical report intended to quantify the uncertainty in the UAM–V model predictions. These commenters argued that the contributions which EPA found significant are within the ''noise'' of the modeling. The EPA has reviewed that study and determined that (1) the results do not indicate any bias in the model predictions as being either too high or too low and (2) there is no indication of any bias in the model's response to emissions reductions or the ability of the model to predict the contribution of emissions in upwind States to downwind nonattainment. This is discussed in further detail in the RTC document.

Several commenters made general assertions that EPA was not clear in its definition of significant contribution, and was inconsistent, subjective, or arbitrary in its determination that certain States do not make a significant contribution, but that other States do. EPA believes that its definition of significant contribution is reasonably clear and consistently applied. EPA's examination of the linkages raised by the commenters does not reveal inconsistencies. This issue is discussed further in the RTC.

In the proposal EPA requested comment on the individual upwind-downwind linkages and, in particular, the linkages between some of the more distant States, such as Alabama to Pennsylvania and Missouri to Pennsylvania.

Several commenters were critical of EPA's finding that emissions from Missouri contribute significantly to 8-hour nonattainment in Pennsylvania. One of these commenters submitted an analysis of contribution using many of the metrics EPA calculated from the State-by-State zero-out and source apportionment modeling. In this analysis, the commenter applied numerical criteria, used as a bright-line test, to judge the significance of the contributions indicated by each metric. The commenter then applied a numerical scoring system to evaluate the overall significance of each individual linkage. The commenter used the results of this analysis to argue that Missouri does not contribute significantly to Pennsylvania. The EPA agrees that the scoring system concept provides a way to quantify and numerically compare the significance of individual linkages. However, the commenter provided no technical justification for the criteria used in this analysis or for selecting the cut-off value used to determine whether or not the final score for each linkage indicates a significant contribution. The EPA disagrees that using a single final cutoff value is the appropriate way to distinguish between significant and insignificant contributions. In this regard, EPA believes that technical judgement, based on an evaluation of all of the metrics for each linkage, as described elsewhere in today's rulemaking, is necessary for decisions on which linkages are significant.

Regarding the linkage between Alabama and Pennsylvania under the 8-hour NAAQS, several commenters submitted an independent study of EPA's modeling of Alabama's contribution to 8-hour nonattainment in Pennsylvania. These commenters concluded from this study that the largest contributions from Alabama occur in Pennsylvania on a single day in one episode. The study also includes a limited comparison of the observed winds at 7 a.m. each day against the corresponding wind data used in the modeling. For some wind observation stations between Alabama and Pennsylvania, the data presented in the study indicate that the observed winds are more westerly and/or northwesterly than those used in the modeling. The commenter also notes uncertainties in the modeled wet deposition calculations and modeled ozone overpredictions. The commenter concludes from these data that in light of ''improper model assumptions'', a determination of a significant impact on 8-hour nonattainment in Pennsylvania is arbitrary.

The EPA has reviewed the data submitted by the commenters along with the transport pattern of ozone from Alabama predicted by both the UAM–V zero-out and the CAMx source apportionment modeling together with the full set of data concerning observed and modeled winds aloft. Based upon a comprehensive review of observed and modeled data, EPA concludes that (1) the winds used in the model adequately represent the transport pattern between

Alabama and Pennsylvania during this time period, (2) model performance was acceptable for the full domain and the Southeast and Midwest OTAG regions (3) EPA is not aware of errors in the modeling due to wet deposition calculations and (4) the ozone ''plume'' from Alabama is geographically extensive, covering a large portion of Pennsylvania, as indicated by both the zero-out and source apportionment modeling. Thus, there is no basis for EPA to change its conclusion relative to the significance of Alabama's contribution to 8-hour nonattainment in Pennsylvania. This is discussed further in the RTC document.

Several commenters stated that EPA's modeling indicates that much of the downwinds' ozone problem is due to local emissions. The EPA agrees that local emissions are a large part of the overall ozone problem in most major cities in the OTAG region. However, the collective contribution from upwind sources to ozone in these areas is also quite large. For example, the average contribution from upwind manmade emissions to 1-hour nonattainment in New York City is 45 percent (28 percent from States outside the Northeast), 83 percent in Greater Connecticut (21 percent from States outside the Northeast), and 32 percent in the Philadelphia nonattainment area (all from States outside the Northeast).

Some commenters questioned why the available modeling information was not sufficient for EPA to make a final decision on whether certain States in the OTAG domain (e.g., New Hampshire, Maine, and Vermont) contribute significantly to nonattainment in downwind States. As stated above, EPA primarily relied on two types of modeling for making a determination of significant contribution. This included State-by-State UAM-V zero-out and CAMx source-apportionment modeling. For an upwind-downwind linkage to be significant, contributions from both of the State-by-State techniques had to show significant contributions. For 15 States in the OTAG domain, including those identified by these commenters, EPA does not have a complete set of modeling comparable to that relied on for those States found to be significant. Thus, as part of the NO_X SIP call, EPA deferred taking final action on these States. This is discussed further in the RTC document.

The upwind States that were named by the petitioners and which are found to contain sources that make a significant contribution to nonattainment in the petitioning States are based on the upwind-downwind linkages found to be significant in the NO_X SIP call. The exception to this is Maine's petition for relief from emissions in North Carolina. In its petition, Maine requested relief from large stationary sources within a 600 mile radius of the southwestern most nonattainment area in Maine. This radius includes several counties in the extreme northeastern portion of North Carolina that do not contain sources of the type and size identified in Maine's petition. Thus, even though EPA found that emissions in North Carolina contribute significantly to 8-hour nonattainment in Maine, EPA is denying Maine's petition relative to North Carolina because there are no section 126 sources located in the portion of North Carolina covered by Maine's petition.

The significant upwind-downwind linkages applicable to the section 126 petitions are listed in Tables II–1 for the 1-hour NAAQS and Table II–2 for the 8-hour NAAQS. The linkages in Table II–1 take into account the recent revocations of the 1-hour NAAQS for certain 1-hour nonattainment areas. All of the information contained in the docket of the NO_X SIP call rulemaking that is relevant to the determination of significant contribution is incorporated by reference into today's rulemaking.

TABLE II–1.—NAMED UPWIND STATES WHICH CONTAIN SOURCES THAT CONTRIBUTE SIGNIFICANTLY TO 1-HOUR NONATTAINMENT IN PETITIONING STATES

Petitioning state (nonattainment area)	Named upwind states
New York (New York City)	DC, DE, IN, KY, MD, MI, NC, NJ, OH, PA, VA, WV.
Connecticut (Greater Connecticut)	DC, DE, IN*, KY*, MD, MI*, NC*, NJ, NY, OH, PA, VA, WV.
Pennsylvania (Philadelphia)	NC, OH, VA, WV.
Massachusetts (Western Massachusetts)	WV.
Rhode Island	None.*
Maine	None.**
New Hampshire	None.**
Vermont	None.**
Total	DC, DE, IN, KY, MD, MI, NC, NJ, NY, OH, PA, VA, WV.

*Upwind States marked with an asterisk are considered to significantly contribute because they contribute to an interstate nonattainment area that includes part of the petitioning State. Part of Connecticut is included in the New York City nonattainment area.

**Based on 1996–1998 air quality monitoring data, EPA cannot now determine that areas in these States continue to be in nonattainment for the 1-hour NAAQS.

TABLE II–2.—NAMED UPWIND STATES WHICH CONTAIN SOURCES THAT CONTRIBUTE SIGNIFICANTLY TO 8-HOUR NONATTAINMENT IN PETITIONING STATES

Petitioning state	Named upwind states
Pennsylvania	AL, IL, IN, KY, MI, MO, NC, OH, TN, VA, WV.
Maine	CT, DC, DE, MA, MD, NJ, NY, PA, RI, VA.
Massachusetts	OH, WV.
New Hampshire	CT, DC, DE, MD, MA, NJ, NY, PA, RI.

TABLE II–2.—NAMED UPWIND STATES WHICH CONTAIN SOURCES THAT CONTRIBUTE SIGNIFICANTLY TO 8-HOUR NONATTAINMENT IN PETITIONING STATES

Petitioning state	Named upwind states
Vermont	None.
Total	AL, CT, DC, DE, IL, IN, KY, MA, MD, MI, MO, NJ, NY, NC, OH, PA, RI, TN, VA, WV.

The EPA concluded from all of the information considered that the 20 jurisdictions listed below contain sources that make a significant contribution to nonattainment in, or interfere with maintenance by, one or more petitioning States under the 1-hour and/or the 8-hour NAAQS:

Alabama,
Connecticut,
Delaware,
District of Columbia,
Illinois,
Indiana,
Kentucky,
Maryland,
Massachusetts,
Michigan,
Missouri,
New Jersey,
New York,
North Carolina,
Ohio,
Pennsylvania,
Rhode Island,
Tennessee,
Virginia, and West Virginia.

I. Identifying Sources

As discussed previously in Section I.D., all of the petitions named specific upwind source categories as significantly contributing to nonattainment in, or interfering with maintenance by, the petitioning State. Four petitioning States (Massachusetts, New Hampshire, New York, and Rhode Island) also attempted to identify the existing sources in the targeted source categories. However, the petitioners cautioned EPA that the lists might not be complete and that any omissions were unintentional. In addition, the EPA has received several comments from sources on the State lists saying that they do not meet the source category definitions provided in the petitions.

In the final NO_X SIP call (63 FR at 57427), EPA provided the opportunity for comment on source-specific inventory data revisions for the data used to establish each State's base inventory and budget. Furthermore, EPA extended that comment period to February 22, 1999 (63 FR 71221). At the same time, EPA reopened the comment period for the proposed section 126 and the proposed FIP for the same source-specific inventory data revisions. Based on these comments, EPA will be finalizing a list of existing sources in the source categories for which EPA is making an affirmative technical determination. These sources will be included in the Federal NO_X Budget Trading Rule which EPA intends to promulgate in July. The source categories named in the petitions that EPA is making affirmative technical determinations are large EGU boilers and turbines and large non-EGU boilers and turbines. The EPA's methodology for determining if a boiler or turbine fits in the EGU or the non-EGU category and whether it is large or small are explained below. The EPA's rationale for determining that large EGU boilers and turbines and large non-EGU boilers and turbines contribute significantly is explained in Section II.J below.

1. Proposed EGU Source Classification

The section 126 NPR proposed the same two-step approach as used in the final NO_X SIP call for determining which of the following categories a boiler or turbine fits into: large EGU, small EGU, large non-EGU, or small non-EGU. In the final NO_X SIP call, EPA first determined if a boiler or turbine should be classified into the category of EGU or non-EGU. The EPA then determined if the boiler or turbine should be classified as large or small.

The EPA used three sources of data for determining if an existing generator's purpose included generation of electricity for sale and thus qualified the unit connected to the generator as an EGU. First, EPA treated as EGUs all units that are currently reporting under title IV of the CAA. Second, EPA included as EGUs any additional units that were serving generators reporting to the Energy Information Administration using Form 860 in 1995. Form 860 is submitted for utility generators. Third, EPA included units serving generators that reported to Energy Information Administration using Form 867 in 1995. Since Form 867 is submitted by non-utility generators, including generators ''which consume all of their generation at the facility,'' EPA excluded any units for which EPA had information indicating that the unit was not connected to any generators that sold any electricity. This was determined by excluding units that were not listed as sources that sell power under contract to the electric grid using the electric generation forecasts of the North American Electric Reliability Council.

Once EPA determined that a boiler or turbine should be classified as an EGU, EPA considered that unit to be a large EGU if it served a generator greater than 25 MWe and considered it a small EGU if it served a generator less than or equal to 25 MWe.

The EPA explained that there are two important reasons that the methodology outlined above is not appropriate to use on an ongoing basis for new boilers or turbines. First, EPA was concerned about the completeness of data using this methodology. The EPA had this concern because there are limited consequences to not reporting to Energy Information Administration and because EPA has no assurance that sources will continue to be required to report to Energy Information Administration using the same forms. Second, because of changes in the electric generation industry and because of regulatory developments such as the NO_X SIP call, owners and operators of units may have an incentive to install, operate and sell electricity from small (25 MWe or less) generators connected to larger boilers or turbines that are primarily used for industrial processes and not electricity generation. Such sources could have significant NO_X emissions.

To ensure that owners and operators of such units did not install a small generator and sell small amounts of electricity merely to circumvent the requirements of this rule, EPA established a slightly different process for categorizing units that commenced operation on or after January 1, 1996. First, EPA explained it would classify as an EGU any boiler or turbine that is connected to a generator greater than 25 MWe from which any electricity is sold. This would be based on information reported directly to the State under the SIP (or EPA in the case of a FIP or

section 126 action). The EPA stated that this addresses the first concern about completeness of data, as discussed in the previous paragraph. Second, if a boiler or turbine is connected to a generator equal to or less than 25 MWe from which any electricity is sold, it would be considered a small EGU if it has the potential to use more than 50.0 percent of the usable energy from the boiler or turbine to generate electricity. For example, this means that a 260 mmBtu boiler connected to a 20 MWe generator that is used to generate some electricity for sale would be considered a small EGU. On the other hand, a 600 mmBtu boiler connected to a 20 MWe generator that is used to generate some electricity for sale would be considered a large non-EGU. This addressed EPA's second concern (discussed in the previous paragraph) about owners or operators of large boilers and turbines that have small generators.

All other boilers and turbines (including boilers and turbines connected to generators equal to or less than 25 MWe from which any electricity is sold and which have the potential to use 50.0 percent or less of the usable energy from the boiler or turbine to generate electricity) were considered non-EGUs. The EPA stated that it will use the process described below to classify those units as large or small. The EPA stated that, once a unit had been classified in the base inventory, EPA did not intend to reclassify that unit, but explained that it might reconsider unit classification in 2007 along with the 2007 transport reassessment.

2. Proposed Non-EGU Boiler and Turbine Source Classification

In the section 126 NPR, the non-EGU point source categories that EPA determined to be subject to the section 126 reduction requirements are large boilers and turbines. The EPA proposed in the section 126 NPR to use the same method to identify ''large'' and ''small'' non-EGU boilers and turbines that was used in the final NO_X SIP call (for more detailed information refer to ''Development of Modeling Inventory and Budgets for Regional SIP Call,'' September 24, 1998). The methodology is as follows:

1. Where boiler heat input capacity data were available for a unit, EPA used that data. Units with such data that are less than or equal to 250 mmBtu are ''small'' and units greater than 250 mmBtu/hr are ''large.''

2. Where boiler heat input capacity data were not available for a unit, EPA estimated that data, as described in the NO_X SIP call NPR and SNPR. Units estimated to be greater than 250 mmBtu/hr are ''large.''

3. Where boiler heat input capacity data were not available for a unit and where the boiler capacity was estimated to be less than 250 mmBtu/hr, EPA checked 1995 point-level emissions for each unit. If the 1995 average daily ozone season emissions were greater than one ton, the unit was categorized as a ''large'' source; otherwise, the unit was categorized as a ''small'' source.

3. Issues Raised by Commenters on EGU/Non-EGU Classification

One commenter, representing the pulp and paper industry, argued that small cogeneration units should not be treated as EGUs and EPA should continue to apply the exemption from treatment as utility units established under new source performance standards (NSPS) and the Acid Rain Program for cogeneration units that produce an annual amount of electricity for sale less than one-third of their potential electrical output capacity or equal to or less than 25 MWe. (Note that the regulations implementing title IV converted the annual 25 MWe threshold to 129,000 MWe hrs of electricity which is equivalent to 25 MWe per hour times 8760 hours per year.) The commenter also noted that section 112 of the CAA defines ''electricity steam generating unit'' excluding cogeneration units using the same thresholds. The commenter made several assertions to support its argument. First, the commenter said the classification of small cogeneration units would be contrary to 20 years of Agency precedent under the NSPS and Acid Rain programs. The CAA encourages cogeneration by exempting small cogenerators below the one-third/25 MWe trigger from the Acid Rain program and from section 112. Deviating from this historical precedent was not a logical outgrowth of the proposed NO_X SIP call since the proposed NO_X SIP call did not discuss that EPA would treat small cogeneration units as EGUs or differently than under the NSPS and Acid Rain programs. Second, the commenter argued the uniqueness of boiler design, fuel type, and operations of individual industrial boilers makes these units less amenable to achieving the utility standards.

Another commenter expressed concerns that defining ''electrical generating units solely on the basis of electrical generating capacity without regards to boiler size is patently unfair to a number of industrial boilers.'' They explained that ''from a practical standpoint, emissions from a 250 mmBTU/hr coal-fired industrial boiler are the same whether it is used to generate electrical power or not.'' The commenter continued that EPA should treat all industrial boilers alike whether or not they generate electrical power.

Several other commenters expressed concerns that the definition in the trading rule was more inclusive than the definition used for setting forth the control requirements. One commenter suggested specific language to remedy this concern.

As EPA explained in a clarification notice published on December 24, 1998 (See 63 FR at 71223), EPA used two classification methods to determine whether a unit should be classified as an EGU or a non-EGU. One method (based on whether a unit served a generator from which electricity was sold under a firm contract) applied to units that were in existence in 1995 and were part of the base year emission inventory, and the other method (based on whether a unit serves a generator from which any electricity is sold) applies to units that came into existence on or after January 1, 1996. Both of these methodologies are explained above (in sections II.I.C1 and C.2). In addition, the methodology used to classify units in the base-year inventory was explained in the document, ''Development of Modeling Inventory and Budgets for Regional NO_X SIP call.'' A draft of this document was issued on March 23, 1998 and a final document was issued on September 24, 1998, and is available in the NO_X SIP call docket.

The methodology used to classify existing units as EGUs or non-EGUs was based upon whether or not a unit was connected to a generator that produced electricity for sale under firm contract to the grid. Since most industrial units are not currently involved in sales under firm contract to the grid, this leads to most industrial cogeneration units being classified as non-EGUs. The EPA has several concerns about changing from this methodology to a methodology based upon a one-third potential capacity/25 MWe threshold, as suggested by the commenter. The first is that EPA has not used that threshold in the rulemaking to date, and does not have information on all existing units necessary to apply that threshold to all the units. For example, EPA does not have information to identify all the units that actually cogenerate and the information on how much electricity is sold from these units. The commenter did not even identify the units owned by its members, much less provide that information for identified units.

Second, if EPA did have the information for each unit to determine if the unit's classification should be changed, EPA is concerned that the classification for a number of units would change, apparently none of

which are owned or operated by the commenter's members. The commenter noted that changing the definition to be based upon a one-third potential capacity/25 MWe threshold ''would not alter the Agency's baseline emissions inventory.'' Since the commenter never identified any existing units where classification is different in the inventory under the Agency's classification method than under the commenter's classification method, EPA concludes that changing the methodology would not change the inventory classification of any units owned or operated by the commenter's members. The EPA believes that this is because using the criteria of selling under firm contract to the grid classifies most industrial units that generate small amounts of electricity as non-EGUs rather than EGUs.

However, EPA maintains that there is the potential that a number of other units could be reclassified if EPA applied the one-third potential capacity/25 MWe threshold. This could change the classification of a large EGU to a large non-EGU, the classification of a large non-EGU to a large EGU or the classification of a small EGU to a large non-EGU. For example, a unit that is currently classified as a large EGU could become a large non-EGU if, even though the unit was selling electricity under a firm contract, it sold less than one third of its potential electrical output capacity. An independent power producer unit that is connected to a generator greater than 25 MWe and that cogenerates and provides both steam and electricity could fit into this category. A unit that is currently classified as a large non-EGU could become a large EGU if it did not sell power under a firm contract, but did sell more than one third of its potential electrical output capacity. An industrial boiler that cogenerates and is connected to a generator greater than 25 MWe could fit into this category. A unit that is currently classified as a small EGU and sells under firm contract, but less than one-third of its potential electrical output capacity, could become a large non-EGU if the unit was greater than 250 mmBtu and the generator to which it was connected was less than 25 MWe. An independent power producer unit that cogenerates could fit into this category. In short, the adoption of the commenter's classification methodology could result in reclassification leading to more stringent, rather than less stringent, regulation of some cogeneration facilities

The EPA also does not agree with the commenter's arguments: (1) That deviating from the classification that EPA has used for cogeneration units for 20 years was not a logical outgrowth of the proposed NO_X SIP call and that no discussion was included in the proposal that small cogeneration units would be treated as EGUs or differently than under the NSPS and Acid Rain programs; or (2) that the uniqueness of boiler design, fuel type, and operations of individual industrial boilers makes these units less amenable to achieving the reduction requirements for large EGUs.

In prior regulatory programs, EPA has used the criteria of producing an annual amount of electricity for sale less than one-third of a unit's potential electrical output capacity or less than 25 MWe. However, these criteria were not applied in the same way in each of these prior programs and recent, ongoing changes in the electric power industry undermine the basis for the criteria, and justify using different criteria for the new units, in today's action. The Agency began using the one-third potential capacity/25MWe cutpoint in 1978, in 40 CFR part 60, subpart Da, setting forth new source performance standards for ''electric utility steam generating units.'' In that case, the cutpoint was not used to exempt units entirely from NSPS. Rather, it was used to classify them as either ''electric utility steam generating units'' that would be subject to the new standards under subpart Da or to classify them as non-utility steam generating units that would continue to be subject to the requirements under subpart D and would subsequently become subject to more stringent standards for ''Industrial-Commercial-Institutional Steam generating units'' under subpart Db. As the commenter noted, this distinction between utility and non-utility units continued under the Clean Air Act Amendments of 1990, in both title IV and section 112. This cutpoint applied to all steam generating units, not just cogeneration facilities. The cutpoint was used as a proxy for utility vs. non-utility ownership of the units, the assumption being that a unit involved in electricity sales at or below the cutpoint was owned by a company that was in a business other than electric generation and so was a utility.

