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- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: Tuesday, April 17, 2001 at 9:00 a.m.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202-523-4538



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phone numbers, online resources, finding aids, reminders,
and notice of recently enacted public laws.

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1436

RIN 0560-AG00

Farm Storage Facility Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule which was published Thursday, January 18, 2001 (66 FR 4607). The section entitled "Eligible borrowers" was incorrectly numbered and is corrected with this document.

EFFECTIVE DATE: March 29, 2001.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, (202) 205-5851.

Correction of Publication

Accordingly, in the final rule published January 18, 2001, (66 FR 4607) make the following correction:

§ 1436.5 [Corrected]

On page 4613, in § 1436.5, the second paragraph (a)(6) and paragraphs (a)(7) through (a)(10) are redesignated as paragraphs (a)(7) through (a)(11).

Signed at Washington, DC, on March 22, 2001.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01-7787 Filed 3-28-01; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

RIN 1076-AE13

Distribution of Fiscal Year 2001 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: We are issuing a final rule requiring that we distribute the remaining 25 percent of fiscal year 2001 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. We are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting states. Up to \$35,000 per tribe is available under this distribution until August 15, 2001, for administrative capacity building and other eligible transportation activities upon receipt, review, and approval of self-determination contracts and self-governance agreements, where applicable, and receipt of tribal requests by direct services tribes for BIA regions to perform these functions for them. We are extending the deadline for applying for these funds from March 15, 2001, to May 15, 2001.

EFFECTIVE DATE: March 29, 2001. Section 170.4b expires September 30, 2001.

FOR FURTHER INFORMATION CONTACT:

LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS-4058-MIB, Washington, DC 20240. Mr. Gishi may also be reached at 202-208-4359 (phone) or 202-208-4696 (fax).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA-21) Negotiated Rulemaking Process?

The background information on the IRR program, the relative need formula,

the FHWA Price Trends Report, and the TEA-21 Negotiated Rulemaking process is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431). You may obtain additional information on the IRR program web site at <http://www.irr.bia.gov>.

Why Are You Publishing This Final Rule?

We are publishing this final rule only for the distribution of the remaining 25 percent of fiscal year 2001 IRR funds. This rule sets no precedent for the final rule to be published as required by Section 1115 of TEA-21. On January 9, 2001, we published a temporary rule distributing 75 percent of fiscal year 2001 IRR funds (66 FR 1576).

Where Can I Find Information on the Distribution of 75 Percent of Fiscal Year 2001 IRR Funds?

You can find this information in the **Federal Register** notice dated January 9, 2001 (66 FR 1576).

What Comments Did You Receive on the Temporary Rule for Distribution of 25 Percent of Fiscal Year 2001 IRR Program Funds?

In the 30-day comment period after publication of the temporary rule distributing 75 percent of fiscal year 2001 IRR program funds, we received comments from 84 commenters. We have reviewed and considered these comments on distributing the remaining 25 percent of fiscal year 2001 IRR program funds.

Many commenters referred to "the [TEA-21] Negotiated Rulemaking Committee's consensus" on IRR funding for fiscal year 2001. The full committee did not consider or come to a consensus on this funding. Rather, the tribal caucus came to consensus and made written recommendations for fiscal year 2001 IRR funding to the Assistant Secretary—Indian Affairs, as requested by the Assistant Secretary. The Assistant Secretary considered the recommendations and implemented almost all of them, except for specific items for which the Department's legal review required changes.

Comment: Eight commenters objected to the Secretary's reserving \$19.53 million for administrative capacity building and other transportation activities out of the second 25 percent distribution rather than out of the first 75 percent distribution. Their objection

was that reserving the \$19.53 million from the 25 percent distribution subjected those funds to "further decision-making" and violated the tribal caucus recommendation on fiscal year 2001 IRR funding.

Response: The portion of fiscal year 2001 IRR program funds reserved for administrative capacity building was a new provision and departed from the current relative need formula. Therefore, we were required to solicit comments from the public. Those funds necessarily must come from the second distribution to allow for consideration of comments and any appropriate changes. After considering all comments, we will distribute fiscal year 2001 IRR program funds according to the diagram shown in the January 9, 2001, **Federal Register** notice (66 FR 1578).

Comment: Twenty-nine commenters objected to the requirement that tribes submit contract applications for administrative capacity building funds (\$35,000 per tribe from the \$19.53 million reserved) in order to receive those funds. The commenters said that the tribal caucus recommendation only required that tribes submit a tribal resolution or other official tribal action to receive the funds.

Response: The temporary rule, following the tribal caucus recommendation, required that tribes submit a scope of work, a budget, and a tribal resolution or other official tribal action in order to apply for a self-determination contract or self-governance agreement. It required that direct services tribes request the administrative capacity building services from the appropriate region.

Comment: Five commenters said the March 15, 2001, deadline for tribes to apply for administrative capacity building and other eligible transportation activities should be extended to August 15, 2001, as the tribal caucus recommendation stated.

Response: The tribal caucus recommendation set August 15, 2001, as the deadline for both the application requests as well as awards of ACB funds. This deadline for applications does not allow BIA a reasonable time for consideration and approval of applications and direct service requests. Since the fiscal year ends September 30, 2001, the August 15, 2001, deadline for application allows BIA and the tribes only 45 days to negotiate all requests for contracts and agreements and requests for direct services. However, in this final rule BIA is extending the deadline for tribes to apply for funds for administrative capacity building and

other eligible transportation activities to May 15, 2001.

Comment: Twelve commenters stated that direct services tribes should not be required to submit anything in order to receive administrative capacity building services from their respective regional offices.