Since 1990 there have been dramatic changes in the electric power industry associated with the emergence of competitive markets for electricity generation where non-utility generators compete to an increasingly significant extent with traditional utilities. As these changes occur, it becomes less and less appropriate to differentiate between utilities and non-utilities that produce electricity. The Energy Policy Act of 1992 reflected these types of changes in the electric power industry by recognizing a whole new category of non-utility generators, wholesale generators that directly compete with utility generators. The Federal Energy Regulatory Commission's 1996 order adopting open transmission access and the actions of many States (currently at least 18 States) that are in the process of deregulating electric power generation have further blurred the distinction between utilities and non-utilities. Other federal agencies that deal with the power industry have realized that historical categorizations of the industry are no longer appropriate. For instance, the Energy Information Agency is in the process of streamlining its reporting requirements so that there will no longer be a distinction between reporting by utility generators and by non-utility generators.

In the NO_X SIP call rulemaking, that EPA expressed concern that, under a deregulated electricity market, it is important to consider all NO_X emissions sources that generate electricity. For instance, in the supplemental notice of proposed rulemaking under the NO_X SIP call, EPA explained that:

> Additionally, with deregulation of electric utilities, it is not clear how ownership of the electricity generating facilities will evolve. Therefore, EPA proposes to include all large electricity generating sources, regardless of ownership, in the trading program. As there is no relevant physical or technological difference between utilities and other power generators, the same monitoring provisions and the size cut-off of greater than 25 MWe are applicable to all units which serve generators. 63 FR at 25923.

With regard to the feasibility of meeting the ''utility'' standards, the above commenter made several technical arguments about why non-utility units are fundamentally different from utility sources. In particular, the commenter argued that because of the need to vary loads significantly, many industrial boilers cannot operate at the conditions required to obtain maximum NO_X reduction using combustion controls. In addition, the commenter argued that pulp and paper mill boilers have technical limitations on the installation of selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR), due to wide and rapid load and lower operating temperatures. Furthermore, the commenter does not believe there will be a significant number of allowances available or that the assumption of allowance availability should be used to justify higher costs for industrial sources. Moreover, the commenter argues that some affected States have expressed hesitancy to participate in

interstate or even intrastate NO_X trading programs.

The EPA continues to believe that industrial cogeneration units can achieve similar NO_X emission reductions as utility units. Post-combustion NO_X control technologies, like SNCR and SCR, are available to industrial units that cannot achieve NO_X reductions using combustion controls. Both SCR and SNCR are proven technologies demonstrated on industrial and utility units, including paper and pulp industry units. See White Paper—Selective Catalytic Reduction (SCR) for Controlling NO_X Emissions, ICAC, 1997 and White Paper—Selective Non-Catalytic Reduction (SNCR) for Controlling NO_X Emissions, ICAC, 1997. At the same time, this rulemaking provides for multiple compliance options including trading of allowances. The Agency believes that a significant number of allowances will be available for trading. The Integrated Planning Model (IPM) analysis shows a significant number of allowances will be available in 2003 when trading begins (see the Regulatory Impact Analysis for further discussion). The compliance supplement pool also provides further allowances in the trading market (see compliance supplement pool discussion in Section III below). In addition, EPA is aware of several States in the process of developing a trading program under the NO_X SIP call. Furthermore, a trading program will be promulgated for this section 126 rulemaking.

For all of these reasons, EPA believes that it is appropriate to consider all units that generate electricity for sale as one source category, regardless of whether the owners and operators of the units are traditional utilities, independent power producers, or industrial companies. (Indeed, it may be appropriate at some time in the future to consider all units generating electricity, whether for sale or internal use, as a single category). However, for purposes of this rulemaking, EPA is continuing to apply to existing units the definition of EGU based on firm-contract sales, essentially as clarified in the December 24, 1998 correction notice. This definition does not classify either all existing or new units that generate electricity, or all existing or new units that generate electricity for sale, as EGUs. For example, industrial units that generate electricity only for internal use will be considered non-EGUs. Furthermore, most existing industrial units that sell small amounts of electricity will also not be considered EGUs, because most of these units do not sell electricity under firm contract. Even though EPA is not basing the EGU and non-EGU definitions on the one-third potential capacity/25 MWe threshold supported by the commenters, EPA believes that the definition for existing units classifies the units of the commenter's members in a way that is consistent with the way the commenters have suggested those units should be classified, i.e., as non-EGUs.

The EGU and non-EGU definitions based on any sales of electricity will apply to units that commence operation on or after January 1, 1999. These definitions will not apply to any of the units referenced by the commenter (e.g., the units referenced, but not identified, in the commenter's April 7, 1999 comments for which the commenter provided information on actual, annual electricity sales). Thus, in general, any new units that serve generators involved in electricity sales will be EGUs. The EPA intends to make parallel clarifications to the definition of EGU under the NO_X SIP call rulemaking. The EPA believes that the definition of EGU needs to be consistent across the NO_X SIP call, section 126, and FIP rulemakings because it is possible that at one time a source might be subject to control requirements under one of these mechanisms, while at another time a source might be subject to control requirements under another one of these mechanisms. Changing the category that a source has been placed in because of this change in regulatory structure could be confusing and burdensome for the source.

While EPA is not including all sources that generate electricity for sale or internal use as EGUs at this time, EPA may for all of the reasons explained above, consider whether this would be appropriate in future rulemakings.

4. Final Rule EGU/Non-EGU Classification

In summary under today's final rule, EPA will take a three-step approach to determining which of the following categories a boiler or turbine fit into: large EGU, small EGU, large non-EGU, or small non-EGU. First, EPA will determine the date upon which a unit commenced operation. Second, EPA will determine if a boiler or turbine should be classified into the category of EGU or non-EGU by applying the appropriate criteria depending on the date on which the boiler or turbine commenced operation. Finally, EPA will determine if the boiler or turbine should be classified as large or small.

For units that commenced operation before January 1, 1999, EPA will classify as an EGU any boiler or turbine that sells any electricity to the grid under firm contract. For units that commenced operation on or after January 1, 1999, EPA intends, in general, to classify as an EGU any boiler or turbine that produces any amount of electricity for sale.

Once EPA determines that a boiler or turbine should be classified as an EGU, EPA then will classify the unit as a small or large EGU. For a unit that commenced operation before January 1, 1999, EPA will consider the unit a small EGU if it serves a generator less than or equal to 25 MWe and a large EGU if it serves a generator greater than 25 MWe. For a unit that commenced operation on or after January 1, 1999 and sells any electricity, EPA will consider the unit a small EGU if it serves a generator that is less than or equal to 25 MWe and that has the potential to use more than 50 percent of the potential electrical output capacity of the unit. Units that serve generators greater than 25 MWe and that sell any electricity will be considered large EGUs.

All other boilers and turbines will be considered non-EGUs. This includes boilers and turbines that commence operation on or after January 1, 1999 connected to generators equal to or less than 25 MWe from which any electricity is sold and that have the potential to use 50 percent or less of the potential electrical output capacity of the boiler or turbine. This also includes any unit that commenced operation before January 1, 1999 that did not produce electricity for sale under firm contract.

Non-EGUs will be considered large if their maximum rated heat input capacity is greater than 250 mmbtu/hour and will be considered small if their maximum rated heat input capacity is equal to or less than 250 mmbtu/hour.

The EPA intends to address comments related to inconsistencies between this definition and the applicability requirements of part 97, when EPA promulgates part 97 in July.

J. Cost Effectiveness of Emissions Reductions

As described in Section II.A, above, one part of the significant-contribution interpretation that EPA applied in the NO_X SIP call rule, and that EPA applies for purposes of today's final rule, is the extent to which ''highly cost-effective'' NO_X control measures are available for the types of stationary sources named in the petitions[27]. As in the NO_X SIP call

[27] As discussed in this section, the highly cost-effective NO_X controls happen to apply only to large stationary sources. Under section 126, EPA can make a finding for ''any major source or group of stationary sources.'' In other words, even if not all sources subject to this action were major, they would be part of a group of stationary sources that contribute significantly to nonattainment and hence could potentially be subject to a finding.

rule (63 FR at 57399) and the proposed section 126 rule (63 FR at 56304), the EPA has selected these highly cost-effective measures by examining the technological feasibility, administrative feasibility and cost-per-ton-reduced of various multi-state ozone season NO_X control measures in light of other actions taken by EPA and States to control NO_X.

1. Identifying Highly Cost Effective NO_X Controls Levels

The first step in the process of determining cost effectiveness was to identify the types of sources named in the various petitions. The petitioning States have identified the source categories that they believe significantly impact their ability to achieve attainment of the ozone standard. These categories are listed in Table I–1 earlier in this preamble. The EPA has determined that the named source categories can be combined into one general category—fossil fuel-fired indirect heat exchangers. This term applies to boilers and turbines used for the production of steam, electricity, and in some cases mechanical work, and to process heaters. To assure equity among the various subcategories of such sources and the industries they represent, EPA considered the cost effectiveness of controls for each subcategory separately throughout the affected 20-jurisdiction region described in Section II.B above. The EPA further subdivided the category of boilers and turbines into two categories, those used to generate electricity for sale and those used for all other purposes. Therefore, the EPA split the population of indirect heat exchangers into the following four subcategories, consistent with the approach EPA took in the final NO_X SIP call and the section 126 proposal: (1) Boilers and turbines serving generators greater than 25 MWe that produce electricity for sale to the grid (''large EGUs''); (2) boilers and turbines with a heat input greater than 250 mmBtu/hr that exclusively generate steam, produce mechanical work (e.g., provide energy to an industrial pump), or produce electricity for internal use (''large non-EGUs''); (3) process heaters with a heat input greater than 250 mmBtu/hr (''large process heaters''); and (4) smaller indirect heat exchangers, i.e., all such sources not included in the first three subcategories (''small sources'').

As mentioned above, in evaluating the cost effectiveness of NO_X control levels for indirect heat exchangers, the EPA has taken the same approach as that taken in the final NO_X SIP call (see 63 FR at 57399). In short, for each subcategory, the amounts of emissions that cause subcategories in the covered upwind States to contribute significantly to a petitioning State's nonattainment were determined based on the application of NO_X controls that achieve the greatest feasible emissions reduction while still falling within a cost-per-ton-reduced range that EPA considers to be highly cost effective. The NO_X control levels for this rulemaking were considered highly cost effective for the purposes of reducing ozone transport to the extent they achieve the greatest feasible emissions reduction but still cost no more than $2,000 per ton of ozone season NO_X emissions removed (in 1990 dollars), on average, for each subcategory. The discussion below further describes the basis for this cost amount and the techniques used for each subcategory. The EPA believes that certain control levels that cost more than $2,000 per ton of NO_X reduced are reasonably cost effective in reducing ozone transport or in achieving attainment with the ozone NAAQS in specific nonattainment areas. However, EPA is basing the significant-contribution determination only on highly cost-effective reductions. In addition, as discussed further below, in determining whether to assume reductions from the small source subcategory, EPA considered administrative burden.

More specifically, to determine what level of control can be considered highly cost effective, EPA considered other recently undertaken or planned NO_X control measures. Table II–3 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 below $2,000 per ton. 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 EPA believes that the cost effectiveness of measures that it or States have adopted, or have proposed to adopt, forms a good reference point for determining which of the available additional NO_X control measures are among the most cost-effective measures that can be implemented by the sources considered in today's action.

TABLE II–3.—AVERAGE COST EFFECTIVENESS OF NO_X CONTROL MEASURES RECENTLY UNDERTAKEN

(1990 $)

Control measure	Cost per ton of NO_X removed
NO_X RACT	150–1,300
Phase II Reformulated Gasoline	[a] 4,100
State Implementation of the Ozone Transport Commission Memorandum of Understanding	950–1,600
New Source Performance Standards for Fossil Steam Electric Generation Units	1,290
New Source Performance Standards for Industrial Boilers	1,790

[a] Average cost representing the midpoint of $2,180 to $6,000 per ton. This cost represents the projected additional cost of complying with the Phase II reformulated gasoline NO_X standards, beyond the cost of complying with other standards for Phase II RFG.

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 II–3. These actions include the title IV NO_X reduction program. Though these actions are very cost effective, the Agency is focusing on what other measures exist, at a potentially higher (though still not the highest reasonable) cost effectiveness, that can further reduce NO_X emissions. Table II–3 is thereby useful as a reference of the next higher level of NO_X reduction cost effectiveness that the Agency considers among the most reasonable to undertake. As a result, the Agency concludes that NO_X controls that can feasibly be achieved and have an average subcategory-specific cost effectiveness less than $2,000 per ton of NO_X removed are highly cost effective. The subcategories that EPA intends to control are those major stationary sources in the named categories for which EPA finds that these highly cost-effective controls are available.

2. Determining the Cost Effectiveness of NO_X Controls

In an effort to determine what, if any, highly cost-effective mix of controls is available for each subcategory (i.e., large EGUs, large non-EGUs, large process heaters, and small sources) the Agency considered the average cost effectiveness of alternative levels of controls for each subcategory as described in the final NO_X SIP call (see 63 FR at 57400). That analysis is summarized below.

For purposes of this final rule, EPA is using cost-effectiveness numbers developed for the final NO_X SIP call. When EPA finalizes its source-specific inventory data (as discussed in section I above), EPA will revise the cost estimates for this action in conjunction with promulgation of the trading portion of this section 126 rulemaking. The EPA does not anticipate that the revised cost-effectiveness numbers will be significantly different from those in today's action. This is due to the fact that unit-specific changes on the inventory should be minimal. For example, EGU units should not change significantly because the information used for NO_X SIP call inventory was based on CEM data. For non-EGUs, EPA anticipates a small decrease in the number of affected sources as units move from the large to small category. In addition, EPA concludes that the cost of controls and reductions achievable do not vary significantly across the region and removing the three States that are in the NO_X SIP call, but not in today's section 126 action, should not impact the regionwide average cost effectiveness. This is due to the fact that cost-effectiveness numbers assume trading among sources. Therefore, today's rule will use the cost-effectiveness numbers developed for the NO_X SIP call.

As part of today's action, the Agency is describing the interim final emission limitations that will be imposed in the event that a section 126 finding is made and the Agency does not promulgate the Federal NO_X Budget Trading Program before such finding (see Section IV.D below for further discussion). The EPA notes that the cost-effectiveness analysis summarized below applies to the Federal NO_X Budget Trading Program and not the interim final emission limitations. EPA is committed to establishing final allocations and trading program provisions by July 15, 1999, well before the date that sources need to comply with this action (May 1 ,2003), and thus, the cost-effectiveness analysis presented is appropriate for today's rulemaking.

The average cost effectiveness of the controls was calculated from a baseline level that included all currently applicable Federal or State NO_X control measures for each subcategory. The baseline did not include Phase II and Phase III of the OTC NO_X MOU since those measures are not Federally required and they have not yet been adopted by all the involved States;[28] if the OTC NO_X MOU were included in the baseline, the overall costs would be lower. In determining the cost of NO_X reductions from large EGUs, EPA assumed a multi-state cap-and-trade program. As discussed in the final NO_X SIP call (see 63 FR at 57400), EPA evaluated and compared the likely air quality impacts both with and without a multi-state NO_X cap-and-trade program for electricity generating sources. This analysis showed that a multi-state trading program causes no significant adverse air quality impacts. Because such a program would result in significant cost savings, EPA's cost-effectiveness determination for large EGUs (i.e., the majority of the core group of sources in the trading program) assumes sources will participate in a multi-state trading program.[29] For non-EGU sources, EPA used a least-cost method which is equivalent to an assumption of an intrastate trading program. Under this method, the least costly controls, in terms of total annual cost per ozone season ton removed, across the entire set of possible source-control measure combinations are selected in order until the required NO_X emission budget is achieved. Inclusion of non-EGU sources in a multi-state trading program would provide further cost savings.

Table II–4 summarizes the control options investigated for each subcategory covered by the petitions and the resulting average, multi-state cost effectiveness as presented in EPA's final NO_X SIP call (see 63 FR at 57401). Additionally, the cost effectiveness analysis included a consideration of each subcategory's growth, including new sources. Thus, the control levels arrived at are also cost-effective for new sources.

TABLE II–4.—AVERAGE COST EFFECTIVENESS OF OPTIONS ANALYZED [a]

[1990 dollars in 2007]

Source category	Average cost effectiveness ($/ozone season ton) for each control option
Large EGUs:	
0.20 lb/mmBtu	$1,263
0.15 lb/mmBtu	1,468
0.12 lb/mmBtu	1,760
Large Non-EGUs:	
50% reduction	1,235
60% reduction	1,467
70% reduction	2,140
Process Heaters [b]:	
$3,000/ton maximum per source	2,860
$4,000/ton maximum per source	2,896
$5,000/ton maximum per source	2,896

[a] The cost-effectiveness values in Table II–4 are regionwide averages. The cost-effectiveness values represent reductions beyond those required by title IV or title I RACT, where applicable.

[b] For process heaters, the table indicates that the same control technology (at the same cost) would be selected whether the cost ceiling for each source is $3,000, $4,000, or $5,000 per ton; thus the average cost-effectiveness number for this source category is the same in each column.

The following discussion explains the control levels determined by EPA to be highly cost effective for each subcategory.

a. Large EGUs

As proposed (63 FR at 56306), for large EGUs, the control level was determined by applying a uniform NO_X emissions rate across the 23 jurisdictions of the NO_X SIP call which includes the jurisdictions potentially subject to section 126 findings. The cost effectiveness for each control level was determined using the IPM. Details regarding the methodologies used can be found in the Regulatory Impact Analysis. Table II–4 summarizes the control levels and resulting cost effectiveness of three levels analyzed.

A regionwide level of 0.20 lb/mmBtu was rejected because, though it resulted in an average cost effectiveness of less than $2,000 per ton, the air quality benefits were less than those for the 0.15 lb/mmBtu level, which was also less than $2,000 per ton.

Some commenters supported a control level based on 0.12 lb/mmBtu. The EPA estimates that a control level based on 0.12 lb/mmBtu has a cost effectiveness of $1,760 per ozone season ton removed, which is within the upper range of cost effectiveness. This estimate is based on the Agency's best estimates of several key assumptions on the performance of pollution control technologies and electricity generation requirements in the future. While the record strongly supports EPA's

[28] In the Regulatory Impact Analysis of the final NO_X SIP call, EPA evaluates an additional option of the economic impact of including the Phase II and III OTC NO_X MOU in the baseline for the electric power industry.

[29] Large EGUs in States covered by (1) the NO_X Budget Trading program under the section 110 NO_X SIP call, (2) the section 110 FIP, or (3) section 126, will be able to trade among each other.

determination that a 0.15 lb/mmBtu trading program beginning in 2003 will not lead to installation of SCR technology at a level and in a manner that will be difficult to implement or that will result in reliability problems for electric power generation, the record is not as clear with regard to a trading program based on a 0.12 lb/mmBtu level (see Section II.K below for discussion of reliability and section III.C for discussion of compliance date). Although 0.12 lb/mmBtu is technically achievable, the record had data from only one boiler achieving that level, Birchwood Unit I in Virginia. (*See Performance of Selective Catalytic Reduction on Coal-Fired Steam Generating Units*, EPA, June 25, 1997.)

With a strong need to implement a program by 2003 that is recognized by the States as practical, necessary, and highly cost effective, the Agency has decided to base the emissions budgets for EGUs on a 0.15 lb/mmBtu trading level of control. This control level has an average cost effectiveness of $1,468 per ozone season ton removed [30]. This amount is consistent with the range for cost effectiveness that EPA has derived from recently adopted (or proposed to be adopted) control measures.

b. Large Non-EGUs

As proposed (63 FR at 56306), EPA determined a highly cost-effective control level for large non-EGUs by applying a uniform percent reduction in increments of 10 percent. Details regarding the methodologies used are in the Regulatory Impact Analysis. Table II–4 summarizes the control levels and resulting cost effectiveness for non-EGUs.

For large non-EGUs, the cost-effectiveness determination includes estimates of the additional emissions monitoring costs that sources would incur in order to participate in a trading program. Some non-EGUs already monitor their emissions. These costs are defined in terms of dollars per ton of NO_X removed so that they can be combined with the cost-effectiveness figures related to control costs. Monitoring costs for large non-EGU boilers and turbines are about $160 per ton of NO_X removed.

Based on this information, the EPA determines that for large non-EGUs, a control level corresponding to 60 percent reduction from baseline levels is highly cost effective (this percent reduction corresponds to a regionwide average control level of about 0.17 lb/mmBtu).

c. Large Process Heaters

For large process heaters, the control level was determined by applying various cost-effectiveness thresholds, because trading was not assumed to be readily available for this subcategory. Details regarding the methodologies used are in the Regulatory Impact Analysis. Table II–4 summarizes the control levels and resulting cost effectiveness for each option under this subcategory.

At proposal (see 63 FR at 56306), EPA determined that controlling process heaters, though reasonably cost effective, is not highly cost effective because all the options analyzed for these source categories cost more than $2,000 per ton of NO_X removed. Thus, EPA concluded that these sources do not emit in amounts that significantly contribute to petitioning States' nonattainment or maintenance problems.

One commenter objected to EPA's proposed denial of section 126 petition with respect to large process heaters. The commenter argued that implementation of the regional NO_X budget program adopted by the OTC indicates that a trading program is readily available for such sources within the OTC. If such a program is available in the OTC, the commenter questions why such a program is not being imposed on sources under section 126.