Response: The tribal caucus recommendation states that "the BIA will provide administrative capacity building services for tribes which so request." The temporary rule required that tribes needing direct services request those services from the appropriate BIA regional office.

Comment: Eighteen commenters stated the temporary rule does not indicate that funds will be provided to regions to provide administrative capacity building services to direct services tribes.

Response: The temporary rule states that the reserved funds will be distributed to the twelve BIA regions based on the number of tribes in the region that request to participate by tribal resolution or other official action of the tribe.

Comment: Twenty-eight commenters agreed with the Secretary's reserving \$19.53 million for administrative capacity building and other eligible transportation activities.

Response: Accepted.

Comment: Five commenters stated administrative capacity building funds should continue and be made available as part of the new funding formula.

Response: The tribal caucus recommendation stated that this funding allocation is for fiscal year 2001 only. The temporary rule also states that this funding allocation applies only to fiscal year 2001 IRR program funding.

Comment: Five commenters opposed the \$19.53 million reserved for administrative capacity building and other eligible transportation activities.

Response: The tribal caucus recommendation was to reserve funds for administrative capacity building for fiscal year 2001 only. The Assistant Secretary—Indian Affairs considered this tribal caucus recommendation to allow all tribes to participate in the IRR program, as an acceptable funding method for fiscal year 2001 and proposed it only for fiscal year 2001 in the temporary rule.

Comment: Four commenters supported using the current relative need formula.

Response: Accepted.

Comment: One commenter stated the BIA should not use empty cells in the funding formula, but should use the regional engineer's estimates and recompute the cost to construct in that

region and distribute the remaining 25 percent of fiscal year 2001 IRR program funds to correct for the entire year.

Response: We are continuing to distribute IRR program funds for fiscal year 2001 as we have done in previous years using nationwide data in the approved relative need formula.

Comment: Twenty-one commenters support the existing relative need formula only if it includes funds for administrative capacity building.

Response: The tribal caucus recommendation was to use the current relative need formula and reserve funds for administrative capacity building for fiscal year 2001 only. The Assistant Secretary—Indian Affairs considered this tribal caucus recommendation to allow all tribes to participate in the IRR program as an acceptable funding method for fiscal year 2001 and proposed it only for fiscal year 2001 in the temporary rule.

Comment: Twelve commenters recommend distributing program management and oversight funds in an equitable manner considering number of tribes served, difficulty, and cost to travel to provide service to tribes, and geographic location.

Response: Program management and oversight funds are part of the statutorily directed takedown and are not subject to the formula distribution.

Comment: One commenter noted that "administrative capacity building" is not defined.

Response: Accepted.

Comment: One commenter recommended immediately distributing the first part of fiscal year 2001 IRR funds and immediately making available the \$35,000 per tribe for administrative capacity building and other eligible transportation activities.

Response: Upon publication of the temporary rule on January 9, 2001, we distributed 75 percent of fiscal year 2001 IRR program funds. The portion of fiscal year 2001 IRR program funds reserved for administrative capacity building was a new provision and departed from the current relative need formula. Therefore, we were required to solicit comments from the public. Those funds necessarily must come from the second distribution to allow for consideration of comments and any appropriate changes. After considering all comments, we will distribute fiscal year 2001 IRR program funds according to the diagram shown in the January 9, 2001, **Federal Register** notice (66 FR 1578).

Comment: Twenty-nine commenters objected to the requirement that tribes submit contract applications for administrative capacity building funds

(\$35,000 per tribe from the \$19.53 million reserved) in order to receive those funds. The commenters said that the tribal caucus recommendation only required that tribes submit a tribal resolution or other official tribal action to receive the funds.

Response: The temporary rule, following the tribal caucus recommendation, required that tribes submit a scope of work, a budget, and a tribal resolution or other official tribal action in order to apply for a self-determination contract or self-governance agreement. It required that direct services tribes request the administrative capacity building services from the appropriate region.

Comment: Forty-two commenters agreed with using the Federal Highway Administration Price Trends Report with appropriate modifications for non-reporting states in the relative need formula if the report is implemented correctly; i.e., if BIA uses the most recently reported data and does not default non-reporting states to their lowest scores.

Response: Accepted.

Comment: Two commenters disagreed with using FHWA Price Trends Report as the guide for determining the cost-to-construct because the trends are taken from projects exceeding \$500,000 and most reservation projects are much less than this.

Response: The FHWA Price Trends Report indices are a reflection of the market trends for different categories of highway construction in each state. It does not determine the cost-to-construct. The cost-to-construct is determined by updates tribes/agencies submit to BIA regional offices and approved by BIA Division of Transportation. The FHWA Price Trends Report is applied consistently to all states which have federally-recognized tribes.

Comment: One commenter recommended using projected FHWA price indices for relative need formula for fiscal year 2001 IRR funds only if fiscal year 2000 4th quarter price indices have not been published by FHWA at the time regional distributions are finally calculated.

Response: The use of FHWA Price Trends Report in the current relative need formula for fiscal year 2001 is consistent with its use since 1993. Recommendations for changes in use of the FHWA Price Trends Report or its elimination are appropriate for comments to the Notice of Proposed Rulemaking for the new relative need formula as proposed the TEA-21 Negotiated Rulemaking Committee.

Comment: One commenter disagreed with modifications to the FHWA Price Trends Report and use of that data in distribution of fiscal year 2001 IRR funds.

Response: The use of FHWA Price Trends Report in the current relative need formula for fiscal year 2001 is consistent with its use since 1993. Recommendations for changes in use of the FHWA Price Trends Report or its elimination are appropriate for comments to the Notice of Proposed Rulemaking for the new relative need formula as proposed the TEA-21 Negotiated Rulemaking Committee.

Comment: Two commenters stated that \$35,000 per tribe for administrative capacity building and other eligible transportation activities is arbitrary and should be increased under certain circumstances based on need and available funding.

Response: As proposed, \$35,000 per tribe for administrative capacity building is only for fiscal year 2001 IRR program funds.

Comment: Seven commenters agreed with distributing fiscal year 2001 IRR funds in two installments.

Response: Accepted.

Comment: Six commenters objected to distributing fiscal year 2001 IRR funds in two parts, noting that the tribal caucus consensus recommendation was to distribute the funds to the BIA regions in one payment.

Response: The portion of fiscal year 2001 IRR program funds reserved for administrative capacity building was a new provision and departed from the current relative need formula. Therefore, we were required to solicit comments from the public. Those funds necessarily must come from the second distribution to allow for consideration of comments and any appropriate changes. After considering all comments, we will distribute fiscal year 2001 IRR program funds according to the diagram shown in the January 9, 2001, **Federal Register** notice (66 FR 1578).

Comment: One commenter stated that undistributed funding from the \$19.53 million should remain in the region from which it was to be appropriated.

Response: The tribal caucus recommendation states "any funds reserved by the BIA to fund administrative capacity building applications which are not needed for this purpose based on the number of applications received by August 15 shall be redistributed nationally under the relative need formula." We accepted and used the tribal caucus recommendation in the temporary rule.

Comment: Three commenters noted that the temporary rule did not include the Negotiated Rulemaking Committee's tribal caucus consensus statement that a transition distribution formula was necessary to provide tribes not already participating in the IRR program the opportunity to participate and that this should be addressed in future IRR regulations.

Response: The temporary rule provided that all tribes should be able to participate in administrative capacity building.

Comment: Three commenters noted that the temporary rule did not include the formula component diagram exactly as the committee caucus recommendation had presented it. The commenters said displaying the term "reserved" in the "takedowns" oval is misleading and should be correctly applied to the "reserved" amounts for the nationwide priority program for improving deficient IRR bridges of not less than \$13 million.

Response: The diagram as published in the temporary rule accurately reflects the current method for distributing IRR program funds under the current relative need formula. The statutorily directed takedown is not subject to formula distribution. The commenter is correct that reserved funds refer to reserved IRR bridge funds.

Comment: Three commenters noted that the temporary rule and the diagram included in it imply that the \$35,000 per tribe is intended only to be used for administrative capacity building rather than also for "other eligible transportation activities" and the diagram ignores possible allocations to regions to perform other eligible transportation activities for direct services tribes.

Response: The temporary rule provides that the funds are reserved for administrative capacity building and other eligible transportation activities.

Comment: Two commenters noted that they were hereby submitting their applications for \$35,000 for administrative capacity building and other eligible transportation activities.

Response: Accepted.

Comment: Four commenters noted that they would be submitting a scope of work, budget, and tribal resolution for administrative capacity building funds by March 15, 2001.

Response: Accepted.

Comment: One commenter stated that the BIA should distribute the remaining 25 percent of fiscal year 2001 IRR funds according to the same relative need formula used to distribute the first 75 percent of those funds.

Response: Accepted.

Comment: Thirty-seven commenters stated that although the temporary rule did not address the population factor in the relative need formula, they were commenting that BIA should not reduce Alaska's population numbers in the BIA Labor Force Report.

Response: We are continuing to distribute IRR program funds as we have in previous years under the relative need formula using data tribes provide to BIA.

Comment: Two commenters support lifting the restriction that requires funds to be used on BIA projects.

Response: All IRR program funds are eligible for use on projects, functions, services, and activities for all IRR transportation projects.

Comment: One commenter stated that each village in Alaska should not receive tribal status.

Response: IRR program funds are available for approved IRR projects for all federally recognized tribes as identified in the **Federal Register**. This comment is outside the scope of this rule.

Comment: One commenter stated that Alaska needs a separate IRR program because the relative need formula was not designed for Alaska.

Response: The IRR program was developed to serve all federally recognized tribes. This comment is outside the scope of this rule.

Comment: Two commenters noted that using adjusted mileage for Alaska in the current relative need formula is contrary to Public Law 102-381 after the relative need formula was put into place in 1993.

Response: Comments on inventory data are properly addressed in TEA-21 Section 1115 negotiated rulemaking process and comments to the Notice of Proposed Rulemaking when it is published. This comment is outside the scope of this rule.

Comment: One commenter stated that revenue from the federal fuel excise tax should be used mainly for community road maintenance and construction and should not be used for other transportation activities.

Response: This comment is outside the scope of this rule.

Comment: One commenter noted that the temporary rule does not take into account the Office of Self-Governance or the 100 percent advance payment provision of a fiscal year 2001 self-governance agreement.

Response: This comment is correct, however, this comment is properly addressed in TEA-21 Section 1115 negotiated rulemaking process and comments to the Notice of Proposed Rulemaking when it is published.

Comment: One commenter noted that each chapter of the Navajo Nation should be allocated \$35,000 for administrative capacity building.

Response: The temporary rule provides that administrative capacity building funds in the temporary rule are available to federally recognized tribes in the amount of \$35,000 per tribe.

Does This Rule Include the Reserved Funds for Administrative Capacity Building?

Yes. The remaining 25 percent of fiscal year IRR program funds distributed under this rule includes the \$19.53 million reserved for administrative capacity building and other eligible transportation activities. These funds will be distributed until August 15, 2001, based on approved self-determination contracts or applicable self-governance agreements or requests by direct services tribes to the appropriate BIA region for BIA to perform administrative capacity building for them. After August 15, 2001, any undistributed funds reserved for administrative capacity building will be distributed to the appropriate BIA regions using the relative need formula.