Although a trading program is available for process heaters under the OTC, EPA has determined that controlling process heaters across the entire region covered by section 126 is not highly cost effective. If EPA were to include monitoring costs in its cost-effectiveness number and assume that a trading program would achieve a 30 percent reduction in the cost-effectiveness number, controlling process heaters would still cost more than $2,000 per ton of NO_X removed. Thus, for today's final rule, EPA concludes that process heaters do not emit in amounts that significantly contribute to petitioning States' nonattainment or maintenance problems.

d. Small Sources

At proposal (see 63 FR at 56306), for the subcategory of small sources, EPA has determined that additional control measures or levels of control are not highly cost effective and appropriate to mandate. For the purposes of this rulemaking, EPA generally considers the following sizes of point sources to be small: (1) electricity generating boilers and turbines serving generators 25 MWe or less, and (2) other indirect heat exchangers with a heat input of 250 mmBtu/hr or less (see section I above for further discussion).

One commenter objected to EPA's denial of section 126 petitions with respect to EGUs between 15 and 25 MWe. The commenter advocated capping such sources at 1990 levels consistent with the OTC NO_X MOU. The commenter argued that this action would not require additional controls in a market driven NO_X control program.

In the NO_X SIP call (see 63 FR at 57402), EPA found that the collective emissions from small sources were relatively small (in the context of that rulemaking) and the administrative burden, to the permitting authority and to regulated entities, of controlling such sources was likely to be considerable. Even if EPA were not to apply additional controls beyond capping small sources at 1990 levels, there would be administrative costs that would be considerable in comparison to the emissions reductions gained. Thus, this level of control is not highly cost effective and appropriate to mandate. Furthermore, EPA notes that the 25 MWe is approximately equivalent to 250 mmBtu/hr used for small non-EGUs.

In today's action, for the same reasons as described in the final NO_X SIP call, EPA concludes that small sources do not emit in amounts that significantly contribute to petitioning States' nonattainment or maintenance problems.

e. Summary of Control Measures

Table II–5 summarizes the controls that are assumed for each subcategory.

TABLE II–5.—SUMMARY OF FEASIBLE, HIGHLY COST-EFFECTIVE NO_X CONTROL MEASURES

Subcategory	Control measures
Large EGUs	State-by-State ozone season emissions level (in tons) based on applying a NO_X emission rate of 0.15 lb/mmBtu on all applicable sources assuming historic ozone season heat input and adjusting for growth to year 2007.

[30] It should be noted that in the final NO_X SIP call, EPA also investigated the regionwide cost effectiveness of NO_X reductions if each State individually met the budget component for large electricity generting boilers and turbines (i.e., through intra-State trading). In the case of the 0.15 lb/mmBtu strategy, intra-State trading resulted in a regionwide cost effectiveness of $1,499/ton compared to $1,468/ton for regionwide trading.

TABLE II–5.—SUMMARY OF FEASIBLE, HIGHLY COST-EFFECTIVE NO_X CONTROL MEASURES—Continued

Subcategory	Control measures
Large Non-EGUs	State-by-State ozone season emissions level (in tons) based on applying a 60 percent reduction from uncontrolled emissions on all applicable sources assuming uncontrolled ozone season emissions and adjusting for growth to year 2007.
Large Process Heaters.	No additional controls highly cost effective.
Small Sources	No additional controls highly cost effective.

K. Feasibility of NO_X Control Implementation Date

Some commenters asserted that a compliance deadline of May 2003 is infeasible for completing the installation of the assumed NO_X controls. Some commenters argued that there are not enough materials and suppliers to install NO_X controls by the May 2003 deadline. Other commenters expressed concern that utilities will not have sufficient time to install NO_X controls without causing electrical power outages; these commenters stated that such power outages would have adverse impacts on the reliability of the electricity supply. Commenters also expressed concern about the technologies EPA assumed could be used to meet the 2003 deadline and the cost assumptions for NO_X control technology.

As part of the NO_X SIP call, the Agency conducted a detailed examination of the feasibility of installing the NO_X controls that EPA assumed in developing the emissions budgets for the affected States. See Feasibility of Installing NO_X Control Technologies By May 2003, EPA, Office of Atmospheric Programs, September 1998. The Agency's findings are summarized in the NO_X SIP call final rule (63 FR at 57447). Based on these findings, EPA believes that the compliance date of May 1, 2003 for NO_X controls to be installed to comply with this section 126 rulemaking is a feasible and reasonable deadline.

Furthermore, several utility plants have already begun installation of SCR retrofits, indicating the ability of electric utilities to meet the compliance date for the NO_X SIP call without system reliability concerns. These projects are summarized in Table II–6 below. For instance, the Tennessee Valley Authority (TVA) has publicly announced its schedule to have all its units comply with the NO_X SIP call by 2003. This is quite significant, since TVA operates more than 7 percent of the coal-fired capacity in the NO_X SIP call Region.

TABLE II–6.—PLANNED SCR RETROFIT PROJECTS

Utility	Plant	Unit size (MW)	Fuel	Outage date
TVA	Allen 1	300	Coal	Spring 2001.
	Allen 2	300	Coal	Spring 2002.
	Allen 3	300	Coal	Fall 2001.
	Bull Run	900	Coal	Spring 2003.
	Cumberland 1	1300	Coal	Spring 2003.
	Cumberland 2	1300	Coal	Fall 2002.
	Paradise 1	700	Coal	Fall 2000.
	Paradise 2	700	Coal	Spring/Fall 1999.
	Widows Creek 2	141	Coal	Spring 2003.
	Widows Creek 7	575	Coal	Spring 2002.
AES	Kintigh	655	Coal	Before 2003.
Associated Electric Cooperative	New Madrid 1	600	Coal	Before 2003.
	New Madrid 2	600	Coal	Fall 1999.
Edison Mission Energy	Homer City 1	660	Coal	Before 2003.
	Homer City 2	660	Coal	Before 2003.
	Homer City 3	692	Coal	Before 2003.

In addition, one commenter agrees that the controls are feasible in terms of their supply, the time available for the needed installation and the availability of vendors to effectively install them. The commenter has assessed the feasibility of NO_X SIP call compliance by the affected sources in the context of electric system reliability, as explained in a report Electric System Reliability—A Red Herring to Delay Clean Air Progress, Ozone Attainment Coalition, September 1998. This report shows that, even with conservative assumptions about outage periods for the installation of SCR controls, compliance with the SIP call can be achieved in aggregate by the affected sources. Furthermore, the commenter has completed additional analysis that concludes that SIP call compliance is a manageable situation that will be accomplished during the non-peak periods of electricity demand. The analysis estimates that SCR can be installed on 255 electric utility units as compared to EPA's estimate of 142 units (see Electric System Reliability and the NO_X SIP Call, Ozone Attainment Coalition, Draft Report, April 1999).

The Agency is also providing compliance flexibility to sources for the 2003 and 2004 ozone seasons by establishing State compliance supplement pools. (See section IV.C.1.c for further discussion of compliance supplement pool.)

The EPA also concludes from the German experience that reliability should not be a problem. In the mid-1980s, West Germany required every plant to meet a NO_X emission rate of about 0.16 lb/mmBtu, every half-hour all year long. Within a 3-year period, West Germany retrofitted more than 80 percent of its coal-fired power plants with SCR. The retrofitted, coal-fired plants represented about 33 percent of the overall generation capacity of Germany, compared to 27 percent of the U.S. in the final NO_X SIP call (under section 126 this percentage will be less since the rule covers three less States). During this time, no brownouts are known to have occurred as a result of the SCR retrofits, even though West German plants tend to have more space restrictions than U.S. plants and it was

much more difficult for West Germany to import power from other countries.

1. Cost Assumptions for SCR

One commenter has argued that the costs for installation of SCR are 50 percent greater than EPA's estimate and that SCR does not achieve NO_X removal greater than 83 percent. The commenter did not provide the basis for its estimates.

The EPA maintains that SCR systems are achieving 90 percent or greater NO_X removal in applications demonstrated worldwide. The SCR is a proven technology used to significantly reduce NO_X emissions from more than 300 sources in the U.S., and more than 500 sources worldwide. By proper catalyst selection and system design, NO_X removal efficiencies exceeding 90 percent can be achieved. In practice, commercial SCR systems often meet control targets of over 90 percent. For further discussion see White Paper—Selective Catalytic Reduction (SCR) for Controlling NO_X Emissions, ICAC, 1997.

The SCR control assumptions used by EPA are supported by actual SCR applications. The Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA) prepared a comprehensive report on the status of technologies to reduce emissions of NO_X from electric utility boilers. The report relied on real-world cost and operating experience from actual installations of advanced NO_X control technologies (including SCR) at fourteen U.S. facilities involving 52 coal and gas/oil-fired boilers. The report results demonstrate that available technologies can achieve significant NO_X emissions reductions both cost effectively and reliably. The report states that NO_X emission rates of 0.15 and as low as 0.08 lb/mmBtu were achieved at a cost of $400 to about $1500/ton. (See Status Report on NO_X Control Technologies and Cost Effectiveness for Utility Boilers, Staudt, James E., NESCAUM/MARAMA Report, June 1988.) Note that capital costs reported are comparable to EPA capital costs which were given at $50–70/kW (in 1997 dollars). (See Analyzing Electric Power Generation Under the CAAA, EPA, March 1998.)

The EPA used the information available from the existing retrofit at Merrimack Unit 2 to corroborate its costing methodology. For this 330 MW cyclone-fired installation, designed for a 65 percent NO_X removal efficiency, the total capital cost was reported to be $55/kW and cost effectiveness was $400/ton of NO_X removed (see NESCAUM/MARAMA Report, June 1988). This cost included the addition of a significant amount of additional ductwork and support steel required for this retrofit because of unusual space limitations. The baseline NO_X emission rate for this unit was also unusually high (2.66 lb/mmBtu), thus requiring a relatively large and expensive ammonia handling system. The capital cost estimate for the Merrimack Unit 2 retrofit using EPA's cost model was $68.53/kW, which was over 20 percent higher than the $55/kW actual cost reported. Thus, this comparison confirms the conservatism of the EPA's cost methodology and contingencies built into it.

2. Technology Deployment

Commenters maintained that EPA has overestimated the amount of SCNR that will be installed as a result of the section 126 action. First, commenters argued that SNCR NO_X removal is between 15 and 35 percent, as opposed to EPA's estimate of 40 percent. Second, commenters disagreed with EPA's assertion that there are no limits to the unit capacity for commercial application of SNCR. Commenters maintained that SNCR is limited to units with capacities no higher than 325 MW.

The EPA maintains that SNCR NO_X reduction of 40 percent is attainable and represents the mid-range efficiency achieved in current utility boiler applications. The SNCR has been commercially used on electric utility boilers to achieve in excess of 60 percent NO_X reduction while maintaining ammonia slip below 10 ppm. (See NESCAUM and MARAMA, June 1998, Attachment C, p. 42.) Although this performance may not be possible for every boiler, careful assessment of factors impacting boiler performance (such as initial NO_X level, furnace temperature, flue gas flow and NO_X distribution profiles at various operating load conditions, and access for injection of reagent) can result in increased NO_X reduction efficiency and reduced ammonia slip from SNCR systems. Reported literature indicates that SNCR control efficiency on the installed utility boilers ranges predominantly from 30 to 60 percent. (See White Paper—Selective Non-Catalytic Reduction (SNCR) for Controlling NO_X Emissions, ICAC, 1997, p. 18.) Based on the demonstrated experience in the electric utility and other industry, EPA has suggested use of SNCR as a cost-effective option to achieve desired emissions reductions. The EPA does not require use of SNCR and acknowledges that some of the affected facilities may choose to install SCR instead of SNCR and reduce emissions over and above what is required by the NO_X SIP call, as part of their compliance and economic strategies.

The EPA also maintains that there are no limits to the unit capacity for commercial application of SNCR. The size of the boiler does not limit the ability to inject SNCR reagent into the combustion gas flow to achieve NO_X reductions, as demonstrated by applications worldwide. The SNCR is a fully commercial NO_X reduction technology, with application of ammonia and urea-based processes at approximately 300 installations worldwide, ranging up to 822 MW in size and covering a wide array of stationary combustion units firing a variety of fuels. (See White Paper—Selective Non-Catalytic Reduction (SNCR) for Controlling NO_X Emissions, ICAC, 1997, pp. 17–26.) Industrial boilers, process units, and municipal combustors make up the largest share of commercial SNCR installations in the U.S. This distribution appears to be a result of NO_X control regulations in place rather than SNCR's technical limitations. In the U.S., the largest urea-based SNCR has been commercially applied to a 320 MWe pulverized coal-fueled, wall-fired electric utility boiler. However, there are various commercial urea-based SNCR contracts in place for larger units (e.g., one unit is as large as 620 MWe). (See NESCAUM/MARAMA Report, June 1998, Attachment C, p. 44.) Additionally, literature shows that one technology vendor has conducted a computer simulation of SNCR application on some large size boilers and is extending commercial performance guarantees for the same. (See CFD Modeling of Urea-Based SNCR and Hybrid Performance on Large Utility Boilers, Comparato, J.; Boyle, J.; and Michaels, W., ICAC Forum 1998, pp. 1–8.) Based on this information, it is reasonable to conclude that commercially available SNCR technology can be applied to large boilers, and therefore, costs for utility NO_X reductions have not been underestimated.

To further address concerns on the potential size limitations for SNCR raised by the commenters, EPA conducted a sensitivity analysis using the IPM as part of the final NO_X SIP call. In this analysis, SNCR was applied to boilers 200 MWe or smaller only. This is a conservative assumption considering application of SNCR on a boiler as large as 320 MW has already been demonstrated. Additionally, it was assumed that SNCR NO_X reduction efficiency would be 35 percent for sources which emit NO_X (prior to the

application of SNCR) at levels of equal to or more than 0.5 lb/mmBtu. The SNCR efficiency was assumed to be limited to 30 percent for sources which emit NO_X (prior to the application of SNCR) at levels less than 0.5 lb/mmBtu (i.e., low-emitting sources).

Results of the IPM sensitivity simulation, showed less of SNCR and more of SCR is needed to achieve the required NO_X budget contributions. Specifically, there is a decrease of 33.3 gigawatts (GW) of SNCR on coal-fired units and an increase of 24.7 GW of SCR installation on coal-fired units. Cost of compliance for EGUs under the sensitivity scenario are estimated to be about $1746 (1990 dollars) per ton of NO_X removed in 2007. Thus, even with reduced use and effectiveness of SNCR, it is highly cost effective for EGUs to comply with the section 126 requirements.

In addition to the cost of compliance, EPA examined the feasibility of implementing the retrofits by September 2002 for the sensitivity scenario. The IPM projections revealed that, in general, one to three SCR or SNCR installations per plant would be expected. However, at one plant a maximum of six SCR systems may be required. Based on these projections and EPA's analysis of control technology retrofitting schedules, it is reasonable to conclude that all of the necessary engineering and air permitting activities can be accomplished by September 2002.

Based on the above discussion, limiting SNCR applicability and NO_X control efficiency would not affect the feasibility of implementing the controls by May 2003. Moreover, compliance with the section 126 requirements would still be cost effective.

3. Catalyst Supply

One commenter has argued that EPA's estimates on the availability of SCR catalyst are flawed because the Agency is underestimating the number of EGUs that will be employing SCR technology.

The EPA has determined that ample supply of catalyst exists. One major catalyst vendor has recently announced its plans to build a new catalyst manufacturing plant by mid-year 2000, thus increasing the current supply of available catalyst. In addition, a study of catalyst availability during the NO_X SIP call had concluded that adequate capacity of SCR catalyst supply is believed to be available to satisfy the demand that may result from the projected SCR installations. (See Feasibility of Installing NO_X Control Technologies by May 2003, EPA, September 1998.) In addition, as discussed above, EPA conducted a sensitivity analysis limiting SNCR applicability and assuming a lower SNCR NO_X reduction efficiency. Even with the increase in projected SCR capacity under the sensitivity scenario, the excess capacity in catalyst supply would be sufficient to meet the demand over an implementation period of less than 3 years. Given the findings of the sensitivity analysis and the plans for building an additional catalyst plant, EPA infers there will be sufficient catalyst supply for increased SCR installations.

4. Outage Periods

One commenter has submitted information reflecting that SCR retrofits expected to result from the final rule could be placed in three categories: cases with modest retrofit difficulty, cases with intermediate retrofit difficulty, and cases with challenging retrofit difficulty. The commenter suggested that a modestly difficult retrofit will require about 4–6 weeks of outage for completing SCR installation; a retrofit with intermediate difficulty will need 8–12 weeks; and a challenging retrofit will need more than 14 weeks of outage.

The EPA has examined the information submitted by the commenter and determined that this information is unsupported and speculative. The commenter asserts that the length of the outage periods to install SCR will vary, depending upon the size of the affected units and the degree of access. According to the commenter, small units with reasonable access will be modestly difficult retrofits. The commenter fails to show a logical connection between the size of a unit and the degree of retrofit difficulty in the case of an SCR installation, where the emission controls are in a separate structure adjacent to the unit itself. In EPA's view, a large unit with relatively unconstrained plant layout may be easier to retrofit compared to a small unit with a relatively constrained layout.

The commenter provides an example of a hypothetical ''intermediate retrofit difficulty case'' in which access to the unit is constrained. In this example, the commenter lists the activities to be completed and the volume of material needed but does not provide any data relating these activities to the time needed to complete them. In the absence of this data, the commenter's claimed outage period for the example is unsupported. However, EPA notes that in any construction project (such as SCR retrofit), multiple activities can be conducted concurrently and, if needed, more personnel can be deployed to expedite the project. Therefore, even assuming, for the sake of argument, the commenter's categorization of retrofit difficulty has some merit, the relationship of this categorization to outage requirement is unsupported. The commenter's assertion that the vast majority of SCR retrofits will be of intermediate retrofit difficulty also is unsupported.

The EPA also notes that a large utility in Germany, which also supplies SCR systems, completed each of its SCR retrofits in about 4 weeks. This utility also has informed EPA that SCR retrofit-related work can be spread over two or three outages. (See Feasibility of Installing NO_X Control Technologies By May 2003, September 1998.) By spreading retrofit work over a few outages, if necessary, plants would be able to avoid causing any impacts on the reliability of electricity supply.

The EPA used IPM to look into the sensitivity of a number of the model's assumptions, as discussed in Feasibility of Installing NO_X Control Technologies by May 2003. One of the sensitivity runs considered the installation of 63 GW in 1 year and an increase of the planned outage period to 9 weeks. This run can also be considered a representation of the installation of 189 GW of SCR at coal-fired units over a 3-year period (more than the commenter assumes will occur) with 9 weeks of planned outages each year (10 percent less than what the commenter assumes will occur on average). In this sensitivity scenario, increasing the amount of planned outage did not threaten the stability of the power supply (deduced from the fact that no new units were built in IPM simulations). What does occur is some shifting of power between regions in and around the SIP call region, decisions for later existing unit retirement, and increased use of gas-fired units and an overall result of some increased cost of electricity production, but no conditions that would necessitate a blackout. The total costs over 3 years amount to a small increase of about 1.3 percent in overall costs. The increase in costs were found to be related to the need to substitute available, idle power plants for those units taken off line, which are more expensive to run.

L. Air Quality Assessment

In the proposal, EPA relied on air quality modeling in the final NO_X SIP call to evaluate the ozone benefits in the petitioning States of NO_X controls proposed in today's action. That modeling was performed for the 23 jurisdictions covered in the NO_X SIP call to confirm that those States

collectively contribute significantly to downwind nonattainment. The collective contribution of all the upwind States is one factor that went into EPA's decision that each individual upwind State contributes significantly to downwind nonattainment. The results of this modeling indicate that the NO_X controls applied to the sources in the upwind States which make a significant contribution to nonattainment in one or more of the petitioning States will provide substantial ozone benefits in each of the petitioning States. As discussed below, the EPA continues to believe that the results of that modeling analysis are valid for the purpose of today's rulemaking, as well.

The modeling cited at proposal was based on UAM–V model runs for a 2007 Base Case and a control scenario designed to evaluate the effects of NO_X controls very similar to those in today's rulemaking on nonattainment in downwind States, including each of the petitioning States. The details of this modeling are described in the final NO_X SIP call rulemaking. Several commenters stated that this modeling does not isolate the effects on ozone in the petitioning States of controls applied outside the Northeast. As part of the NO_X SIP call rulemaking, EPA performed model runs which provide the type of assessment similar to that requested by the commenters. This modeling included a comparison of two control scenarios. One scenario is identified above as having NO_X controls applied across all 23 jurisdictions. The other scenario included the application of these same NO_X controls in the Northeast only. The difference in ozone predictions between these two scenarios shows the effects in the Northeast of NO_X controls applied outside this region. A full description of this modeling and the metrics used to evaluate the results are described in the final NO_X SIP call rulemaking.

The results indicate that controls similar to those in today's rulemaking will produce large reductions in ozone concentrations in the petitioning States. For example, the number of modeled exceedences of the 1-hour NAAQS that are reduced by upwind controls include a 16 percent reduction in New York City, a 38 percent reduction in Philadelphia, and 43 percent reduction in western Massachusetts. Also, for the 8-hour NAAQS, the number of exceedences reduced by upwind controls is 7 percent in New York, 10 percent in Massachusetts, and 32 percent in Pennsylvania. Thus, the results of this modeling indicate that the proposed NO_X controls applied to the sources in the upwind States proposed as making a significant contribution to nonattainment in one or more of the petitioning States will provide substantial ozone benefits downwind in the petitioning States.

The EPA recognizes that the amount of emissions reduction in the modeled strategy is not identical to the amount of emissions reduction in today's rulemaking. There are three additional upwind States (i.e., Georgia, South Carolina, and Wisconsin) which are controlled in the modeled strategy that are not covered by today's rulemaking. The difference in the total NO_X emission reductions for the 20 jurisdictions covered by today's rule between what was assumed in the 23 jurisdiction modeling is 11 percent. These three States were covered in the NO_X SIP call because of their contributions to States other than the petitioning States. Since EPA believes that emissions from sources in these States do not contribute significantly to nonattainment in any of the petitioning States, it is reasonable to assume that emissions reductions in these States will not have any appreciable impact on nonattainment in any of the petitioning States.

III. EPA's Final Action on Granting or Denying the Petitions

The EPA is taking final action on the section 126 petitions based on the outcome of the multi-step process described in the preceding section. The EPA's action consists of three components: (1) Technical determinations of whether upwind sources or source categories named in each of the petitions significantly contribute to nonattainment (of the 1-hour or 8-hour standard) or interfere with maintenance (of the 8-hour standard) in the relevant petitioning State; (2) for those sources or source categories for which EPA is making an affirmative technical determination, action specifying when a finding that those sources emit or would emit in violation of the section 110(a)(2)(D)(i)(I) prohibition will be deemed made or not made (or made but subsequently withdrawn) if certain events occur for purposes of section 126(b); and (3) the specific emissions-reduction requirements that will apply when such a finding is deemed made. Each of these actions is described below. Under this final action, new and existing large EGUs and large non-EGUs in 19 upwind States and the District of Columbia are potentially subject to a future section 126(b) finding and therefore to the requirements set forth in this final rule.

A. Technical Determinations

First, EPA is making final affirmative technical determinations as to which of the new (or modified [31]) or existing major sources or groups of stationary sources named in each petition emit or would emit NO_X in amounts that contribute significantly to nonattainment of the 1-hour or 8-hour standard in (or interfere with maintenance of the 8-hour standard by) each petitioning State. The regulatory text of today's rule sets forth each of the affirmative technical determinations for sources named in each petition.

In short, for each petition, with respect to each ozone standard (as specifically requested in the petition), EPA is making affirmative technical determinations of significant contribution (or interference) for those large EGU and large non-EGU sources for which highly cost-effective controls are available (as described in Section II.J.), to the extent those sources are located in one of the ''Named Upwind States'' corresponding to that petition in Tables II–1 and II–2. Thus, to illustrate, for the petition from New York, EPA is making an affirmative technical determination that large EGUs and large non-EGUs that are located or would be located in the named portions of Delaware, the District of Columbia, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia emit, or would emit, NO_X in amounts that contribute significantly to nonattainment of the 1-hour standard in the State of New York. (By contrast, EPA is determining that such sources located in Tennessee, which New York also named in its petition, do not emit NO_X in amounts that significantly contribute to nonattainment problems in the State of New York.) The result is that EPA is determining that the large EGUs and large non-EGUs in at least some upwind States named in every petition except Vermont's and Rhode Island's contribute significantly to nonattainment of at least one of the standards (or interfere with maintenance of the 8-hour standard) in the petitioning State. The EPA refers the reader to the regulatory text for a full description of the final affirmative technical determinations for each petition.

The EPA notes that the Agency is not making final affirmative technical determinations as to any sources located in Arkansas, Iowa, Louisiana, Maine, Minnesota, Mississippi, New

[31] Whenever the word ''new'' is used in relation to sources affected by this rule, it includes both new and modified sources.

Hampshire, and Vermont. For the States of Maine, New Hampshire, and Vermont EPA has not completed sufficient modeling and other assessments to enable the Agency to conclude that sources in any of those States contribute significantly to nonattainment (or interfere with maintenance) of an ozone standard in any downwind petitioning State.[32] In the final NO_X SIP call, EPA stated that it planned to conduct State-by-State modeling for these and certain other States for which EPA does not currently have adequate information. The EPA indicated it intended to begin the modeling in the fall of 1998. However, in letters dated March 10, 1999, EPA notified these States that, given the Agency's current resource contraints, it would not be able to conduct the additional air quality modeling at this time. Accordingly, for the present, EPA is denying, on the grounds of inadequate information, the portions of the petitions from Maine, New Hampshire, and Pennsylvania that request a finding of significant contribution with regard to sources located in any of these three States.

The EPA is also not making any affirmative technical determinations regarding sources located in Georgia, South Carolina, Wisconsin, Minnesota, Mississippi, Louisiana, Arkansas, and Iowa. For these States, EPA has sufficient modeling results (and other technical assessments) to enable it to conclude that these States do not significantly contribute to downwind nonattainment or maintenance problems in any of the petitioning States.[33]

Although, EPA does not believe that sources in Georgia, South Carolina, and Wisconsin are significantly contributing to nonattainment problems in any of the petitioning States, EPA notes that it has determined in the NOx SIP call rule that sources in these States are significantly contributing to other States in the eastern half of the nation.

B. Action on Whether To Grant or Deny Each Petition

1. Portions of Petitions for Which EPA Is Making an Affirmative Technical Determination

For the reasons described in Section II.E., EPA is issuing the alternative type of final action provided for in the consent decree. Under that alternative approach, for sources for which EPA is today making an affirmative technical determination of significant contribution, the section 126(b) finding that certain sources emit or would emit in violation of the prohibition in section 110(a)(2)(D)(i)(I) will be deemed made as of certain specified dates if certain events do not occur by those dates. More specifically, a finding that new or existing sources, for which EPA has made an affirmative technical determination, do emit in violation of section 110(a)(2)(D)(i)(I) will be deemed made:

- As of November 30, 1999, if by such date EPA does not issue either a proposed approval, under section 110(k) of the CAA, of a SIP revision submitted by such State to comply with the requirements of the NO_X SIP call; or a final FIP meeting such requirements for such State in which the affected sources are or will be located,
- As of May 1, 2000, if by November 30, 1999, EPA proposes to approve the SIP revision described above for such State, but, by May 1, 2000, EPA does not fully approve the SIP revision or promulgate a FIP meeting the requirements of the NO_x SIP call for such State.

The EPA also is determining that any such finding as to any such major source or group of stationary sources would be considered a finding under section 126(b) and, therefore, would trigger the remedial requirements of this final rule. At such time as a finding is deemed made, EPA intends to publish a notice in the **Federal Register** announcing the source categories and locations affected by the finding.

Furthermore, any portion of a petition for which EPA is making an affirmative technical determination (as described above) shall be deemed denied as of May 1, 2000, if a section 126(b) finding has not been deemed to have been made by that date. In other words, if EPA has taken final action putting into place a SIP or FIP meeting the requirements of the NO_X SIP call, any outstanding portions of petitions will be deemed denied as of the date of approval of the SIP or promulgation of the FIP. In addition, after a section 126(b) finding has been deemed made as to sources or groups of stationary sources in an upwind State, that finding will be deemed withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator either approves a SIP or promulgates a FIP which complies with the requirements of the NO_X SIP call for such upwind State. This would minimize any overlap between an effective section 126(b) finding, on one hand, and the application of satisfactory SIP or FIP provisions, on the other.

2. Portions of Petitions for Which EPA Is Not Making an Affirmative Technical Determination

Consistent with this overall approach, for the sources for which EPA is not making an affirmative technical determination, EPA is concluding that they do not or would not emit in violation of the section 110(a)(2)(D)(i)(I) prohibition. As a result, EPA is denying each aspect of each petition relating to such sources. Table I–1 shows which States and sources were named in each petition. The EPA is not making affirmative technical determinations for all sources named in the petitions that are located in States not linked to the petitioning State as shown in Tables II-I and II–2. In addition, EPA is not making affirmative technical determinations for sources for which EPA has determined highly cost effective control measures are not available (see Section II.J.) For example, EPA is denying New York's petition as to sources in any State (or portion of a State) named in New York's petition that are outside the large EGU and large non-EGU categories described in Section II.J., as well as any named sources of any type in Tennessee. Another example is that EPA is today denying the petitions from Rhode Island and Vermont in their entirety because

[32] Maine's petition named sources in Vermont and New Hamsphire; New Hampshire's petition named sources in Maine, Vermont, and Iowa; and Pennsylvania's petition named sources in Arkansas, Iowa, Louisiana, Minnesota, and Mississippi.

[33] As part of EPA's evaluation of contributions, two screening criteria were used to identify those linkages that were definitely not significant (i.e., a 4-episode average contribution <1 percent or a maximum contribution <2ppb). A linkage is considered insignificant if at least one of the two screening criteria is not met. The results of the CAM_x modeling are described in the Air Quality Modeling Technical Support Document for the NO_x SIP Call. The CAM_x modeling indicates that the 1-hour and 8-hour contributions from Iowa to both New Hampshire and Pennsylvania are below the 1 percent screening criteria for the 4-episode average contribution metric. Also, the CAM_x modeling for Louisiana and Mississippi and the multi-state group containing Arkansas and Minnesota indicates that contributions from these States to 1-hour nonattainment in Pennsylvania are below the 1 percent screening criteria. Given that EPA's significant contribution test requires that an upwind area be determined to significantly contribute based on both the CAM_x and UAM–V models, the fact that these States do not significantly contribute based on CAM_x modeling means that they could not be found to significantly contribute even if they are found to be significant under the UAM–V modeling. Thus, even though EPA has not conducted State-specific UAM–V zero-out modeling for each of these States, the 1-hour and 8-hour linkages from Iowa to New Hampshire and Pennsylvania and the 1-hour linkages from Arkansas, Louisiana, Minnesota, and Mississippi to Pennsylvania are not significant because these linkages do not pass the screening criteria for the CAM_x 4-episode average contribution metric. Note that the contributions from Louisiana, Mississippi, and the multi-state grouping containing Arkansas and Minnesota to 8-hour nonattainment in Pennsylvania exceed the screening criteria. Thus, we are not making affirmative technical findings on these States under the 8-hour standard because, without the State-by-State UAM–V zero-out modeling, EPA does not have sufficient information to determine whether they contribute significantly to Pennsylvania.

EPA has determined that none of the sources named in these petitions is significantly contributing to nonattainment or maintenance problems with respect to the ozone standard(s) for which relief is requested in the petitions.

C. Requirements for Sources for Which EPA Makes a Section 126(b) Finding

The control requirements that would apply to any new or existing major source or group of stationary sources for which a section 126(b) finding is ultimately made are discussed in Section IV below.

Section 126(c) states, in relevant part, that:

> it shall be a violation of this section and the applicable implementation plan in such State
>
> (1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of section 110(a)(2)(D)([i]) or this section or
>
> (2) for any major existing source to operate more than three months after such finding has been made with respect to it.
>
> The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such 3-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 110(a)(2)(D)([i]) as expeditiously as practicable, but in no case later than 3 years after the date of such finding.

The remedial requirements that EPA is finalizing in today's action for sources for which a section 126(b) finding is ultimately made would satisfy the requirements just quoted. First, EPA is requiring that sources for which a section 126(b) finding is ultimately made must comply with the requirements described in Section IV to ensure that they do not emit in violation of the section 110(a)(2)(D)(i) prohibition. Second, the program EPA is finalizing serves as the alternative set of requirements that the Administrator may apply for the purpose of allowing existing sources subject to a section 126(b) finding to operate for more than 3 months after the finding is made. Consistent with section 126(c), the compliance period in EPA's program extends no further than 3 years from the making of the finding. To the extent a finding is deemed made as of November 30, 1999, compliance will be required by November 30, 2002. But since the program EPA is establishing would require actual emissions reductions only in the ozone season (defined for purposes of this rule as May 1–September 30, inclusive), actual reductions will not need to occur until May 1, 2003, the start of the first ozone season after the November 30, 2002, compliance date. Thus, compliance by November 30, 2002 would not require actual reductions until May 1, 2003. A finding deemed made as of May 1, 2000 would also yield a May 1, 2003 compliance date. As described in Section V.A.1 of the final NO_X SIP call and its Response to Comment document and in Section II.K above, EPA believes that compliance by the ozone season beginning May 1, 2003 is feasible.

IV. Section 126 Control Remedy

In the NPR (63 FR at 56309–56320), EPA proposed to implement a market-based cap-and-trade system to bring sources covered by any final section 126(b) finding into compliance. The Federal NO_X Budget Trading Program was proposed as a new part 97 in title 40 of the Code of Federal Regulations. The EPA proposed that the Federal NO_X Budget Trading Program would be triggered automatically if EPA makes a final finding of significant contribution as to any sources under section 126(b). Participation in the program would be mandatory for all sources affected by such a finding. As explained in Section IV.C of this preamble, today's rule includes the general parameters of the Federal NO_X Budget Trading Program remedy in paragraph (j) of § 52.34. The EPA will issue the remaining elements of the Federal NO_X Budget Trading Program by July 15, 1999. Today's rule also includes paragraph (k) of § 52.34, which delineates the interim final emission limitations that will be imposed in the event the Administrator fails to promulgate (i.e., sign and release to the public) the Federal NO_X Budget Trading Program regulations before a finding under section 126 is made. Section IV.D of this preamble describes these default emission limitations.

A. Appropriateness of Trading as a Section 126 Remedy

A market-based cap-and-trade program is a proven method for achieving the highly cost-effective emissions reductions described in section II.J., while providing sources compliance flexibility. As explained in the NO_X SIP call SNPR (63 FR at 25918–25919), the Ozone Transport Assessment Group (OTAG) identified five advantages of market-based systems: (1) Reduced cost of compliance, (2) creation of incentives for early reductions, (3) creation of incentives for emissions reductions beyond those required by regulations, (4) promotion of innovation, and (5) increased flexibility without resorting to waivers, exemptions, and other forms of administrative relief (OTAG 1997 Executive Report, pg. 57).

The Agency received wide support for using the Federal NO_X Budget Trading Program as the section 126 remedy. Several commenters cited lower compliance costs as a reason for supporting a cap-and-trade program and generally stated that the section 126 petitions would be satisfied if the sources named in the petitions were included in the trading program. One commenter claimed that pursuant to section 126, EPA has the clear authority to develop, impose, and implement the emissions caps associated with the trading program. Others claimed, however, that trading is not an appropriate section 126 remedy. One commenter questioned EPA's authority to use trading as the section 126 remedy because a section 126 finding requires reductions from specific sources for which a finding of significant contribution is made. That commenter pointed out that trading allows reductions to occur where they are most cost effective without regard to air quality benefits or impacts.

The EPA agrees with the majority of commenters that expressed support for the Federal trading program. The EPA agrees with the assertion that participation in the Federal NO_X Budget Trading Program is the most cost-effective method for achieving the reductions required if EPA makes a finding with regard to the section 126 petitions. The EPA rejects the comment that EPA lacks the authority under section 126 to implement a trading program. The EPA finds that it has authority under section 126 to require sources or groups of sources for which a section 126(b) finding is made to comply with a cap-and-trade program. Section 126(c) provides that such sources or groups of sources may continue to operate if they comply ''with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance'' with section 110(a)(2)(D). Under section 302, an ''emission limitation'' is a ''requirement * * * which limits the quantity, rate, or concentration of emission of air pollutants on a continuous basis.'' This term is broad enough to include the limiting of sources' emissions through a cap-and-trade program. In fact, title IV of the Clean Air Act expressly refers to the

allowance requirements of the Acid Rain SO_2 cap-and-trade program as ''emission limitations.'' See e.g., 42 U.S.C. 7651c(a).

Under a cap-and-trade program, the Administrator sets an emission limitation and compliance schedule for all units subject to the program. The emission limitation for each unit is the requirement that the quantity of the unit's emissions during a specified period (here, the tonnage of NO_X emissions during the ozone season) cannot exceed the amount authorized by the allowances that the unit holds. Allowances are allocated to units subject to the program, and the total number of allowances allocated to all such units for each control period is fixed or capped at a specified level. The compliance schedule is set by establishing a deadline (here, May 1, 2003 as explained in Section III.C of this preamble) by which units must begin to comply with the requirement to hold allowances sufficient to cover emissions. In summary, since EPA has the authority to establish emission limits and compliance schedules under section 126, and allowance requirements include both emission limits and a compliance schedule, EPA has the authority to promulgate allowance requirements and allocate allowances for purposes of section 126.

The Federal NO_X Budget Trading Program required in response to a section 126 finding will achieve the intended emissions reductions while providing flexibility and cost savings to the covered sources. The significant reductions incorporated into the cap, or budget, under which the Federal trading program would operate help ensure that the remedy would sufficiently mitigate the transport of ozone as required by any remedy under section 126. This budget represents the sum of NO_X allowances allocated each year to affected sources in States covered by any final section 126 findings, calculated as explained in Section IV.C.1.b of this preamble. (For purposes of the section 126 remedy, this budget is not aggregated to a State level for any purpose other than for the calculation of allowances available for allocation to affected sources. Since the focus in the remedy is sources rather than States, there are no programmatic requirements associated with this budget at the State level.) For commenters concerned about the appropriateness of trading, EPA emphasizes that the trading program has been designed to mitigate the transport of ozone and its precursors to facilitate attainment and maintenance of the ozone NAAQS. The program was proposed based on recommendations from OTAG, experience from the OTC, and the NO_X SIP call rulemaking process. Additionally, four of the petitioning States requested that a cap-and-trade program serve as the section 126 remedy.

The analyses performed in conjunction with the NO_X SIP call demonstrate that no significant changes in the location of emissions reductions will result from implementation of an unrestricted trading program with a uniform control level, as compared to a traditional command-and-control scenario (''Supplemental Ozone Transport Rulemaking Regulatory Analysis'', April 1998, pp. 2–19). The trading program will therefore allow named sources to retain some flexibility in meeting the emission limitations, but also will ensure that the necessary NO_X reductions are achieved to mitigate the transport of ozone.

B. Relationship of the Section 126 Remedy to the NO_X SIP Call and the Proposed FIP

In the section 126 NPR (63 FR at 56309), the EPA proposed to establish a common trading program among sources subject to a trading program under the NO_X SIP call, a section 126 remedy or a FIP. This common trading program could include all sources in States found to be significantly contributing to nonattainment or interfering with maintenance of the ozone standard in another State. Sources subject to the Federal NO_X Budget Trading Program under the section 126 rulemaking or the FIP, and sources in States choosing to participate in the State NO_X Budget Trading Program under the SIP call, could trade with one another across participating States under a NO_X cap equivalent to the sum of the NO_X emissions allocated to sources in participating States.

The commenters almost uniformly supported integrating the trading programs under the NO_X SIP call, section 126 rulemaking, and the FIP. One commenter stated that aligning the program requirements could lessen unnecessary compliance costs, promote greater certainty in compliance planning, and reduce the potential administrative burdens on both the regulatory and regulated communities. Most commenters cited that all three programs address the same transport problem and integrating them would achieve the environmental objective at least cost and with more flexibility for the affected sources. One commenter did not believe a trading program was an appropriate remedy for the section 126 petitions (addressed in section IV.A.), and therefore, the section 126 remedy should not be integrated with the NO_X SIP call and the FIP trading programs.

As stated in the section 126 NPR, all three rulemaking actions (the NO_X SIP call, the FIP, and the section 126 rulemaking) are aimed at reducing transport of ozone by controlling emissions from sources in a given State that are found to be contributing significantly to nonattainment or interfering with maintenance in another State. The EPA agrees with commenters that, because all three programs were intended to achieve the same environmental objective, it would be possible to integrate the programs and maintain the integrity of this environmental objective.

In order to be eligible to participate in a cap-and-trade program, the EPA believes that there are certain criteria that sources must meet (e.g., they must accurately and consistently account for all of their emissions). See Section 126 NPR, 63 FR at 56310. Because the sources in States that choose to participate in the cap-and-trade program outlined in the final NO_X SIP call (40 CFR part 96) will meet these criteria, the sources subject to this section 126 action will meet these criteria, and the sources in States that would be subject to the proposed FIP (with the exception of cement kilns and IC engines, which are not included in the trading program) will meet these criteria, EPA supports the establishment of a common trading program. Therefore, EPA has determined that sources subject to the Federal NO_X Budget Trading Program under section 126 or the proposed FIP, and sources in States choosing to participate in the State NO_X Budget Trading Program under the NO_X SIP call, could trade with one another under a NO_X cap across participating States equivalent to the sum of the NO_X caps of the individual States. In addition, in rejecting concerns about the appropriateness of one common trading program as a remedy, EPA relies on the analyses performed in conjunction with the NO_X SIP call, which demonstrated that implementation of a single trading program with a uniform control level results in no significant changes in the location of emissions reductions as compared to a non-trading scenario (''Supplemental Ozone Transport Rulemaking Regulatory Analysis,'' April 1998, pp. 2–19).

C. Federal NO_X Budget Trading Program

Under the terms of the consent decree with petitioning states, EPA must take final action on a remedy under section 126 by April 30, 1999. In accordance with that requirement, EPA is

promulgating the general parameters of the remedy in paragraph (j) of § 52.34. The general parameters of the remedy promulgated today include the decision to employ a cap-and-trade program as the aggregate remedy, identification of the categories of sources subject to the trading program, specification of the basic emission limitation for the covered source categories, specification of the total emissions reductions to be achieved by the trading program, and the compliance date. Since EPA is not promulgating in today's rule the unit-specific allocations or 40 CFR part 97 rule provisions providing the details of the trading program for the section 126 remedy (as explained in Section IV.C.2), today's final rule specifies that EPA will issue these elements of the Federal NO_X Budget Trading Program by July 15, 1999. The EPA is committed to acting quickly in promulgating the remaining elements of the Federal NO_X Budget Trading Program. The EPA has therefore specified the date in § 52.34 by which those elements will be promulgated, and has delineated in paragraph (k) of § 52.34 the interim final emission limitations that will be imposed in the event the remaining elements of the Federal NO_X Budget Trading Program are not promulgated, as explained in Section IV.D of this preamble.