*What Is the Deadline for Applying for Administrative Capacity Building Funds for Fiscal Year 2001 as Outlined in the January 9, 2001, **Federal Register** Notice?*

The deadline for applying for administrative capacity building funds for fiscal year 2001 is changed from March 15, 2001 to May 15, 2001.

How Will the Secretary Distribute the Remaining 25 Percent of Fiscal Year 2001 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute the remaining 25 percent (approximately \$56.5 million) of fiscal year 2001 IRR program funds based on the current relative need formula used in fiscal year 2000 and in the first distribution in fiscal year 2001. From this 25 percent the Secretary is reserving \$19.53 million to distribute for administrative capacity building by the process described in the January 9, 2001, temporary rule. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process.

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is a significant regulatory action because it will have an annual effect of more than \$100 million

on the economy. The total amount available for distribution of fiscal year 2001 IRR program funds is approximately \$226 million and we are distributing approximately \$56.5 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2001 IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients.

This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the second partial distribution of fiscal year 2000 IRR program funds and the first partial distribution of fiscal year 2001 IRR funds.

Approximately 1400 road and bridge construction projects are at various phases that depend on this fiscal year's IRR program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This

rule continues to adopt the relative need formula that we have used since 1993.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not state and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it has an annual effect on the economy of \$100 million or more. We are distributing approximately \$57.5 million under this rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required.

This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of \$100 million or greater in any year. The effect of this rule is to immediately provide the remaining 25 percent of fiscal year 2001 IRR program funds to tribal governments for ongoing IRR activities and construction projects.

Takings Implications (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule should not affect the relationship between state governments and the Federal government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. We are still pursuing the TEA-21 mandated negotiated rulemaking process. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to the remaining 25 percent of fiscal year 2001 IRR program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of

this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to the President's Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have consulted with tribal representatives throughout the negotiated rulemaking process and in developing this rule. The TEA-21 Negotiated rulemaking committee's tribal caucus presented a consensus recommendation to the Assistant Secretary for distribution of fiscal year 2001 IRR program funds. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR funds. We are making a change from previous years (which we also made for fiscal year 2000 and the first part of fiscal year 2001 IRR program funds (see **Federal Register** notices at 65 FR 7431 and 66 FR 1576)) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. The only other change from previous years is to provide for up to \$35,000 per tribe for administrative capacity building and other eligible transportation activities by reserving \$19.53 million from this distribution. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA-21 negotiated rulemaking process and this distribution uses the TEA-21 Negotiated Rulemaking Committee's tribal caucus recommendation.

List of Subjects in 25 CFR Part 170

Highways and Roads, Indians-lands.

For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e-2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

2. Revise § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute the remaining 25 percent of fiscal year 2001 Indian Reservation Roads program funds?

On March 29, 2001 we will distribute the remaining 25 percent of fiscal year 2001 IRR program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105-178. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting states by inserting the latest data reported for those states for use in the relative need formula process. Of this remaining 25 percent of fiscal year 2001 IRR program funds, \$19.53 million is available for immediate distribution to provide for up to \$35,000 for each tribe for administrative capacity building and other eligible transportation activities based on approved contracts, agreements, or requests for such funds by the deadline of May 15, 2001.

Dated: March 23, 2001.

James H. McDivitt,

Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 01-7744 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179-0275; FRL-6954-9]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 24, 1997 and concerns oxides of nitrogen (NO_x) and carbon monoxide (CO) emissions from boilers, steam generators and process heaters in petroleum refineries. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources

and directs California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on April 30, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901
Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814
Bay Area AQMD, 939 Ellis Street, San Francisco, CA 94109-7799

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1160.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On July 24, 1997, 62 FR 39795, EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule#	Rule title	Adopted	Submitted
BAAQMD	9.10	Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators and Process Heaters in Petroleum Refineries.	01/05/94	07/23/96

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

Rule does not specify any test method for determination of compliance with the NO_x emission limit, and does not require recordkeeping to demonstrate compliance with the emission rate.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18

months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rule has been adopted by the BAAQMD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements

beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under

the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 29, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 6, 2001.

Michael Schulz,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(E)(6) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(E) * * *

(6) Rule 9–10 adopted on January 5, 1994.

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[FR Doc. 01–7792 Filed 3–28–01; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1602

Privacy Act of 1974; Implementation

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: The Chemical Safety and Hazard Investigation Board adopts regulations for handling requests made under the Privacy Act. The Privacy Act requires Federal agencies to create regulations establishing procedures for its implementation. These regulations will ensure the proper handling and preservation of agency records subject to the Privacy Act. A Notice of Systems of Records is published elsewhere in this issue of the **Federal Register**.

DATES: This rule is effective April 30, 2001.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, 202–261–7619.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 27, 2000 (65 FR 81810), the Chemical Safety and Hazard Investigation Board published a proposed rule setting forth its proposed procedures for the implementation of the Privacy Act of 1974. The proposed rule provided for a 30-day comment period. No comments were received in response to the proposed rule and invitation for comments. This final rule is unchanged from the proposed rule.

The Chemical Safety and Hazard Investigation Board is concurrently publishing a Notice of Systems of Records in the Notices section of this issue of the **Federal Register**.

These regulations implement the Privacy Act of 1974, 5 U.S.C. 552a. The Board adopts the following set of regulations to discharge its responsibilities under the Privacy Act. The Privacy Act establishes: Basic procedures for individuals' access to all records in systems of records maintained by the Chemical Safety and Hazard Investigation Board ("CSB" or "Board") that are retrieved by an

individual's name or personal identifier. These regulations describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the CSB.