1. Elements of the Section 126 Remedy Promulgated With Today's Rulemaking

The intent of EPA's action today is to prescribe the general parameters of the section 126 remedy and postpone the details of the Federal NO_X Budget Trading Program until July 1999. Today's rule includes part 52, which establishes the general parameters of the Federal NO_X Budget Trading Program as well as the default emission limitations should EPA fail to promulgate the details of the trading program and allocation provisions. Specifically, the regulatory language finalized today specifies the following elements, listed here and explained in further detail in Sections IV.C.1.a and IV.D.1, below:

- All large EGUs and large non-EGUs for which EPA makes a final finding under section 126(b) will be covered by and subject to the Federal NO_X Budget Trading Program.
- Beginning May 1, 2003, the owner or operator of each source subject to the Federal NO_X Budget Trading Program must hold total NO_X allowances available to that source in the ozone season that are not less than the total NO_X emissions emitted by the source during that ozone season.
- The total tons of NO_X allowances allocated under the trading program (other than any compliance supplement pool credits) will be equivalent to the sum of two tonnage limits:

(A) The total tons of NO_X that large EGUs in the program would emit in an ozone season after achieving a 0.15 lb/mmBtu NO_X emissions rate, assuming historic ozone season heat input adjusted for growth to the year 2007; plus

(B) The total tons of NO_X that large non-EGUs in the program would emit in an ozone season after achieving a 60 percent reduction in ozone season NO_X emissions compared to uncontrolled levels adjusted for growth to the year 2007.

- If EPA makes a final finding under section 126(b) for any large EGUs and large non-EGUs and fails to promulgate the trading program regulations, owners or operators shall control emissions from such units so that each unit does not emit NO_X emissions in excess of the unit's allocated NO_X allowances. Moreover, NO_X allowances will be allocated to large EGUs and large non-EGUs according to the methodology originally set forth in the proposed part 97.
- Compliance supplement pool credits may be available for distribution to affected sources, subject to specific State-by-State tonnage limits as established in the SIP call.

a. Compliance Schedule and Emission Limitation

Section 52.34(j)(1) in today's final rule serves to establish a compliance schedule, i.e., the May 1, 2003 start date for the control program, as well as the general emission limitations for the large EGUs and large non-EGUs covered by any final section 126 remedy (see section II.I of this preamble for EGU and non-EGU definitions). Although section 126 findings are made for sources or source categories (as required by section 126), the section 126 remedy described in today's final rule applies at the unit level rather than the source level. This reflects the fact that many sources have multiple emission units and already report emissions at the unit level.

Section 52.34(j)(1) requires the owners or operators of each such unit to hold total ''NO_X allowances available'' for the ozone season not less than the unit's NO_X emissions during that ozone season. The NO_X allowances—each allowance representing a limited authorization to emit one ton of NO_X—would be the currency used in the Federal NO_X Budget Trading Program. The term ''available'' is intended to be sufficiently broad to include not only NO_X allowances allocated to the unit, but additional NO_X allowances which may be available through trading or banking to the extent such flexibility is incorporated into the final Federal NO_X Budget Trading Program, as well as allowances from the compliance supplement pool in the 2003 and 2004 ozone seasons to the extent they are distributed.

b. Trading Program Budget

In today's final rule, EPA describes the methodology used to determine the NO_X emissions budget, i.e., the total amount of NO_X allowances allocated to all units subject to the Federal NO_X Budget Trading Program in a State for purposes of any section 126 finding. As noted in Section IV.A of this preamble, for purposes of the section 126 remedy, this budget is not aggregated to a State level for any purpose other than for the calculation of allowances available for allocation. Section 52.34(j)(3) indicates that the total available allowances will be calculated consistently with the method used in developing the NO_X SIP call budgets in 40 CFR part 51, as described in the preamble to the final NO_X SIP call. The number of available allowances will be equal to the sum of the tonnage limits explained in the following two paragraphs. The EPA will calculate these emissions budgets following the issuance of the final revised inventory for the SIP call and this section 126 rulemaking.

For large EGUs, the total tonnage limit will be determined by applying a 0.15 lb/mmBtu emission rate to either the 1995 or 1996 heat input level (whichever is higher for a particular State) projected to the year 2007 in a manner consistent with the methodology EPA used in developing the NO_X SIP call budgets. The EPA used forecasts of future electricity generation to apply State-specific growth factors in calculating the emissions budgets for the electricity generating sector. The Agency derived these State specific growth factors from application of the Integrated Planning Model (IPM) using the 1998 Base Case (the condition of the industry in the absence of the NO_X SIP call). A complete explanation of how EPA uses IPM to determine growth factors is included in EPA's *Analyzing Electric Power Generation under the CAAA*, March 1998.

Non-EGU point source inventory data for 1995 were grown to 2007 using Bureau of Economic Analysis (BEA) historical growth estimates of industrial earnings at the State 2-digit Standard Industrial Classification (SIC) level. Where source specific SIC data were not available, associated Source Classification Code (SCC) growth rates were used. In those cases where a State or industry may have had more accurate

information than the BEA forecast (e.g., planned expansion or population rates), data were verified and validated by the affected States and by EPA, and revisions were made to the factors used for that category.

A fixed number of NO_X allowances will be allocated to units for each ozone season equal to the total amount of the aggregate emissions (as calculated above) allowed for the units in each State included in the Federal NO_X Budget Trading Program for purposes of the section 126 remedy. The specific unit allocations as well as the specific methodology will be provided with the provisions of the Federal NO_X Budget Trading Program when part 97 is promulgated by July 15, 1999. The regulatory language finalized today leaves the Agency free to adopt a method for determining individual unit allocations in a manner different from the method used to determine unit emissions in the NO_X SIP call inventory.

c. Compliance Supplement Pool

In today's final rule, EPA includes a compliance supplement pool, as delineated in § 52.34(j)(4). In the Section 126 NPR, EPA proposed that part 97 would include a compliance supplement pool consistent with the compliance supplement pool finalized with the NO_X SIP call (63 FR at 56318). The Agency had received comments in response to the proposals for the NO_X SIP call expressing concern that some sources may encounter unexpected problems installing controls by the May 1, 2003 deadline. The commenters suggested that these unexpected problems could cause unacceptable risk for a source and its associated industry. In particular, commenters expressed concern related to the electricity industry, stating that the deadline could adversely impact the reliability of electricity supply.

The EPA addressed these concerns in the SIP call by providing additional flexibility for sources to comply with requirements (see also section II.K). One element of this flexibility is the compliance supplement pool, which ensures that there are a limited number of allowances available in addition to State budgets at the start of the program. The EPA proposed to use the same compliance supplement pools on a State-by-State basis for the section 126 remedy as were included in the final NO_X SIP call.

The majority of the commenters supported inclusion of the compliance supplement pool in the Federal NO_X Budget Trading Program. These commenters asserted that the pool is necessary for sources that are unable to meet the compliance deadline and to alleviate concerns about electric supply reliability. However, three petitioning States argued that the CAA does not authorize a compliance supplement pool. These States commented that the pool effectively extends the compliance period under section 126 from 3 to 5 years. One State maintained that the compliance supplement pool compromises the relief sought by its section 126 petition and requested that the States against which its petition was directed not be permitted to rely on the pool. An additional State commenter suggested that delay of the compliance deadline was not warranted and supported this conclusion with an example of an SCR installation that only took 6 months. That State also commented that if EPA does adopt the compliance supplement pool, the portion of the compliance supplement pool allotted to States in the Ozone Transport Commission (OTC) should be apportioned to the combined OTC States rather than individual States because that would provide for less forfeiture of OTC banked allowances. Since each State could bring banked allowances under the OTC into the Federal NO_X Budget Trading Program up to the level of their compliance supplement pool, pooling allowances among OTC States would allow these States to ensure maximum incorporation of banked allowances. Another OTC State asserted that the States in the OTC are given disproportionately small compliance supplement pools as a result of the stricter controls already installed on their sources.

Consistent with the decision made for the NO_X SIP call, the Agency is including the compliance supplement pool as part of its section 126 remedy, as delineated in § 52.34(j)(4). Although the Agency agrees with the commenters who asserted that States affected by the NO_X SIP call could reasonably achieve the reductions in the time-frame specified (see section III.K of this preamble and section III.F.6 of the final NO_X SIP call preamble), EPA created the additional pool of emissions to address concerns about the compliance deadline. Those same concerns exist for sources subject to a section 126 finding and we affirm and incorporate into this rulemaking the rationales for the compliance supplement pool offered in the SIP call final rule. Therefore, EPA is including the compliance supplement pool in the Federal NO_X Budget Trading Program.

The Agency disagrees with commenters that assert that EPA lacks authority to include the compliance supplement pool and also disagrees with commenters who stated that the compliance supplement pool compromises the relief sought under section 126. The Agency disagrees with the commenters' assertions that the compliance supplement pool delays the compliance deadline beyond the 3 years required by section 126. The compliance deadline for the covered sources is 3 years from the date the finding is made (which results in a May 1, 2003 deadline, as explained in Section III.C) and the compliance supplement pool is an inherent part of the remedy and concomitant emissions reductions required to be achieved at that time, just as are the trading provisions. Thus, this rule will require compliance with the Federal NO_X Budget Trading program as the remedy within the three year timeframe contemplated by the CAA.

The section 126 remedy incorporates a reasonable degree of flexibility with these compliance supplement pool provisions, while still ensuring the necessary reductions to mitigate the transport of ozone since the level of NO_X emissions authorized through the remedy is fixed. Capping the compliance supplement pool ensures limited impact on emissions. Further, credits issued from the compliance supplement pool will not be valid for compliance past the 2004 ozone season.

The Agency disagrees with commenters who suggest that the compliance supplement pool should be distributed in a manner different from the method described in the proposal. The compliance supplement pool will be distributed, as proposed, proportionately to the level of reductions required in each State by the NO_X SIP call for those States whose sources are covered by any section 126 remedy. The final rule adopts the method in the NO_X SIP call for distributing the pool to each State because that method directly addresses the reason for the creation of the pool: to address concerns that the emission reductions required would create undue risk to the industry affected by the controls. Therefore, the Agency rejects comments asserting that the OTC States' share of the compliance supplement pool is disproportionately small and that the compliance supplement pool allowances should be aggregated across the OTC. Each State's share of these additional allowances is based on the same distribution criteria to ensure consistent treatment (in terms of the original justification of the compliance supplement pool) of sources in each State for which a section 126 finding is made. This approach will maintain

compatibility with the NO_X SIP call for the States covered by the section 126 remedy.

The July rule will specify the criteria and procedures for distributing allowances from the compliance supplement pool to sources affected by the section 126 remedy. Comments relevant to distribution of the compliance supplement pool to sources will be addressed at that time.

2. Elements of the Section 126 Remedy Not Finalized With Today's Rulemaking

After finalization of the NO_X SIP call on October 27, 1998, EPA provided a 60-day public comment period for review of the NO_X SIP call inventory and budgets, which on December 24, 1998 was extended to February 22, 1999 (see Section I.I in this preamble). Because the section 126 rulemaking relies on the same emissions inventory as the NO_X SIP call, EPA also reopened the section 126 comment period for emissions inventory comments. The EPA is completing its review of the inventory comments received and has committed to revising the final SIP call inventory and budgets after full evaluation of the comments submitted by States and sources. Following the revision of the inventory, the Agency will finalize the list of Section 126 affected sources, the Federal NO_X Budget Trading Program's allocation methodology, the unit-by-unit NO_X allowance allocations, and the compliance supplement pool distribution methodology. The Agency did not have sufficient time to properly evaluate comments related to the trading program which were dependent on consideration of the inventory revisions, or to incorporate those inventory revisions into the final trading program prior to today's action.

The Agency has decided that taking until as late as July 15, 1999 to promulgate part 97 and the source specific allocations will not affect the triggering of the remedy on November 30, 1999 or May 1, 2000 (these trigger dates are explained in Section III.B.1 and tied to the SIP submission process under the NO_X SIP call), or affect the May 1, 2003 start date for compliance with the remedy. The Agency has found that the May 1, 2003 implementation date is feasible to achieve given the dates by which a section 126 remedy could be triggered (see preamble section III.K.). Because the section 126 remedy can not be triggered until November 30, 1999 at the earliest, issuing final trading program regulations by July 15, 1999 will not affect the trigger dates and therefore will not affect implementation of the section 126 remedy.

Therefore, by July 15, 1999, the Administrator will promulgate regulations setting forth the remaining elements of the section 126 remedy. The July rulemaking will describe in detail the entire Federal NO_X Budget Trading Program, summarize and respond to comments on the proposed program provisions and unit allocations, and present the specific unit allocations that would be imposed under a section 126(b) finding. The July rulemaking will also specify the methodology for distribution of allowances from the compliance supplement pool. However, should the Administrator fail to promulgate the trading program regulations before a section 126 finding is made, the interim final emission limitations described in Section IV.D will apply.

D. Default Emission Limitations in the Absence of a Promulgated Federal NO_X Budget Trading Program

The Agency has committed to promulgating regulations setting forth the Federal NO_X Budget Trading Program by July 15, 1999, including the allocation of NO_X allowances under the program. By that date EPA will have considered the comments received on the trading program and the individual unit allocations and will be able to respond to these comments in making a final determination on allocations and other trading program provisions.

As discussed in Section I.E. of this preamble, EPA entered into a consent decree with the petitioning States that committed the Agency to developing a final section 126 remedy by April 30, 1999. As part of today's action, the Agency is promulgating on an interim basis emission limitations that will be imposed in the event a finding under section 126 is made and the Administrator does not promulgate the Federal NO_X Budget Trading Program regulations before such finding. EPA is finalizing the default emissions limitations remedy set forth in § 52.34(k) under the ''good cause'' exemption to the Administrative Procedure Act's requirements for rulemaking. See 5 U.S.C. 553(b)(B). As noted elsewhere, taking into account the comments received on the appropriate remedy is impracticable given the court-ordered deadline and the volume of comments received. The EPA does not expect the default remedy set forth in § 52.34(k) to ever be applied, for the reasons explained in this section. When EPA promulgates the details of the Federal NO_X Budget Trading Program (40 CFR part 97), § 52.34(k) will be superseded as a matter of law and EPA will take action to delete § 52.34(k) accordingly.

The EPA believes that today's action, even without any default emission limitations, meets the terms of the consent decree. However, this rule limits a unit's emissions to the amount of its allocated allowances to provide a remedy (in addition to the statutory remedy under section 126) by ensuring that unit-specific emission limitations are in place in the event that the Administrator fails to promulgate the Federal NO_X Budget Trading Program regulations and a section 126 finding is made. In that event, the amount of allowances allocated to each unit will be that unit's emission limitation in the absence of trading provisions.

As discussed in Section III.B.1. of this preamble, any section 126 remedy would not be triggered before November 30, 1999 at the earliest. Therefore, the interim remedy discussed in this section will not apply unless the remedy is triggered *and* the Administrator has not promulgated the Federal NO_X Budget Trading Program regulations. Further, as would be the case for the Federal NO_X Budget Trading Program, unit compliance with any section 126 remedy (whether it is the default emission limitations described in this section or the Federal NO_X Budget Trading Program regulations to be promulgated in July) would not be required until May 1, 2003.

The methodology presented in this action for calculating the allowance allocations mirrors the methodology for allocating allowances described in the proposed part 97 (63 FR 56315), with changes to account for incorporation of the rule language into part 52. Each of these NO_X allowance allocations will serve as a unit-specific emission limitation only if a finding under Section 126 is made and the Administrator fails to promulgate regulations setting forth the Federal NO_X Budget Trading Program before such finding. If the Administrator promulgates such regulations prior to the triggering of a section 126 remedy, the unit-specific emission limitations described in § 52.34(k) will not apply.

The EPA emphasizes that these allocations provide a default remedy under the consent decree and that EPA is committed to establishing final allocations, as well as trading program provisions, by July 15, 1999. The Agency has included these interim final limitations in order to assure the petitioning States that emission limitations will be in place should a final section 126 finding be made and the Administrator has failed to promulgate the Federal NO_X Budget

Trading Program regulations. As explained in Section IV.D.2, the Agency is incorporating as a default remedy the proposed part 97 methodology, but this does not represent the Agency's final determination on allowance allocations under the NO_X Budget Trading Program. The Agency is continuing to review comments received on the proposed allocation methodologies and will come to a final decision by July 15, 1999. The proposed part 97 rule language describing the allowance allocation methodology is included in today's rule without significant change in order not to pre-judge any decision the Agency will make on allocations.

Further, EPA acknowledges that assigning these allowance allocations as unit-specific emission limitations in the absence of a trading program is not necessarily within the cost-effectiveness bounds delineated in Section II.J. However, given that the statutory alternative remedy to not promulgating emission limitations at this time is requiring the shutdown of units within 3 months of a finding under section 126(b) of the Act, today's action to meet the terms of the consent decree represents a more cost-effective alternative. Nonetheless, the Agency is concerned about meeting the cost-effectiveness criteria. For this reason, as well as for the reason that the allocation methodology included in today's rule does not necessarily reflect the Agency's final decision on allocations, EPA reiterates its commitment to promulgate the regulations and unit-specific allocations to implement the Federal NO_x Budget Trading Program by July 15, 1999.

1. Default Emission Limitations

Section 52.34(k) sets forth the provisions for how the Administrator will allocate NO_x allowances to sources for which EPA makes a finding under section 126(b), in the event that the Administrator fails to promulgate the Federal NO_X Budget Trading regulations. The methodology for determining the individual unit emission limitations included in this action incorporates rule language that was proposed in § 97.42 (63 FR 56315) for determining allowance allocations. The EPA has incorporated § 97.42 as proposed, with changes only where necessary to account for the incorporation of the proposed § 97.42 into § 52.34. Specifically, the Agency removed any references to terminology or provisions of other sections of proposed part 97, in order to refer instead to the relevant terminology or provisions of part 52 or delete entirely references relevant only to participation in a trading program. For example, in order to maintain consistent terminology with § 52.34, EPA replaced the term ''NO_X Budget unit'' with the term ''large EGUs and large non-EGUs.''

a. Default Emission Limitations for Existing Units

As was described in the proposed § 97.42, § 52.34(k) bases the allowance allocations on heat input data. For large EGUs, initial unadjusted allocations would be based on actual heat input data (in mmBtu) for the units multiplied by an emission rate of 0.15 lb/mmBtu. For the ozone seasons in 2003, 2004, and 2005, the heat input used in the allocation calculation for large EGUs equals the average of the heat input for the two highest ozone seasons for the years 1995, 1996, and 1997. The emission limitations for each unit would then be adjusted upward or downward so that the total allocations for large EGUs in the State match 95 percent (to provide for a 5 percent new source set-aside) of the total ozone season NO_X emissions calculated for large EGUs in each State (see section IV.C.1.b. of this preamble).

For the ozone seasons starting in 2006, the heat input used in the allocation calculation for large EGUs equals the heat input measured during the ozone season of the year that is four years before the year for which the allocations are being calculated. The emission limitations would be determined by multiplying the heat input by 0.15 lb/mmBtu, and then adjusting the result so that the sum of the allocations to each EGU in the State equals 98 percent (to provide for a 2 percent new source set-aside) of the total ozone season NO_X emissions calculated for large EGUs in each State.

For large non-EGUs, initial unadjusted allocations would be based on 1995 heat input data (in mmBtu) for the units multiplied by an emission rate of 0.17 lb/mmBtu (the average emission rate for existing non-EGUs after controls are in place). As discussed in the section 126 NPR, this differs from the method used to determine the aggregate emission level for non-EGUs (a percentage reduction from historical emissions) because at the time the aggregate level was determined (during the NO_X SIP call proposal process), heat input data for individual units was not available. Distributing allocations on a heat-input basis provides a fuel-neutral method of allocating allowances to the units in the trading program similar to the allocation approach proposed for the EGUs. This heat-input-based allocation also allows for reallocating in the future (to accommodate new units) whereas allocations based upon a specific percentage reduction do not.

The emission limitations for each unit would then be adjusted upward or downward so that the total allocations for large non-EGUs in the State match 95 percent (to provide for a 5 percent new source set-aside) of the total ozone season NO_X emissions calculated for large non-EGUs in each State.

As described for large EGUs, for the ozone seasons starting in 2006, the heat input used in the allocation calculation for large non-EGUs equals the heat input measured during the ozone season of the year that is four years before the year for which the allocations are being calculated. The emission limitations would be determined by multiplying the heat input by 0.17 lb/mmBtu, and then adjusting the result so that the sum of the allocations to each non-EGUs in the State equals 98 percent (to provide for a 2 percent new source set-aside) of the total ozone season NO_X emissions calculated for large non-EGUs each State.

b. Default Emission Limitations for New Units

The proposed § 97.42 contained a new source set-aside of 5 percent for the ozone seasons of 2003, 2004 and 2005 and 2 percent for each subsequent year. For purposes of this interim final remedy, the set-aside would enable new units, which did not operate during the full baseline periods used in assigning allocations to existing sources, to still receive an allowance allocation.

As described in § 52.34(k), the allowances would be issued to new sources on a first-come, first-served basis at a rate of 0.15 lb/mmBtu for large EGUs and 0.17 lb/mmBtu for large non-EGUs multiplied by the unit's maximum design heat input. Following each ozone season, the source would be subject to a reduced utilization calculation, in which EPA would deduct NO_X allowances based on the unit's actual utilization. Because the allocation for a new unit from the set-aside is based on maximum design heat input, this procedure adjusts the allocation by actual heat input for the ozone season of the allocation. This adjustment is a surrogate for the use of actual utilization in a prior baseline period which is the approach used for allocating NO_X allowances to existing units.

At the end of the relevant ozone season, EPA would allocate any allowances remaining in the account to the existing sources in the State on a pro-rata basis. This would have the effect of increasing each existing source's emission limitation for that ozone season.

2. July 15, 1999 Allocation Decisions

The methodology described above is included in § 52.34 as a default remedy under the consent decree with the section 126 petitioners. The EPA emphasizes that no decisions have yet been made as to the allocation methodology that will be included in the Federal NO_X Budget Trading Program promulgated in July. Today's default remedy reflects only what was initially proposed in § 97.42 and does not reflect any comments or new information received since the proposal. As explained in Sections I.I and IV.C.2 of this preamble, the Agency has not yet had sufficient time to incorporate SIP call inventory revisions into trading program policy decisions and analysis. The Agency intends to use this revised data when it becomes available, along with the comments received on the trading program generally and allocations specifically, to make a decision on the allocation methodology and other aspects of the trading program by July 15.

Specifically, the Agency has not yet made decisions regarding the basis for allocations, the frequency with which the allocations might be updated (including whether they will be updated), or who might be eligible to receive allowances. In the NPR for the section 126 rulemaking, EPA proposed three possible allocation methodologies and corresponding individual unit allocations for EGUs. The first methodology proposed to allocate allowances based on the heat input methodology that was included in § 97.42 and is used for the interim final emission limitations in § 52.34(k) of this action. The second methodology proposed would allocate to fossil fuel-fired electric generators based on share of total electricity generation. The third methodology would issue allowances to all electricity generators based on their share of total electricity generation.

Selection of the first of these proposed methodologies for the interim final emission limitations does not indicate that the Agency prefers that option. The heat input option was included as a default only because it had already been proposed in rule language in part 97. The Agency is continuing to review comments, and the Administrator will promulgate regulations by July 15, 1999 which establish the basis for allowance allocations, as well as who will receive allowances.

Likewise, the methodology that describes an annually updating system starting in 2006 was included as the interim remedy because that was proposed in the § 97.42 rule language. The Agency has not yet made a decision regarding whether the allowance allocations in the Federal NO_X Budget Trading Program will be updated periodically or how often they might be updated. The Agency will make a final determination by July 15, 1999 after consideration of comments.

In addition, the Agency has received numerous comments on other aspects of the proposed allocation methodologies and will continue to review these. The Agency will provide final determinations and responses to these comments by July 15, 1999.

V. Non-ozone Benefits to 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 regional 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. Thus, management of NO_X emissions is important to both air quality and watershed protection. 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 qualitatively below.[34]

Justification for Rulemaking: While EPA believes the information discussed in this section is important for the public to understand and, thus, needs to be described as part of the rulemaking and RIA, there should be no misunderstanding as to the legal basis for the rulemaking, which is described in Section II of this notice and does not depend on the non-ozone benefits. The non-ozone benefits did not affect the method in which EPA determined significant contribution nor the control requirements.

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 a nutrient which enhances 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.

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

[34] U.S. Environmental Protection Agency, ''Nitrogen Oxides: Impacts on Public Health and the Environment,'' EPA–452/R–97–002, August 1997.

their small size nitrate particles have a relatively long atmospheric lifetime; these small particles can also penetrate deeply into the lungs. The PM has a wide range of adverse health effects.

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: The 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. While the major cause of visibility impairment in the eastern United States is sulfates, NO_X emissions also contribute to visibility impairment.

VI. Administrative Requirements

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a 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.

The EPA believes that this action is a ''significant regulatory action'' because it raises novel legal and policy issues arising from the Agency's obligation to respond to the section 126 petitions, and because the action could have an annual effect on the economy of more than $100 million. As a result, the final rulemaking was submitted to OMB for review. EPA is referencing the impacts in the final NO_X SIP call and proposed section 126 petitions RIA for the final section 126 rule and has not prepared a new RIA for the final rule at this time. 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 the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble. The RIA is available in hard copy by contacting the EPA Library at the address under ''Availability of Related Information'' and in electronic form as discussed above in that same section.

The RIA for the section 126 petitions addresses the costs and benefits associated with reducing emissions at sources affected under the petitions in the broader context of those sources potentially affected by the final NO_X SIP call and the proposed FIP. Sources named in the section 126 petitions may also be controlled under SIPs that will be revised to meet final NO_X budgets. The EPA has proposed that in the event that States fail to submit approvable SIPs, FIPs will be enacted. Therefore, the sources named in section 126 petitions may be complying with either State or Federal regulations of generally equivalent stringency.

The RIA for the final NO_X SIP call and section 126 petitions concludes that the national annual cost of possible State actions to comply with the NO_X SIP call is approximately $1.7 billion (1990 dollars). The sources named in the section 126 petitions will bear the majority of that total cost. The EPA will revise this total cost estimate when it promulgates the NO_X trading program for this section 126 rulemaking. The EPA anticipates the total cost for this section 126 rulemaking will not exceed the NO_X SIP call estimate. The associated benefits from the NO_X SIP call, in terms of improvements in health, visibility, and ecosystem protection, that EPA has quantified and monetized range from $1.1 billion to $4.2 billion. Due to practical analytical limitations, the EPA is not able to quantify and/or monetize all potential benefits of the NO_X SIP call action. It is anticipated that the majority of these quantified and monetized benefits are associated with the section 126 action because the majority of emission reductions, and the associated exposed populations and ecosystems, are from sources potentially covered by SIP revisions, and these sources may also be covered by this section 126 action.

Due to practical analytical and data limitations, such as a lack of air quality modeling based on the final section 126 inventory data, the EPA is not able to provide a quantified and monetized benefits analysis for the promulgated trading program as part of this section 126 rulemaking in July. The EPA will provide a qualitative benefits assessment for the final section 126 rule in July, and will provide a quantitative benefits analysis for the final rule in October. The qualitative benefits assessment will be included in an RIA. This RIA will also contain estimates of the compliance costs and economic impacts associated with selected regulatory options that will be analyzed as part of the promulgation of the NO_X trading program in July.

B. Impact on Small Entities

1. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), provides that whenever an agency is required to publish a general notice of final rulemaking, it must prepare and make available a final Regulatory Flexibility Analysis, unless it certifies that the proposed rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities.''

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for this rule (see 63 FR at 56322), and convened a Small Business Advocacy Panel (henceforth called a ''Panel'') to obtain advice and recommendations of representatives of the affected small entities in accordance with requirements in the RFA. As per section 604 of the RFA, we also prepared a final regulatory flexibility analysis (FRFA) for today's final rule. The FRFA addresses the issues raised by public comments on the IRFA which was part of the proposal of this rule. The FRFA is available for review in the docket and is summarized below.

In the process of developing this rulemaking, EPA worked with the Small Business Administration (SBA) and OMB and obtained input from small businesses, small governmental jurisdictions, and small organizations. On June 23, 1998, EPA's Small Business Advocacy Chairperson convened a Small Panel under section 609(b) of the RFA as amended by SBREFA. In addition to its chairperson, the Panel consists of EPA's Director of the Office of Air Quality Planning and Standards within the Office of Air and Radiation, the Administrator of the Office of Information and Regulatory Affairs within the OMB, and the Chief Counsel for Advocacy of the SBA.

As described in the proposed rule (see 63 FR at 56322), this Panel conducted

an outreach effort and completed a report on the section 126 proposal. The report provides background information on the proposed rule being developed and the types of small entities that would be subject to the proposed rule, describes efforts to obtain the advice and recommendations of representatives of those small entities, summarizes the comments that have been received to date from those representatives, and presents the findings and recommendations of the Panel; the completed report, comments of the small entity representatives, and other information are contained in the docket for this rulemaking. The contents of today's action, including the RTC document and the Final Regulatory Flexibility Analysis, address the six recommendations in the Panel's report.

In addition, EPA will also prepare a small entity compliance guide to assist small entities in complying with this rule as required by Section 212 of the SBREFA.

2. Potentially Affected Small Entities

To define small entities, EPA used the SBA industry-specific criteria published in 13 CFR section 121. The SBA size standards have been established for each type of economic activity under the Standard Industrial Classification (SIC) System. Due to their NO_X-emitting properties, the following industries have the potential to be affected by the final section 126 rulemaking:

SIC Codes in Division D: Manufacturing
- 2611—Pulp mills
- 2819—Industrial Inorganic Materials
- 2821—Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers
- 2869—Industrial Organic Chemicals
- 3312—Steel Works, Blast Furnaces, and Rolling Mills
- 3511—Steam, Gas, and Hydraulic Turbines
- 3519—Stationary Internal Combustion Engines
- 3585—Air-Conditioning and Warm-Air Heating Equipment and Commercial and Industrial Refrigeration Equipment

SIC Codes in Division E: Transportation, Communications, Electric, Gas, and Sanitary Services

SIC Major Group 49: Electric, Gas, and Sanitary Services, including:
- 4911—Electric Utilities
- 4922—Natural Gas Transmission
- 4931—Electric and other Gas Services
- 4961—Steam and Air Conditioning Supply

The section 126 rulemaking is potentially applicable to all NO_X-emitting entities named in one or more of the section 126 petitions. The EPA estimates that the total number of such entities named in the section 126 petitions is approximately 5200, of which about 1200 are small entities. The EPA's analysis, ''Final Regulatory Flexibility Analysis For the Final Section 126 Petitions Under the Clean Air Act Amendments Title I'' is contained in the docket for this action, and results from this analysis are given below.

For purposes of today's final action, the section 126 rulemaking will apply only to the following types of sources: large EGUs, and large non-EGUs. At these size cutoffs, the estimated number of small entities that would be affected is as follows:

Electric Generating Units—114 small entities

Industrial Boilers and/or Combustion Turbines—31 small entities.

The EPA has further estimated that, of these affected small entities, the following would experience compliance costs equal or greater to 1 percent of their estimated revenues:

Electric Generating Units—32 small entities

Industrial Boilers and Combustion Turbines—4 small entities

Of these, EPA estimates that about 18 small entities with electric generating units and 4 small entities with industrial boilers or turbines would experience costs greater than 3 percent of their estimated revenues.

By limiting the small entities covered by the final rule to large EGUs and large non-EGUs, EPA is reducing by over 85 percent the number of small entities otherwise potentially affected by the cap-and-trade program: out of 1200 potentially-affected small entities, over 1000 would be exempted, with only 145 small entities remaining. Commenters have strongly endorsed these exemptions.

Furthermore, as described in the proposed rule (see 63 FR at 56323), the Panel explored additional options for reducing the impact of the rule on small entities in the context of the NO_X cap-and-trade program. The EPA will consider these options and also produce a small entity analysis based on the latest emissions inventory data when it promulgates the NO_X trading program for this section 126 rulemaking.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more . . . in any one year.'' A ''Federal mandate'' is defined to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate'' (2 U.S.C. 658(6)). A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is ''a condition of Federal assistance (2 U.S.C. 658(5)(A)(i)(I)). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions (2 U.S.C. 658(7)(A)).

The EPA is taking the position that the requirements of UMRA apply because this action could result in the establishment of enforceable mandates directly applicable to sources (including sources owned by State and local governments) that would result in costs greater than $100 million in any one year. 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 EPA's UMRA analysis, ''Unfunded Mandates Reform Act Analysis For the Proposed Section 126 Petitions Under the Clean Air Act Amendments Title I (Phase I),'' is contained in the docket for this action and is summarized below. The results of this analysis are referenced here since there have been no changes in the input data or to the analysis methodology offered by commenters.

This UMRA analysis examines the impacts of the final section 126 rulemaking on both EGUs and non-EGUs that are owned by State, local, and tribal governments, as well as sources owned by private entities. This final rule potentially affects 65 EGUs that are owned by one State and 24 municipalities (Massachusetts owns 6 units, and the municipalities own the remaining 59 units). In addition, seven non-EGUs owned by two States and five municipalities are potentially affected. The EPA has not identified any units on Tribal lands that would be subject to the rule requirements. The overall costs are dominated by the 65 EGUs and are about $30 million per year.

Under section 203 of UMRA, 2 U.S.C. 1533, before EPA establishes any regulatory requirements ''that might significantly or uniquely affect small governments,'' EPA must have developed a small government agency plan. The plan must provide for notifying potentially affected small governments; enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates; and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's final rule does not distinguish EGUs based on ownership, either for those units that are included within the scope of the proposed rule or for those units that are exempted by the generating capacity cut-off. Consequently, the final rule has no requirements that uniquely affect small governments that own or operate EGUs within the affected region. With respect to the significance of the rule's provisions, EPA's UMRA analysis (cited above) demonstrates that the economic impact of the rule will not significantly affect (as defined in Section 203 of UMRA) State or municipal EGUs or non-EGUs, either in terms of total cost incurred and the impact of the costs on revenue, or increased cost of electricity to consumers. Therefore, development of a small government plan under section 203 of UMRA is not required.

Under section 204 of UMRA, 2 U.S.C. 1534, if an agency proposes a rule that contains a ''significant Federal intergovernmental mandate,'' the agency must develop a process to permit elected officials of State, local, and tribal governments to provide input into the development of the proposal.'' In order to fulfill UMRA requirements that publicly-elected officials be given meaningful and timely input in the process of regulatory development, EPA has sent letters to five national associations whose members include elected officials. The letters provided background information, requested the associations to notify their membership of the proposed rulemaking, and encourage interested parties to comment on the proposed actions by sending comments during the public comment period and presenting testimony at the public hearing on the proposal. The EPA considered these comments as part of today's final action and EPA will also consider them when finalizing the trading program.

In addition, during the NO_X SIP call, EPA provided direct notification to potentially affected State and municipally-owned utilities as part of the public comment and hearing process attendant to proposal of the NO_X SIP call and supplemental notice of proposed rulemaking. These procedures helped ensure that small governments had an opportunity to give timely input and obtain information on compliance. The EPA provided the 26 State- and municipally-owned utilities and appropriate elected officials with a brief summary of the proposal and the estimated impacts. The public rulemaking also elicited numerous comments from State and municipal utilities and groups representing utility interests. Commenters generally endorsed the Agency's determinations on application of controls to State- and municipally-owned utilities.

Furthermore, for the section 126 rulemaking, EPA published an ANPR that served to provide notice of the Agency's intention to propose emissions limits and to solicit early input on the proposal. This process helped to ensure that small governments had an opportunity to give timely input and obtain information on compliance.

The Agency will revise the UMRA analysis, based on the data in the final section 126 inventory, when it promulgates the NO_X trading program for this section 126 rulemaking.

D. Paperwork Reduction Act

The information collection requirements in this final rule will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, when the NO_X trading portion of this section 126 rulemaking is promulgated. An Information Collection Request (ICR) document was prepared by EPA for the proposed section 126 rulemaking (see 63 FR at 56325, ICR No. 1889.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, US Environmental Protection Agency (2137), 401 M St., SW, Washington, DC 20460 or by calling (202) 260–2740.

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

1. Applicability of Executive Order 13045

The Executive Order 13045 applies to any rule that EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) addressed an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks''(62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

2. Children's Health Protection

In accordance with section 5(501), the Agency has evaluated the environmental health or safety effects of the rule on children, and found that the rule does not separately address any age groups. However, in conjunction with the final NO_X SIP call rulemaking, the Agency has conducted a general analysis of the potential changes in ozone and PM levels experienced by children as a result of the NO_X SIP call; these findings are presented in volume 2 of the RIA. The findings include population-weighted exposure characterizations for projected 2007 ozone and PM concentrations. The population data includes a census-derived subdivision for the under 18 group. These findings from the final NO_X SIP call RIA are also applicable to today's final action since the exposure characterizations are based on emissions from sources potentially covered by SIP revisions, and these sources may also be covered by this section 126 action.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. In conjunction with the final NO_X SIP call rulemaking, the Agency has conducted a general analysis of the potential changes in ozone and PM levels that may be experienced by minority and low-income populations as a result of the NO_X SIP call; these findings are presented in volume 2 of the RIA. The findings include population-weighted exposure characterizations for projected ozone concentrations and PM concentrations. The population data includes census-derived subdivisions for whites and non-whites, and for low-income groups.

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

The EPA has concluded that this rule may create a mandate on State and local governments and that the Federal government will not provide the funds necessary to pay the direct costs incurred by the State and local governments in complying with the mandate. In order to provide meaningful and timely input in the development of this regulatory action, EPA sent letters to five national associations whose members include elected officials. The letters provided background information, requested the associations to notify their membership of the proposed rulemaking, and encouraged interested parties to comment on the proposed actions by sending comments during the public comment period and presenting testimony at the public hearing on the proposal. The EPA has addressed the concerns of these officials in the UMRA Analysis mentioned in Section V.C. and in the Response to Comments document. A statement supporting the need to issue the regulation is also contained in the UMRA Analysis.

Furthermore, for the section 126 rulemaking, EPA published an ANPR that served to provide notice of the Agency's intention to propose emissions limits and to solicit early input on the proposal. This process helped to ensure that small governments had an opportunity to give timely input and obtain information on compliance.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments and, in any event, will not impose substantial direct compliance costs on such communities. The EPA is not aware of sources located on tribal lands that could be subject to the requirements EPA is finalizing in this action. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking would require all sources that participate in the trading program under proposed part 97 to meet the applicable monitoring requirements of part 75. Part 75 already incorporates a number of voluntary consensus standards. In addition, the Agency recently revised part 75 to incorporate procedures to monitor and report NO_X mass emissions (see 63 FR at 57464). During that rulemaking, process EPA sought comments on additional voluntary consensus standards.

This final rulemaking involves environmental monitoring or measurements. Sources that participate in the trading program would be required to meet the monitoring requirements under part 75. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. The EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified, however, any alternative methods must be approved in advance before they may be used under part 75.

J. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This rulemaking on several section 126 petitions is ''naturally applicable'' within the meaning of section 307(b)(1). At the core of this rulemaking is EPA's interpretation of sections 126 and 110(a)(2)(D)(i)(I). These interpretations were applied uniformly to each section 126 petition.[35] Further, the modeling which EPA employed to assist in

[35] EPA interpreted some of the same provisions in the SIP Call final rule, and the U.S. Court of Appeals for the D.C. Circuit agreed with the Administrator that the rule was nationally significant and thus, that venue lies in that circuit. *See State of Michigan* v. *EPA*, No. 98–1497 (D.C. Cir., Order, Mar. 19, 1999) (*citing Texas Municipal Power Agency* v. *EPA*, 89 F. 3d 858, 867 (D.C. Cir. 1996) (per curiam)).

making today's decisions involved uniform modeling techniques and a uniform set of air quality metrics to assess upwind impacts on downwind states. In addition, the cost effectiveness information was analyzed and applied uniformly to each petition. Further, the remedy selected by EPA is uniformly applicable to upwind sources in many different states and involves interstate trading of NO_X emission allowances. In sum, the numerous legal and technical issues that EPA addressed in this rulemaking apply uniformly to all the sources in 19 states and the District of Columbia about which EPA is making an affirmative or negative determination. *Cf. West Virginia Chamber of Commerce* v. *Browner,* 1998 WL 827315, *7 (4th Cir., Dec. 1, 1998) (the proposed NO_X SIP Call Rule is nationally applicable because it ''seeks to tackle a problem affecting two-thirds of the country by regulating somewhat less than one half of the states'').

For these reasons, the Administrator also is determining that the final action regarding the section 126 petitions is of nationwide scope and effect for purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has ''scope or effect beyond a single judicial circuit.'' H.R. Rep. No. 95–294 at 323, 324, *reprinted in* 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extend to numerous judicial circuits since the downwind petitioning states lie in the First, Second and Third Circuits of the U.S. Courts of Appeals and the upwind regulated states lie in several other circuits. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of ''nationwide scope or effect'' and for venue to be in the D.C. Circuit.

Thus, any petitions for review of final actions regarding the section 126 rulemaking must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 26, 1999.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Emissions trading, Intergovernmental relations, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

Dated: April 30, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart A—General Provisions

2. Subpart A is amended to add § 52.34 to read as follows:

§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Administrator* means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

(2) *Large Electric Generating Units (large EGUs)* means:

(i) For units that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit serving at any time during 1997 or 1998 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

(3) *Large Non-Electric Generating Units (large non-EGUs)* means:

(i) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve at any time during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

(A) At no time serves a generator producing electricity for sale; or

(B) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use 50 percent or less of the potential electrical output capacity of the unit.

(4) *New sources* means new and modified sources.

(5) *NO_X* means oxides of nitrogen.

(6) *NO_X allowance* means an authorization by the permitting authority or the Administrator to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.

(7) *OTAG* means the Ozone Transport Assessment Group (active 1995–1997), a national work group that addressed the problem of ground-level ozone and the long-range transport of air pollution across the Eastern United States. The OTAG was a partnership between EPA, the Environmental Council of the States, and various industry and environmental groups.

(8) *Ozone season* means the period of time beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(9) *Potential electrical output capacity* means, with regard to a unit, 33 percent of the maximum design heat input of the unit.

(10) *Unit* means a fossil-fuel fired stationary boiler, combustion turbine, or combined cycle system.

(b) *Purpose and applicability.* Paragraphs (c) through (h) of this section set forth EPA's affirmative technical determinations, with respect to the

national ambient air quality standards (NAAQS) for ozone, that certain new and existing sources of emissions of nitrogen oxides (''NO_X'') in certain States emit or would emit NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, one or more States that submitted petitions in 1997–1998 addressing such NO_X emissions under section 126 of the Clean Air Act. (As used in this section, the term new source includes modified sources, as well.) Paragraph (i) of this section sets forth EPA's decisions about whether to grant or deny each of those petitions, and the remainder of this section sets forth the emissions-reduction requirements that will apply to the affected sources of NO_X emissions to the extent any of the petitions are granted.

(1) The States that submitted such petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont (each of which, hereinafter in this section, may be referred to also as a ''petitioning State'').