Regulatory Flexibility Act

The Board, 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 on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This regulation will not 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, and it will not significantly or uniquely affect small governments. Therefore, the Board did not deem any action necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48.

Dated: March 21, 2001.

Christopher W. Warner,
General Counsel.

List of Subjects in 40 CFR Part 1602

Administrative practice and procedure, Privacy.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board adds a new 40 CFR Part 1602 to read as follows:

PART 1602—PROTECTION OF PRIVACY AND ACCESS TO INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

Sec.

- 1602.1 General provisions.
- 1602.2 Requests for access to records.
- 1602.3 Responsibility for responding to requests for access to records.
- 1602.4 Responses to requests for access to records.
- 1602.5 Appeals from denials of requests for access to records.
- 1602.6 Requests for amendment or correction of records.
- 1602.7 Requests for accountings of record disclosures.
- 1602.8 Preservation of records.
- 1602.9 Fees.
- 1602.10 Notice of court-ordered and emergency disclosures.

Authority: 5 U.S.C. 552a, 553; 42 U.S.C. 7412 *et seq.*

§ 1602.1 General provisions.

(a) *Purpose and scope.* This part contains the rules that the Chemical

Safety and Hazard Investigation Board ("CSB" or "Board") follows under the Privacy Act of 1974, 5 U.S.C. 552a. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The rules in this part apply to all records in systems of records maintained by the CSB that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the CSB. In addition, the CSB processes all Privacy Act requests for access to records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, following the rules contained in part 1601 of this chapter, which gives requests the benefit of both statutes.

(b) *Definitions.* As used in this part:

Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

Request for access to a record means a request made as described in subsection (d)(1) of the Privacy Act, 5 U.S.C. 552a.

Request for amendment or correction of a record means a request made as described in subsection (d)(2) of the Privacy Act, 5 U.S.C. 552a.

Request for an accounting means a request made as described in subsection (c)(3) of the Privacy Act, 5 U.S.C. 552a.

§ 1602.2 Requests for access to records.

(a) *How made and addressed.* You may make a request for access to a CSB record about yourself by appearing in person or by writing to the CSB. Your request should be sent or delivered to the CSB's General Counsel, at 2175 K Street, NW., 4th Floor, Washington, DC 20037. For the quickest possible handling, you should mark both your request letter and the envelope "Privacy Act Request."

(b) *Description of records sought.* You must describe the records that you want in enough detail to enable CSB personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, your request should describe the records sought, the time periods in which you believe they were compiled, and the name or identifying number of each system of records in which you believe they are kept. The CSB publishes notices in the **Federal Register** that describe its systems of records. A description of the CSB's systems of records also may be found as part of the "Privacy Act Compilation"

published by the National Archives and Records Administration's Office of the Federal Register. This compilation is available in most large reference and university libraries. This compilation also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at http://www.access.gpo.gov/su_docs).

(c) *Agreement to pay fees.* If you make a Privacy Act request for access to records, it shall be considered an agreement by you to pay all applicable fees charged under § 1602.9 up to \$25.00. The CSB ordinarily will confirm this agreement in an acknowledgment letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

(d) *Verification of identity.* When you make a request for access to records about yourself, you must verify your identity. You must state your full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, you may also, at your option, include your social security number.

(e) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, you must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at your option, the social security number of the individual;

(2) Your own identity, as required in paragraph (d) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

§ 1602.3 Responsibility for responding to requests for access to records.

(a) *In general.* In determining which records are responsive to a request, the CSB ordinarily will include only those records in its possession as of the date the CSB begins its search for them. If any other date is used, the CSB will inform the requester of that date.

(b) *Authority to grant or deny requests.* The CSB's General Counsel, or

his/her designee, is authorized to grant or deny any request for access to a record of the CSB.

(c) *Consultations and referrals.* When the CSB receives a request for access to a record in its possession, it will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from access under the Privacy Act. If the CSB determines that it is best able to process the record in response to the request, then it will do so. If the CSB determines that it is not best able to process the record, then it will either:

(1) Respond to the request regarding that record, after consulting with the agency best able to determine whether the record is exempt from access and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(d) *Notice of referral.* Whenever the CSB refers all or any part of the responsibility for responding to your request to another agency, it ordinarily will notify you of the referral and inform you of the name of each agency to which the request has been referred and of the part of the request that has been referred.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals shall be handled according to the date the Privacy Act access request was initially received by the CSB, not any later date.

§ 1602.4 Responses to requests for access to records.

(a) *Acknowledgments of requests.* On receipt of your request, the CSB ordinarily will send an acknowledgment letter, which shall confirm your agreement to pay fees under § 1602.2(c) and may provide an assigned request number for further reference.

(b) *Grants of requests for access.* Once the CSB makes a determination to grant your request for access in whole or in part, it will notify you in writing. The CSB will inform you in the notice of any fee charged under § 1602.9 and will disclose records to you promptly on payment of any applicable fee. If your request is made in person, the CSB may disclose records to you directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If you

are accompanied by another person when you make a request in person, you shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* If the CSB makes an adverse determination denying your request for access in any respect, it will notify you of that determination in writing. Adverse determinations, or denials of requests, consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; and a denial of a request for expedited treatment. The notification letter shall be signed by the General Counsel, or his/her designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the CSB in denying the request; and

(3) A statement that the denial may be appealed under § 1602.5(a) and a description of the requirements of § 1602.5(a).

§ 1602.5 Appeals from denials of requests for access to records.