(2) The new and existing sources of NO_X emissions covered by the petitions that emit or would emit NO_X emissions in amounts that make such significant contributions are large electric generating units (EGUs) and large non-EGUs.

(c) *Affirmative technical determinations relating to impacts on ozone levels in Connecticut.* (1) *Affirmative technical determinations with respect to the 1-hour ozone standard in Connecticut.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in the State of Connecticut with respect to the 1-hour NAAQS for ozone if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (c)(2) of this section; and

(iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Connecticut.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 1-hour ozone standard in Connecticut.* The States, or portions of States, that contain sources of NO_X emissions for which EPA is making an affirmative technical determination are:

(i) Delaware.

(ii) District of Columbia.

(iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F–2, of this part.

(iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F–2, of this part.

(v) Maryland.

(vi) Portion of Michigan located in OTAG Subregion 2, as shown in appendix F, Figure F–2, of this part.

(vii) Portion of North Carolina located in OTAG Subregion 7, as shown in appendix F, Figure F–2, of this part.

(viii) New Jersey.

(ix) Portion of New York extending west and south of Connecticut, as shown in appendix F, Figure F–2, of this part.

(x) Ohio.

(xi) Pennsylvania.

(xii) Virginia.

(xiii) West Virginia.

(d) *Affirmative technical determinations relating to impacts on ozone levels in Maine.* (1) *Affirmative technical determinations with respect to the 8-hour ozone standard in Maine.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in the State of Maine, with respect to the 8-hour NAAQS for ozone if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (d)(2) of this section; and

(iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 of appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Maine.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Maine.* The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Connecticut.

(ii) Delaware.

(iii) District of Columbia.

(iv) Maryland.

(v) Massachusetts.

(vi) New Jersey.

(vii) New York.

(viii) Pennsylvania.

(ix) Rhode Island.

(x) Virginia.

(e) *Affirmative technical determinations relating to impacts on ozone levels in Massachusetts.* (1) *Affirmative technical determinations with respect to the 1-hour ozone standard in Massachusetts.* The Administrator of EPA finds that any existing major source or group of stationary sources emits NO_X in amounts that contribute significantly to nonattainment in the State of Massachusetts, with respect to the 1-hour NAAQS for ozone if it is:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (e)(2) of this section; and

(iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Massachusetts.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 1-hour ozone standard in Massachusetts.* The portion of a State that contains sources for which EPA is making an affirmative technical determination are:

(i) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F–4, of this part.

(3) *Affirmative technical determinations with respect to the 8-hour ozone standard in Massachusetts.* The Administrator of EPA finds that any existing major source or group of stationary sources emits NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Massachusetts, with respect to the 8-hour NAAQS for ozone if it is:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (e)(4) of this section; and

(iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Massachusetts.

(4) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Massachusetts.* The portions of States that contain sources for which EPA is making an affirmative technical determination are:

(i) All counties in Ohio located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F–4, of this part.

(ii) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F–4, of this part.

(f) *Affirmative technical determinations relating to impacts on ozone levels in New Hampshire.* (1) *Affirmative technical determinations with respect to the 8-hour ozone standard in New Hampshire.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of New Hampshire, with respect to the 8-hour NAAQS for ozone if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (f)(2) of this section; and

(iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 of appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of New Hampshire.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in New Hampshire.* The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Connecticut.
(ii) Delaware.
(iii) District of Columbia.
(iv) Maryland.
(v) Massachusetts.
(vi) New Jersey.
(vii) New York.
(viii) Pennsylvania.
(ix) Rhode Island.

(g) *Affirmative technical determinations relating to impacts on ozone levels in the State of New York. (1) Affirmative technical determinations with respect to the 1-hour ozone standard in the State of New York.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in the State of New York, with respect to the 1-hour NAAQS for ozone:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (g)(2) of this section; and

(iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of New York.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 1-hour ozone standard in the State of New York.* The States, or portions of States, that contain sources for which EPA is making an affirmative technical determination are:

(i) Delaware.
(ii) District of Columbia.
(iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F–6, of this part.
(iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F–6, of this part.
(v) Maryland.
(vi) Portion of Michigan located in OTAG Subregion 2, as shown in appendix F, Figure F–6, of this part.
(vii) Portion of North Carolina located in OTAG Subregions 6 and 7, as shown in appendix F, Figure F–6, of this part.
(viii) New Jersey.
(ix) Ohio.
(x) Pennsylvania.
(xi) Virginia.
(xii) West Virginia.

(h) *Affirmative technical determinations relating to impacts on ozone levels in Pennsylvania.* (1) *Affirmative technical determinations with respect to the 1-hour ozone standard in Pennsylvania.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in the State of Pennsylvania, with respect to the 1-hour NAAQS for ozone if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (h)(2) of this section; and (iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Pennsylvania.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 1-hour ozone standard in Pennsylvania.* The States that contain sources for which EPA is making an affirmative technical determination are:

(i) North Carolina.
(ii) Ohio.
(iii) Virginia.
(iv) West Virginia.

(3) *Affirmative technical determinations with respect to the 8-hour ozone standard in Pennsylvania.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Pennsylvania, with respect to the 8-hour NAAQS for ozone:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (h)(4) of this section; and

(iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 in appendix F of this part describing the sources of NO_X emissions covered by the petition of the State of Pennsylvania.

(4) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Pennsylvania.* The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Alabama.
(ii) Illinois.
(iii) Indiana.
(iv) Kentucky.
(v) Michigan.
(vi) Missouri.
(vii) North Carolina.
(viii) Ohio.
(ix) Tennessee.
(x) Virginia.
(xi) West Virginia.

(i) *Action on petitions for section 126(b) findings.* (1) For each existing or new major source or group of stationary sources for which the Administrator has made an affirmative technical determination as described in paragraphs (c) through (h) of this section as to impacts on nonattainment or maintenance of a particular NAAQS for ozone in a particular petitioning State, a finding of the Administrator that each such major source or group of stationary sources emits or would emit NO_X in violation of the prohibition of Clean Air Act section 110(a)(2)(D)(i)(I) with respect to nonattainment or maintenance of such standard in such petitioning State will be deemed to be made:

(i) As of November 30, 1999, if by such date EPA does not issue either:

(A) A proposed approval, under section 110(k) of the Clean Air Act, of a State implementation plan revision submitted by such State to comply with the requirements of 40 CFR 51.121 and 51.122; or

(B) A final Federal implementation plan meeting the requirements of those sections for such State.

(ii) As of May 1, 2000, if by November 30, 1999, EPA issues the proposed approval described in paragraph (i)(1)(i) of this section for such State, but, by May 1, 2000, EPA does not fully approve or promulgate implementation plan provisions meeting such requirements for such State.

(2) The making of any such finding as to any such major source or group of stationary sources shall be considered to be the making of a finding under subsection (b) of section 126 of the Clean Air Act as to such major source or group of stationary sources. Each aspect of a petition covering sources in a State as to which the Administrator has made an affirmative technical determination (as described in paragraphs (c) through (h) of this section) shall be deemed denied as the date of final approval, under section 110(k) of the Clean Air Act, of a State implementation plan revision submitted by such State to comply with the requirements of 40 CFR 51.121 and 51.122, or promulgation of a final Federal implementation plan meeting the requirements of 40 CFR 51.121 and 51.122 for such State. Notwithstanding any other provision of this paragraph (i), after such a finding has been deemed to be made under this paragraph (i) as to a particular major source or group of stationary sources in a particular State, such finding will be deemed to be withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator issues a final action putting in place implementation plan provisions that comply with the requirements of 40 CFR 51.121 and 51.122 for such State.

(j) *Section 126 control remedy.* The Federal NO_X Budget Trading Program applies to the owner or operator of any new or existing large EGU or large non-EGU as to which the Administrator makes a finding under section 126(b) of the Clean Air Act pursuant to the provisions of paragraph (h) of this section.

(1) Starting May 1, 2003, the owner or operator of any large EGU or large non-EGU in the program must hold total NO_X allowances available under the Federal NO_X Budget Trading Program to such unit for the ozone season that are not less than the total NO_X emissions emitted by the unit during that ozone season.

(2) No later than July 15, 1999, the Administrator will promulgate regulations setting forth the Federal NO_X Budget Trading Program, including the allocation and distribution of NO_X allowances under the program in accordance with paragraphs (j)(3) and (j)(4) of this section.

(3)(i) The total amount of NO_X allowances allocated under the Federal NO_X Budget Trading Program will be equivalent to the sum of the following two tonnage limits:

(A) The total ozone season NO_X emissions from all large EGUs in the program after achievement of a 0.15 lb/mmBtu NO_X emissions rate in the ozone season by every large EGU, assuming adjusted historic ozone season heat input as defined in paragraph (j)(3)(ii) of this section; and

(B) The total ozone season NO_X emissions from all large non-EGUs in the program after achievement of a 60 percent reduction in ozone season NO_X emissions from every large non-EGU, assuming adjusted ozone season uncontrolled emissions as defined in paragraph (j)(3)(iii) of this section.

(ii) The adjusted historic ozone season heat input for large EGUs referenced in paragraph (j)(3)(i)(A) of this section will be calculated by:

(A) Determining for each State for each year 1995 and 1996 the total actual ozone season heat input for all EGUs that operated in the State in 1995 or 1996;

(B) Determining for each State whether the total actual ozone season heat input for all EGUs that operated in the State in 1995 or 1996 is greater for 1995 or 1996; and

(C) For all of the large EGUs that operated in a State in 1995 or 1996, taking the actual ozone season heat input for each large EGU for the year determined in paragraph (j)(3)(ii)(B) of this section to have the greater total actual ozone season heat input for the State and adjusting for growth to the year 2007.

(iii) The adjusted ozone season uncontrolled emissions for large non-EGUs referenced in paragraph (j)(3)(i)(B) of this section will be calculated by taking each large non-EGU's 1995 actual ozone season NO_X emissions, increasing the NO_X emissions by removing the effect of any NO_X controls at the large non-EGU in 1995, and adjusting for growth to the year 2007.

(4)(i) Notwithstanding paragraph (j)(3) of this section, the additional NO_X allowances specified in 40 CFR 51.121(e)(3)(iii) will be available for distribution under the Federal NO_X Budget Trading Program to large EGUs and large non-EGUs in the program that are located within applicable States.

(ii) After the 2004 ozone season, the owner or operator of any large EGU or large non-EGU in the program may not use the additional NO_X allowances distributed under paragraph (j)(4)(i) of this section to demonstrate compliance with the provisions of paragraph (j)(1) of this section.

(k) *Default section 126 remedy.* (1) The provisions of this paragraph (k) will apply only if:

(i) The Administrator makes a finding under section 126(b) of the Clean Air Act pursuant to the provisions of paragraph (h) of this section with regard to any new or existing large EGU or large non-EGU; and

(ii) The Administrator fails to promulgate regulations setting forth the Federal NO_X Budget Trading Program (including the allocation and distribution of NO_X allowances under the program in accordance with paragraphs (j)(3) and (j)(4) of this section) before the Administrator makes the finding described in paragraph (k)(1)(i) of this section.

(2) Starting May 1, 2003, the owner or operator of each large EGU or each large non-EGU as to which the Administrator makes a finding under section 126(b) of the Clean Air Act pursuant to the provisions of paragraph (h) of this section shall control emissions from such unit so that the unit does not emit total NO_X emissions during the ozone season in excess of the total NO_X allowances allocated to the unit for that ozone season under paragraph (k)(3) of this section.

(3)(i) The Administrator will allocate to each large EGU and large non-EGU in the program an amount of NO_X allowances and, for certain units, deduct an amount of NO_X allowances, calculated in accordance with paragraphs (k)(3)(ii) through (vii) of this section.

(ii)(A) The heat input (in mmBtu) used for calculating NO_X allowance allocations for each large EGU and large non-EGU in the program will be:

(*1*) For NO_X allowance allocations for the 2003, 2004 and 2005 ozone seasons to any large EGU, the average of the two highest amounts of the unit's actual heat input for the ozone seasons in 1995, 1996, and 1997 and to any large non-EGU, the ozone season in 1995; and

(*2*) For a NO_X allowance allocation for ozone seasons in 2006 and thereafter to any large EGU or large non-EGU, the unit's actual heat input for the ozone season in the year that is four years before the year for which the NO_X allocation is being calculated.

(B) The unit's actual heat input for the ozone season in each year specified under paragraph (k)(3)(ii)(A) of this section will be determined in accordance with 40 CFR part 75 if the large EGU or large non-EGU was otherwise subject to the requirements of 40 CFR part 75 for the ozone season, or will be based on the best available data

reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR part 75 for the ozone season.

(iii) For each ozone season, the Administrator will allocate to all large EGUs in a State that commenced operation before May 1 of the ozone season used to calculate heat input under paragraph (k)(3)(ii) of this section, a total number of NO_X allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the total ozone season NO_X emissions from all large EGUs in the State (as calculated under paragraph (j)(3)(i)(A) of this section) in accordance with the following procedures:

(A) The Administrator will allocate NO_X allowances to each large EGU in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (k)(3)(ii) of this section, rounded to the nearest whole NO_X allowance as appropriate.

(B) If the initial total number of NO_X allowances allocated to all large EGUs in the State for an ozone season under paragraph (k)(3)(iii)(A) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the total ozone season NO_X emissions from all large EGUs in the State (as calculated under paragraph (j)(3)(i)(A) of this section), the Administrator will adjust the total number of NO_X allowances allocated to all such large EGUs for the ozone season under paragraph (k)(3)(iii)(A) of this section so that the total number of NO_X allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of such total ozone season NO_X emissions. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the total ozone season NO_X emissions from all large EGUs in the State (as calculated under paragraph (j)(3)(i)(A) of this section) divided by the total number of NO_X allowances allocated under paragraph (k)(3)(iii)(A) of this section, and rounding to the nearest whole NO_X allowance as appropriate.

(iv) For each ozone season, the Administrator will allocate to all large non-EGUs in a State that commenced operation before May 1 of the ozone season used to calculate heat input under paragraph (k)(3)(ii) of this section, a total number of NO_X allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the total ozone season NO_X emissions from all large non-EGUs in the State (as calculated under paragraph (j)(3)(i)(B) of this section) in accordance with the following procedures:

(A) The Administrator will allocate NO_X allowances to each large non-EGU in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (k)(3)(ii) of this section, rounded to the nearest whole NO_X allowance as appropriate.

(B) If the initial total number of NOx allowances allocated to all large non-EGUs in the State for an ozone season under paragraph (k)(3)(iv)(A) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the total ozone season NO_X emissions from all large non-EGUs in the State (as calculated under paragraph (j)(3)(i)(B) of this section), the Administrator will adjust the total number of NO_X allowances allocated to all such non-EGUs for the ozone season under paragraph (k)(3)(iv)(A) of this section so that the total number of NO_X allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of such total ozone season NO_X emissions. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the total ozone season NO_X emissions from all large non-EGUs (as calculated under paragraph (j)(3)(i)(B) of this section) divided by the total number of NOx allowances allocated under paragraph (k)(3)(iv)(A) of this section, and rounding to the nearest whole NOx allowance as appropriate.

(v) For each ozone season, the Administrator will allocate NO_X allowances to large EGUs and large non-EGUs that commenced operation, or are projected to commence operation, in a State on or after May 1 of the ozone season used to calculate heat input under paragraph (k)(3)(ii) of this section, in accordance with the following procedures:

(A) The Administrator will establish one allocation set-aside for each ozone season for the State. Each allocation set-aside will be allocated NO_X allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the total ozone season NO_X emissions from all large EGUs and large non-EGUs in the State (as calculated under paragraph (j)(3)(i) of this section).

(B) The owner or operator of any large EGU or large non-EGU under paragraph (k)(3)(v) of this section may submit to the Administrator a request, in writing or in a format specified by the Administrator, to be allocated NO_X allowances for no more than five consecutive ozone seasons, starting with the ozone season during which the unit commenced, or is projected to commence, operation and ending with the ozone season preceding the ozone season for which it will receive an allocation under paragraph (k)(3)(iii) or (iv) of this section. The NO_X allowance allocation request must be submitted prior to May 1 of the first ozone season for which the NO_X allowance allocation is requested and after the date on which the State permitting authority issues a permit to construct the large EGU or large non-EGU.

(C) In a NO_X allowance allocation request under paragraph (k)(3)(v)(B) of this section, the owner or operator of a large EGU may request for an ozone season NO_X allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the ozone season starting with the first day in the ozone season on which the unit operated or is projected to operate.

(D) In a NO_X allowance allocation request under paragraph (k)(3)(v)(B) of this section, the owner or operator of a large non-EGU may request for an ozone season NO_X allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the ozone season starting with the first day in the ozone season on which the unit operated or is projected to operate.

(E) The Administrator will review, and allocate NO_X allowances pursuant to, each NO_X allowance allocation request under paragraph (k)(3)(v)(B) of this section in the order that the request is received by the Administrator.

(*1*) Upon receipt of the NO_X allowance allocation request, the Administrator will determine whether, and will make any necessary adjustments to the request to ensure that, for large EGUs, the ozone season and the number of allowances specified are consistent with the requirements of paragraphs (k)(3)(v)(B) and (C) of this section and, for large non-EGUs, the ozone season and the number of allowances specified are consistent with the requirements of paragraphs (k)(3)(v)(B) and (D) of this section.

(*2*) If the allocation set-aside for the ozone season for which NO_X allowances are requested has an amount of NO_X allowances not less than the number requested (as adjusted under paragraph (k)(3)(v)(E)(*1*) of this section), the Administrator will allocate the amount of the NO_X allowances requested (as adjusted under paragraph (k)(3)(v)(E)(*1*) of this section) to the large EGU or large non-EGU.

(*3*) If the allocation set-aside for the ozone season for which NO_X allowances

are requested has a smaller amount of NO_X allowances than the number requested (as adjusted under paragraph (k)(3)(v)(E)(*1*) of this section), the Administrator will deny in part the request and allocate only the remaining number of NO_X allowances in the allocation set-aside to the large EGU or large non-EGU.

(*4*) Once an allocation set-aside for an ozone season has been depleted of all NO_X allowances, the Administrator will deny, and will not allocate any NO_X allowances pursuant to, any NO_X allowance allocation request under which NO_X allowances have not already been allocated for the ozone season.

(F) Within 60 days of receipt of a NO_X allowance allocation request, the Administrator will take appropriate action under paragraph (k)(3)(v)(E) of this section and notify the owner or operator of the large EGU or large non-EGU that submitted the request of the number of NO_X allowances (if any) allocated for the ozone season to the large EGU or large non-EGU.

(vi) For a large EGU or large non-EGU that is allocated NO_X allowances under paragraph (k)(3)(v) of this section for a control period, the Administrator will deduct NO_X allowances to account for the actual utilization of the unit during the ozone season. The Administrator will calculate the number of NO_X allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NO_X allowance as appropriate, provided that the number of NO_X allowances to be deducted shall be zero if the number calculated is less than zero:

NO_X allowances deducted for actual utilization for a large EGU = (Unit's NO_X allowances allocated for ozone season) − (Unit's actual ozone season utilization × 0.15 lb/mmBtu); and

NO_X allowances deducted for actual utilization for a large non-EGU = (Unit's NO_X allowances allocated for ozone season) − (Unit's actual ozone season utilization × 0.17 lb/mmBtu),

Where:

Unit's NO_X allowances allocated for ozone season = The number of NO_X allowances allocated to the unit for the ozone season under paragraph (k)(3)(v) of this section; and

Unit's actual ozone season utilization = The utilization (in mmBtu) of the unit during the ozone season.

(vii) After each ozone season, the Administrator will determine whether any NO_X allowances remain in the allocation set-aside for a State for the ozone season. The Administrator will allocate any such NO_X allowances to the large EGUs and large non-EGUs in the State using the following formula and rounding to the nearest whole NO_X allowance as appropriate:

Unit's share of NO_X allowances remaining in allocation set-aside = Total NO_X allowances remaining in allocation set-aside × (Unit's NO_X allowance allocation ÷ Total amount of NO_X allowances allocated excluding allocation set-aside)

Where:

Total NO_X allowances remaining in allocation set-aside = The total number of NO_X allowances remaining in the allocation set-aside for the State for the ozone season;

Unit's NO_X allowance allocation = The number of NO_X allowances allocated under paragraph (k)(3)(iii) or (iv) of this section to the unit for the ozone season to which the allocation set-aside applies; and

Total amount of NO_X allowances allocated excluding allocation set-aside = The total ozone season NO_X emissions from all large EGUs and large non-EGUs in the State (as calculated under paragraph (j)(3)(i) of this section) multiplied by 95 percent if the ozone season is in 2003, 2004, or 2005 or 98 percent if the ozone season is in any year thereafter, rounded to the nearest whole allowance as appropriate.

3. Appendix F is added to part 52 to read as follows:

Appendix F to Part 52—Clean Air Act Section 126 Petitions From Eight Northeastern States: Named Source Categories and Geographic Coverage

The table and figures in this appendix are cross-referenced in § 52.34.

TABLE F–1.—NAMED SOURCE CATEGORIES IN SECTION 126 PETITIONS

Petitioning state	Named source categories
Connecticut	Fossil fuel-fired boilers or other indirect heat exchangers with a maximum gross heat input rate of 250 mmBtu/hr or greater and electric utility generating facilities with a rated output of 15 MW or greater.
Maine	Electric utilities and steam-generating units with a heat input capacity of 250 mmBtu/hr or greater.
Massachusetts	Electricity generating plants.
New Hampshire	Fossil fuel-fired indirect heat exchange combustion units and fossil fuel-fired electric generating facilities which emit ten tons of NO_X or more per day.
New York	Fossil fuel-fired boilers or indirect heat exchangers with a maximum heat input rate of 250 mmBtu/hr or greater and electric utility generating facilities with a rated output of 15 MW or greater.
Pennsylvania	Fossil fuel-fired indirect heat exchange combustion units with a maximum rated heat input capacity of 250 mmBtu/hr or greater, and fossil fuel-fired electric generating facilities rated at 15 MW or greater.
Rhode Island	Electricity generating plants.
Vermont	Fossil fuel-fired electric utility generating facilities with a maximum gross heat input rate of 250 mmBtu/hr or greater and potentially other unidentified major sources.