(a) *Appeals.* If you are dissatisfied with the CSB's response to your request for access to records, you may appeal an adverse determination denying your request in any respect to the Privacy Act Appeals Officer of the CSB, 2175 K Street, NW., Suite 400, Washington, DC 20037. You must make your appeal in writing, and it must be received within 60 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the determination (including the assigned request number, if any) that you are appealing. For the quickest possible handling, you should mark both your appeal letter and the envelope "Privacy Act Appeal."

(b) *Responses to appeals.* The decision on your appeal will be made in writing. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform you of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, you will be notified in a written decision and your request will

be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination or denial of a request, you must first appeal it under this section.

§ 1602.6 Requests for amendment or correction of records.

(a) *How made and addressed.* You may make a request for amendment or correction of a CSB record about yourself by following the procedures in § 1602.2. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful.

(b) *CSB responses.* Within ten working days of receiving your request for amendment or correction of records, the CSB will send you a written acknowledgment of its receipt of your request, and it will promptly notify you whether your request is granted or denied. If the CSB grants your request in whole or in part, it will describe the amendment or correction made and advise you of your right to obtain a copy of the corrected or amended record. If the CSB denies your request in whole or in part, it will send you a letter stating:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction in the same manner as a denial of a request for access to records (see § 1602.5), and the same procedures will be followed. If your appeal is denied, you will be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the CSB's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. Your Statement of Disagreement must be sent to the CSB, which will place it in the system of records in which the disputed record is

maintained and will mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the CSB shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the CSB will attach a copy of it to the disputed record whenever the record is disclosed and may also attach a concise statement of its reason(s) for denying the request to amend or correct the record.

§ 1602.7 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the CSB to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made by writing to the CSB, following the procedures in § 1602.2.

(b) *Where accountings are not required.* The CSB is not required to provide accountings to you where they relate to disclosures for which accountings are not required to be kept—in other words, disclosures that are made to employees within the agency and disclosures that are made under the FOIA.

(c) *Appeals.* You may appeal a denial of a request for an accounting to the CSB Appeals Officer in the same manner as a denial of a request for access to records (see § 1602.5) and the same procedures will be followed.

§ 1602.8 Preservation of records.

The CSB will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested

records, until disposition or destruction is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Privacy Act.

§ 1602.9 Fees.

The CSB will charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under the FOIA (see part 1601, subpart D of this chapter). No search or review fee will be charged for any record.

§ 1602.10 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the CSB will make reasonable efforts to provide notice of this to the individual. Notice will be given within a reasonable time after the CSB's receipt of the order—except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the CSB will notify that individual of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

[FR Doc. 01-7669 Filed 3-28-01; 8:45 am]

BILLING CODE 6350-01-U

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule; correction.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. The 2001 updates to the specified income levels reflecting the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services were published on March 22, 2001. It has come to our attention that there is an error in the Income Guidelines Table as published. The very first figure in the table, the Income Guideline for a family of 1, within the 48 contiguous states should be \$10,738 and not \$11,188. A corrected table is set forth below.

EFFECTIVE DATE: This rule is effective as of March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Mattie C. Condray, Senior Assistant General Counsel, Legal Services Corporation, 750 First Street N.E., Washington, DC 20002-4250; (202) 336-8817; mcondray@lsc.gov.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Poverty Guidelines. The revised figures for 2001 set out below are equivalent to 125% of the current Poverty Guidelines as published on February 16, 2001 (66 FR 10695).

For reasons set forth above, 45 CFR 1611 is amended as follows:

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

APPENDIX A OF PART 1611—LEGAL SERVICES CORPORATION 2001 POVERTY GUIDELINES¹

Size of family unit	48 Contiguous States and the District of Columbia ²	Alaska ³	Hawaii ⁴
1	\$10,738	\$13,413	\$12,363
2	14,513	18,138	16,700
3	18,288	22,863	21,038
4	22,063	27,588	25,375
5	25,838	32,313	29,713
6	29,613	37,038	34,050
7	33,388	41,763	38,388
8	37,163	46,488	42,725

¹The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

²For family units with more than eight members, add \$3,775 for each additional member in a family.

³For family units with more than eight members, add \$4,725 for each additional member in a family.

⁴For family units with more than eight members, add \$4,338 for each additional member in a family.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01-7824 Filed 3-28-01; 8:45 am]

BILLING CODE 7050-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94-129; FCC 00-255 and FCC 01-67]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of certain carrier change authorization and verification rules we adopted in the Third Report and Order and Second Order on Reconsideration (*Third Report and Order*) in our slamming proceeding and amended in a subsequent Order. The amended *Third Report and Order* was published in the **Federal Register** on March 1, 2001.

DATES: The amendments to 47 CFR 64.1130(a) through (c), 64.1130(i), 64.1130(j), 64.1180, 64.1190(d)(2), 64.1190(d)(3), 64.1190(e), and 64.1195 published at 66 FR 12877 (March 1, 2001) and at 66 FR 16151 (March 23, 2001) become effective on April 2, 2001.

FOR FURTHER INFORMATION CONTACT: Michele Walters, Associate Division Chief, or Dana Walton-Bradford, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418-7400.

SUPPLEMENTARY INFORMATION: In the *Third Report and Order*, released August 15, 2000, the Federal Communications Commission (Commission) revised its carrier change authorization and verification rules. In a subsequent Order, released February 22, 2001, the Commission amended the reporting and registration requirements adopted in the *Third Report and Order*. A summary of the amended *Third Report and Order* was published in the **Federal Register**. 66 FR 12877 (March 1, 2001). The supplementary information in the summary was corrected in a document published in the **Federal Register**. 66 FR 16151 (March 23, 2001). The Office of Management and Budget (OMB) approved the information collections contained in section 64.1195 on March 1, 2001. OMB No. 3060-0855. OMB approved the information collections contained in sections 64.1130, 64.1180, and 64.1190 on March 22, 2001. OMB No. 3060-0787. The rules adopted in the amended *Third Report and Order* will take effect on April 2, 2001.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

[FR Doc. 01-7938 Filed 3-28-01; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112012-1070-02; I.D. 011101B]

RIN 064-A082

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska

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

ACTION: Amendments to an emergency interim rule; request for comments.

SUMMARY: NMFS amends an emergency interim rule implementing 2001 Steller sea lion protection measures and harvest specifications for the groundfish fisheries off Alaska. These modifications relax fishing restrictions on vessels fishing for groundfish off Alaska with jig gear and on vessels less than 60 ft (18.3 m) length overall (LOA) fishing for Pacific cod with hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). The intended effect of this emergency interim rule is to relieve specified restrictions implemented by the 2001 Steller sea lion protection measures on the small boat fleet, while continuing to provide protection to Steller sea lions and their critical habitat and to conserve and manage the groundfish resources in the BSAI and the Gulf of Alaska (GOA) in accordance with the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act) and section 209 of Pub. L. 106-554.

DATES: Effective March 23, 2001, through July 17, 2001, except that 50 CFR 679.22(a)(15) and (b)(8), which will be effective on 1200 hours (noon) A.l.t., June 10, 2001, through July 17, 2001. Comments must be received by April 23, 2001.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via email or Internet.

Copies of the November 30, 2000, Biological Opinion and Incidental Take Statement on Authorization of the BSAI groundfish fisheries based on the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands and Authorization of the GOA groundfish fisheries based on the Fishery Management Plan for Groundfish of the Gulf of Alaska (Comprehensive Biological Opinion), including the Reasonable and Prudent Alternative (RPA), may be obtained from the same address. The Comprehensive Biological Opinion is also available on the NMFS Alaska Region home page at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, Sustainable Fisheries Division, Alaska Region, 907-586-7459 or email at melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531, *et seq.*, and the authority to promulgate regulations to enforce provisions of the ESA to protect such species.

Background

On January 22, 2001, NMFS published an emergency rule that

established 2001 harvest specifications for the BSAI and GOA groundfish fisheries and implemented 2001 Steller sea lion protection measures for these fisheries (66 FR 7276). These protection measures initiated a one-year phase-in of the RPA developed in the Comprehensive Biological Opinion (see **ADDRESSES**). NMFS determined that the 2001 protection measures provided a sufficient degree of protection to endangered Steller sea lions within the one-year time period and were consistent with the intended purpose of the RPA, the ESA, and with section 209 of Public Law 106-554. This statute, enacted on December 21, 2000, was intended to provide for independent scientific review and additional public and Council assessment of the Comprehensive Biological Opinion and the RPA prior to full implementation of the RPA in 2002.

The January 22, 2001, emergency rule extended the Steller sea lion protection measures that were in place during 2000 for the BSAI Atka mackerel fisheries and the BSAI and GOA pollock fisheries, and also implemented several new measures. A complete description and justification of the 2001 Steller sea lion protection measures are discussed in the preamble to the January 22, 2001, emergency rule (66 FR 7276). These measures are summarized below:

1. No transit zones within 3 nautical miles (nm) of 37 rookery sites;
2. Closure within 10 or 20 nm of 37 rookeries to all trawling year-round;
3. Closure to pollock fishing within 10 or 20 nm of 75 haulouts, seasonally or year-round based on use by sea lions;
4. In the Bering Sea pollock fishery: (a) four seasons with harvest limits within Steller sea lion critical habitat foraging areas; and (b) two seasons (40:60 percent allocation) outside critical habitat;
5. Continuation of Bering Sea pollock fishery cooperatives established under the American Fisheries Act;
6. Gulf of Alaska pollock fishery distributed over four seasons (30:15:30:25 percent allocation);
7. Closure of the Aleutian Islands to pollock fishing;
8. Atka mackerel fishery measures include a vessel monitoring system requirement, continuation of two equal seasons, and restrictions on harvests in critical habitat;
9. Closure of the groundfish fishery to federally permitted vessels within 3 nm of more than 75 important haulout sites identified under established criteria;
10. Two fishing seasons for BSAI and GOA Pacific cod, January 1 to June 10 (60 percent of the total allowable catch

(TAC)) and June 11 to December 31 (40 percent of the TAC);

11. Reduction of the allowable catch for Gulf of Alaska pollock from the Council's recommended 2001 level by 10 percent; and

12. The 2001 Bering Sea pollock harvests in the Steller sea lion conservation area (SCA) are limited to no more than the metric ton amount authorized in the final 2000 harvest specifications.

In addition, the emergency rule implemented the closed areas contained in the RPA on June 10, 2001, for the pollock, Pacific cod, and Atka mackerel fisheries. The Council is in the process of considering modifications to these closures.

At its February 2001 meeting and in a subsequent letter to the Secretary of Commerce, the Council requested that NMFS review statutory language at section 209(c)(6) of Pub. L. 106-554 to assess whether the 2001 Steller sea lion protection measures could be modified consistent with the intent of this statute. Section 209(c)(6) provides that

[i]n enforcing regulations for the 2001 fisheries, the Secretary [of Commerce], upon recommendation of the North Pacific [Fishery Management] Council, may open critical habitat where needed, adjust seasonal catch levels, and take other measures as needed to ensure that harvest levels are sufficient to provide income from these fisheries for small boats and Alaska on-shore processors that is no less than in 1999.