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Figure F-1. Location of Ozone Transport Assessment Group (OTAG) Subregions

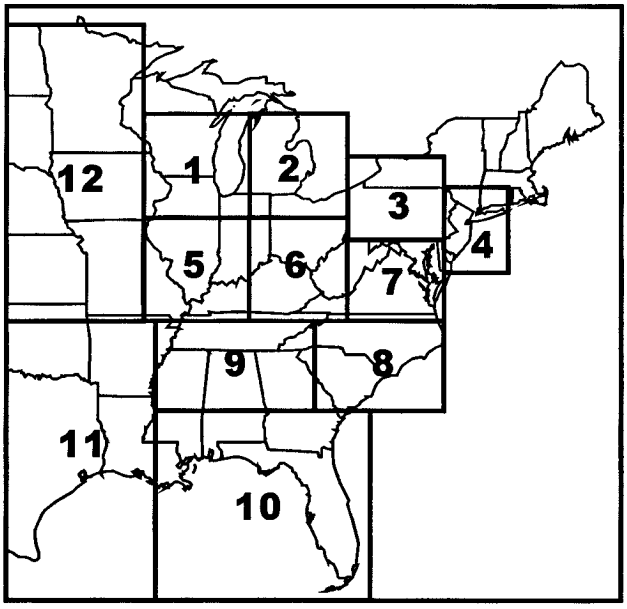


Figure F-2. Areas covered by the section 126 petition from Connecticut

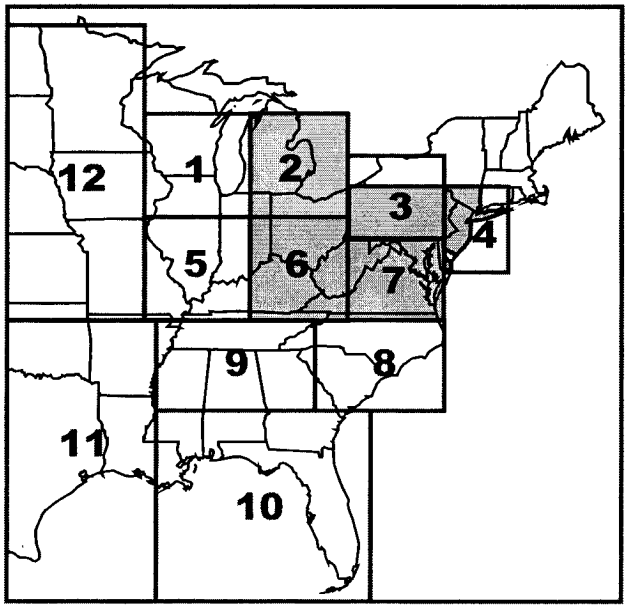


Figure F-3. Areas covered by the section 126 petition from Maine

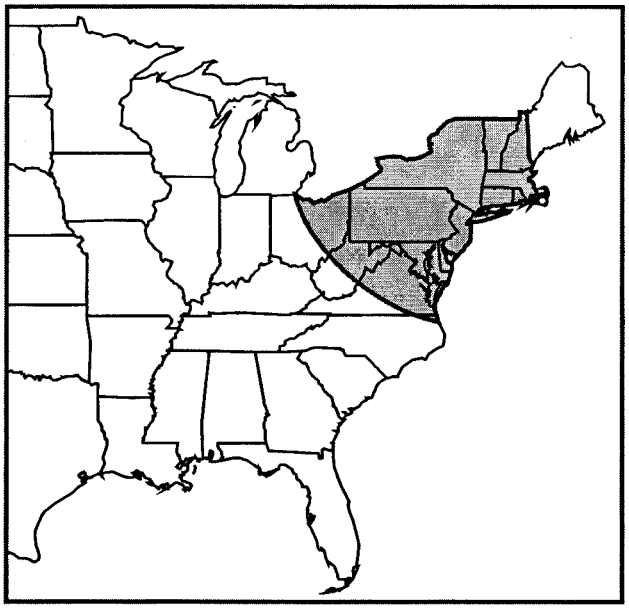


Figure F-4. Areas covered by the section 126 petition from Massachusetts

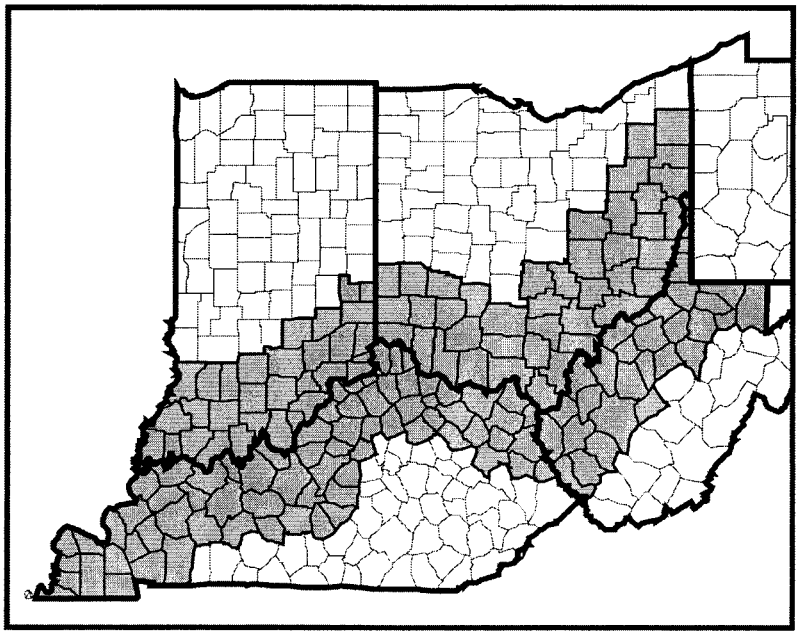


Figure F-5. Areas covered by the section 126 petition from New Hampshire

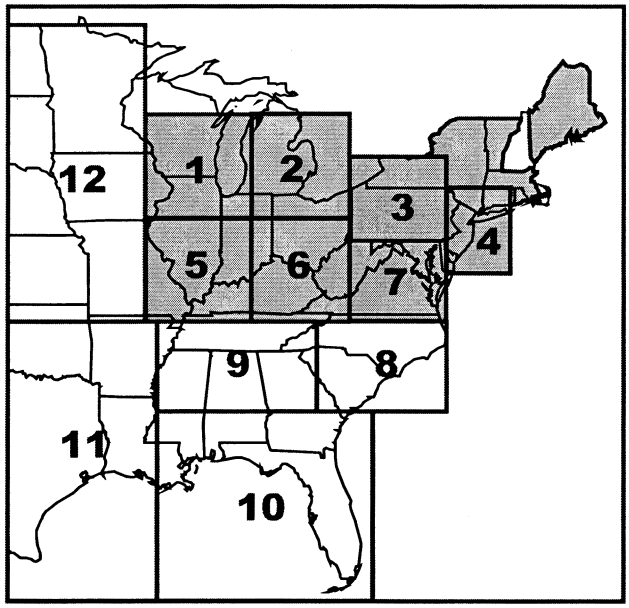


Figure F-6. Areas covered by the section 126 petition from New York

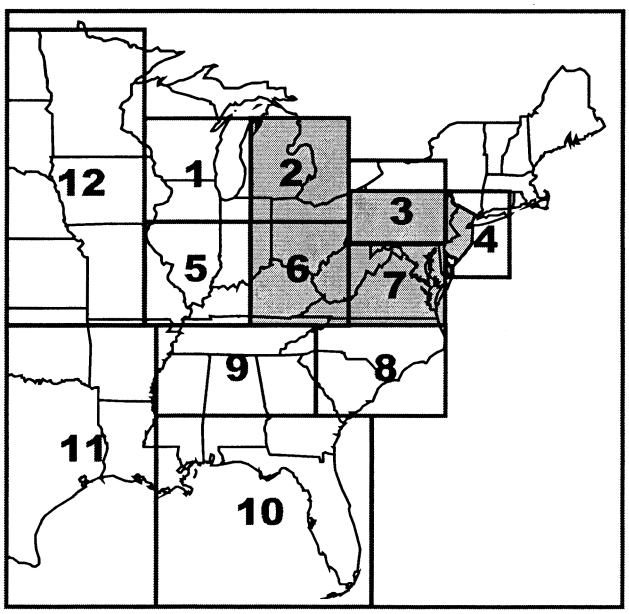


Figure F-7. Areas covered by the section 126 petition from Pennsylvania

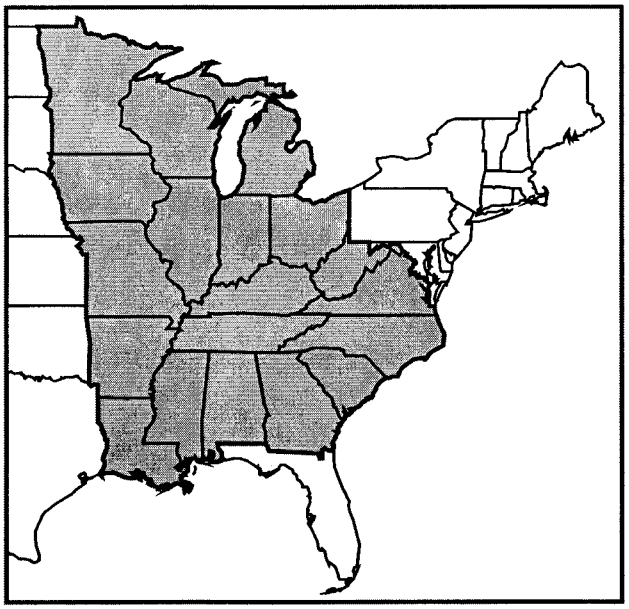


Figure F-8. Areas covered by the section 126 petition from Rhode Island

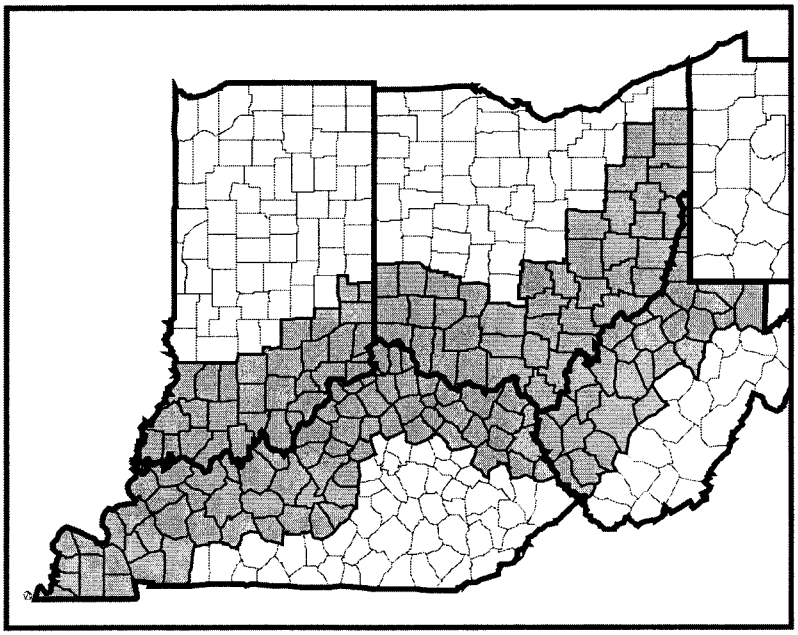
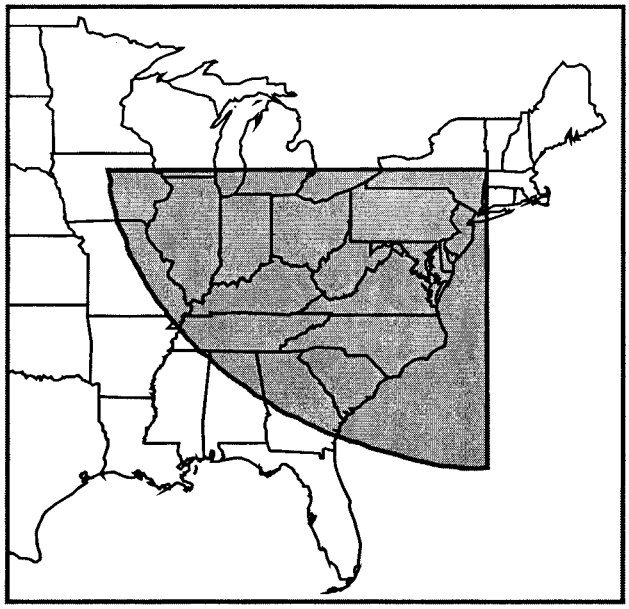


Figure F-9. Areas covered by the section 126 petition from Vermont



[FR Doc. 99–11559 Filed 5–24–99; 8:45 am]
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Federal Register

Tuesday
May 25, 1999

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Relocation Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 97–032]

RIN 9000–AH96

Federal Acquisition Regulation; Relocation Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to remove the ceilings imposed on certain types of relocation costs; to remove specific references to mortgage interest differential and rental differential payments; to permit reimbursement of relocation costs on a lump-sum basis in certain situations; and to make allowable payments for spouse employment assistance and for increased employee income and Federal Insurance Contributions Act (FICA) taxes incident to allowable reimbursed relocation costs.

DATES: Comments should be submitted on or before July 26, 1999, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97–032@gsa.gov.

Please cite FAR case 97–032 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 97–032.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed FAR rule revises the cost principle at FAR 31.205–35, Relocation costs, to remove the numerous ceilings imposed on specific relocation costs; remove specific references to mortgage interest differential and rental differential payments; recognize the growing commercial practice of reimbursing relocation costs on a lump-sum basis in certain situations; and make allowable payments for employment assistance for spouses and for increased employee income and FICA taxes incident to allowable reimbursed relocation costs.

The councils are proposing these revisions for the following reasons:

Removal of ceilings on individual relocation cost elements. Over the years, the relocation cost principle has been criticized as being overly detailed particularly for the many allowability ceilings it places on individual relocation cost elements (*e.g.*, the 14% limitation at FAR 31.205–35(a) (3) and (4) for closing cost and continuing costs of ownership of a former residence and the 5% limitation at FAR 31.205–35(a)(6)(ii) on costs of purchasing a new residence). These ceilings represent unnecessary micromanagement of contractor business practices. Consistent with the move towards increased reliance on commercial practices, the councils propose that the Government rely on contractors' individual corporate relocation policies to limit such costs to reasonable amounts.

Removal of specific references to mortgage interest differential and rental differential payments. The rule removes the specific references to these types of payments from the list of allowable costs at 31.205–35(a). The specific guidance at 31.205–35(a) (7) and (8) is no longer deemed necessary. However, allowability of these types of costs will still be governed by the reasonableness criteria at FAR 31.201–3.

Reimbursement on a lump-sum basis. The rule allows contractors the option of claiming employee relocation costs on an actual cost basis, an appropriate lump-sum basis, or a combination of the two methodologies. However, the rule permits reimbursement on a lump-sum basis only if a contractor has an advance agreement with the Government. This change would recognize the widespread commercial practice of utilizing a lump-sum approach in compensating employees for their relocation expenses. Many contractors have adopted the lump-sum methodology for its administrative ease, and because it results in cheaper and faster relocations, with greater employee satisfaction, than the actual cost approach. While individual receipts are not required with the lump-sum approach, contractors must still demonstrate that amounts paid are reasonable and appropriate for the circumstances.

Two new categories of allowable relocation costs. The rule makes allowable two categories of expenses that are currently unallowable: payments for increased employee income and FICA taxes incident to allowable reimbursed relocations costs; and payments for spouse employee assistance. Since contractors incur these type of costs in a good faith effort to keep transferred employees from being adversely affected by the relocation, it appears equitable to reimburse contractors for these types of costs. In addition, this revision is consistent with a change to the Federal employee travel regulations that now permits recovery of both of these types of costs.

The councils anticipate that these changes to the relocation cost principle will generate savings by reducing administrative costs for both the contractor and the Government. The Government expects the administrative cost savings to lessen any increased costs resulting from this rule change. For example, the removal of the ceilings should lead to a reduction of the Government's auditing and contract administrative effort. In addition, the use of advance agreements for the lump-sum payment methodology should lessen the incidence of post-award disallowances and disputes. Another example of savings would be that contractors would no longer need to monitor individual relocation cost elements to ensure that amounts claimed do not exceed the numerous ceilings.

However, there is some concern within the Government that removing ceilings on individual relocation cost elements and permitting lump-sum payments in lieu of actual costs may result in an increase in costs. Therefore, to help estimate the potential costs and benefits to the Government from these changes, the councils invite respondents to provide the following information together with their comments. Note that public comments provided in response to this notice will be available in their entirety to any requester, including any requester under the Freedom of Information Act (5 U.S.C. 552). Therefore, we caution respondents not to provide proprietary or other business sensitive information. Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.

1. For industry respondents—

(a) How will your company ensure that relocation costs charged to the Government are reasonable under the approach set forth in the proposed rule? (Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.)

(b) If your company has little or no commercial business, how will you ensure that relocation costs charged to the Government are reasonable under the approach set forth in the proposed rule? (Under no circumstances should respondents provide any information unless they do so with a clear

understanding that it will be made available to the public.)

(c) What has been your company's experience in using a lump-sum approach instead of an actual cost method for all or a portion of relocation costs? (Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.)

(d) What are the types of savings that your company would expect if the proposed rule becomes final? (Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.)

(e) Does your company now use commercially available data, such as that developed by the Employee Relocation Council, in order to establish limits on relocation costs? If so, what sources of commercially available data do you use, and how do you use it? (Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.)

2. For Government respondents, identify the types and amounts of costs, savings, advantages or disadvantages that you anticipate would result from implementing the proposed rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–032), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 18, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. In section 31.205–35, revise paragraphs (a), (b), and (c) to read as follows:

31.205–35 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of assigned work location (for an indefinite period or for a stated period, but in either event for not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to the limitations in paragraphs (b) and (f) of this subsection:

(1) Costs of travel of the employee and members of the employee's immediate family (see 31.205–46) and transportation of the household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by the employee and spouse to locate living quarters, and temporary lodging during the transition period for the employee and members of the employee's immediate family.

(3) Closing costs (*i.e.*, brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of the actual residence owned by the employee when notified of the transfer.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, after the settlement date or lease date of a new permanent residence.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in the new work location, except that these costs will not be allowable for existing employees or newly recruited employees who, before the relocation, were not homeowners.

(7) Costs of canceling an unexpired lease.

(8) Payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs.

(9) Payments for spouse employment assistance.

(b) The costs described in paragraph (a) of this section must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically. Reimbursement may be on an actual cost or appropriate lump-sum basis, or combination thereof. However, use of a lump-sum basis in lieu of an actual cost basis is limited to those situations in which a contractor has an advance agreement with the Government.

(3) The costs must not be otherwise unallowable under Subpart 31.2.

(c) The following types of costs are unallowable:

(1) Loss on the sale of a home.

(2) Costs incident to acquiring a home in the new location as follows:

(i) Real estate brokers fees and commissions.

(ii) Costs of litigation.

(iii) Real and personal property insurance against damage or loss of property.

(iv) Mortgage life insurance.

(v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence. (However, the cost of a mortgage title policy is allowable.)

(vi) Property taxes and operating or maintenance costs.

(3) Continuing mortgage principal payments on a residence being sold.

(4) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

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- Work stoppage reports; DD Form 1507 use eliminated; published 5-25-99

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  - Cross-linked sodium polyacrylate with polyvinyl alcohol; published 5-25-99

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- High theft lines for 2000 model year; listing; published 5-25-99

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  - Swim-with-the-dolphin interactive programs; comments due by 6-1-99; published 4-2-99

Exportation and importation of animals and animal products:

- Horses, ruminants, and swine; semen, embryos, and products; alternative ports of entry—
  - Memphis, TN; comments due by 6-1-99; published 4-30-99

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AGRICULTURE DEPARTMENT

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- Feed weights; comments due by 6-1-99; published 4-2-99

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- Bluefin tuna; comments due by 6-1-99; published 5-19-99

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  - Summer flounder, scup, and black sea bass; comments due by 6-1-99; published 4-30-99

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  - HCFC production, import and export; allowance system; comments due by 6-4-99; published 4-5-99

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  - Safety Kleen Corp.; comments due by 6-1-99; published 3-31-99

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  - San Francisco Deep Ocean Disposal Site, CA; comments due by 6-1-99; published 4-29-99

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- Nevada; comments due by 6-1-99; published 4-16-99
- New Mexico; comments due by 6-1-99; published 4-16-99

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  - Federal oil and gas resources; protection against drainage by operations on nearby lands resulting in lower royalties from Federal leases; comments due by 6-4-99; published 4-12-99
  - Performance standards in lieu of current prescriptive requirements; comments due by 6-4-99; published 3-26-99

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S. 453/P.L. 106–27

To designate the Federal building located at 709 West 9th Street in Juneau, Alaska, as the ''Hurff A. Saunders Federal Building''. (May 13, 1999; 113 Stat. 52)

S. 460/P.L. 106–28

To designate the United States courthouse located at 401 South Michigan Street in South Bend, Indiana, as the ''Robert K. Rodibaugh United States Bankruptcy Courthouse''. (May 13, 1999; 113 Stat. 53)

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