Specifically, the Council requested NMFS to consider the following measures for modification to the January 22, 2001, emergency rule under the section 206(c)(6) of Pub. L. 106-554:

1. In the GOA, allow fishing except for 10 nm closures around those haulouts and rookeries listed in the current emergency rule;
2. In the BSAI, allow fishing to continue as it did under the 2000 Steller sea lion protection measures in place prior to the fishery injunction issued by the Federal court in *Greenpeace v. NMFS*, 106 F. Supp 2d 1066 (W.D. Wash 2000);
3. Allow 100 percent of Pacific cod TAC to be released, beginning January 1, 2001;
4. Allow 2001 removals in the Bering Sea Steller sea lion conservation areas using the identical percentage of TAC as was specified in 2000, rather than limiting catch within the SCA by a fixed metric ton limit;
5. Exempt the BSAI Pacific cod jig fishery from the Steller sea lion protection measures; exempt vessels less than 60 ft (18.3 m) LOA that are fishing the fixed gear cod allocation around Akutan and Unalaska from the Steller sea lion protection measures;

6. Defer until 2002 the closure areas scheduled to be implemented on June 10, 2001; and

7. Consider any other measures that will meet the intent of Public Law 106-554 section 209(c)(6).

NMFS considered the Council's requests and determined that any change to the 2001 Steller sea lion protection measures must be consistent with the ESA, must not pose conservation concerns or differ sufficiently from the 2001 protection measures to require a new consultation under section 7 of the ESA, and must be implemented by rulemaking. Based on these considerations, NMFS is implementing modifications to the 2001 Steller sea lion protection measures with this emergency rule. A summary of NMFS' determinations on each of the seven Council requests are discussed below.

1. *In the GOA, allow fishing except for 10 nm closures around those haulouts and rookeries listed in the current emergency rule.* Under the January 22, 2001, emergency rule, eight GOA rookeries or haulouts are closed to directed fishing for pollock within 20 nm until June 10, 2001. This measure is unchanged from the 2000 Steller sea lion protection measures. Directed fishing for groundfish by federally permitted vessels also is prohibited within 3 nm of important haulouts.

The Council has established a new committee (RPA Committee) to assess the Comprehensive Biological Opinion and resulting RPA, including the scheduled June 10 closure/opening of critical habitat areas. The RPA Committee is expected to recommend to the Council changes to the June 10 closures that are consistent with the Comprehensive Biological Opinion. The Council has commenced a process to develop modifications to closed areas in consideration of impacts on small boats and coastal communities. Therefore, NMFS will not modify the open/closed critical habitat areas at this time. Recommendations by the RPA Committee for modified closed areas are scheduled to be considered by the Council at its April 2001 meeting. If approved by NMFS, modifications could be implemented by July 17, 2001, when the January 22, 2001, emergency rule expires.

2. *In the BSAI, allow fishing as per the 2000 Steller sea lion protection measures in place prior to the injunction.* NMFS has determined that the Steller sea lion protection measures in effect immediately before the injunction provide inadequate protection for Steller sea lions and their critical habitat. This request by the

Council would remove all protection measures implemented for the Pacific cod fisheries, as well as other protection measures, in a manner that would be inconsistent with the ESA.

3. *Allow 100 percent of Pacific cod TAC to be made available for harvest beginning January 1, 2001.* NMFS has determined that a single season for the Pacific cod fisheries would provide inadequate protection for Steller Sea lions and their critical habitat. NMFS has determined that this measure would remove nearly all 2001 protection measures implemented for the Pacific cod in a manner that would be inconsistent with the ESA.

4. *Allow 2001 removals in the Bering Sea Steller sea lion conservation area using the identical percentage of the TAC as was authorized in 2000, rather than limiting catch within the area with a fixed metric ton limit.* NMFS agrees that an adjustment to the SCA harvest limit can be considered. However, such an adjustment could pose environmental concerns that should be assessed in a deliberative manner that is not conducive to the timing of this emergency rule. Further, any benefits to the Bering sea pollock roe fishery likely could not be realized given that this emergency rule will become effective after the 2001 pollock roe season concludes, probably by late March. Nonetheless, an adjustment to the SCA harvest limit based on a percentage of TAC proportional to seasonal biomass distribution could be considered by the Council and NMFS for the second half of 2001. Any such recommendation by the Council and approved by NMFS could be implemented as part of the Steller sea lion protection measures implemented by July 17, 2001, for the remainder of 2001.

5a. *Exempt the BSAI Pacific cod jig fishery from the Steller sea lion protection measures.* NMFS agrees to exempt vessels using jig gear from most of the 2001 Steller sea lion protection measures. The relatively small harvests of Pacific cod and Atka mackerel by the jig gear fleet during the 2001 RPA phase-in pose little concern to Steller sea lions and their critical habitat.

The jig gear fleet largely is composed of vessels less than 60 ft (18.3 m) LOA. In 2000, jig gear vessels in the BSAI harvested no Atka mackerel and only 77 mt of Pacific cod. For comparison, the BSAI 2001 Acceptable Biological Catch (ABC) specifications for Atka mackerel and Pacific cod are 69,300 mt and 188,000 mt, respectively. In the GOA, jig gear vessels harvested 42 mt of Pacific cod during the Federal waters fishery. For comparison, the GOA 2001 ABC for Pacific cod is 67,800 mt.

Under this amendment to the January 22, 2001, emergency rule, federally permitted vessels using jig gear will be permitted to fish within 3 nm of important haulouts and in closed Steller sea lion management areas after June 10, 2001. However, no-transit zones around rookeries will remain in place for all vessels and gear types. The seasonal apportionment of the Pacific cod TAC will continue to apply to vessels fishing with jig gear in the GOA because a separate gear allocation does not exist that would facilitate separate treatment of these vessels. In contrast, jig gear vessels in the BSAI have a separate allocation of the Atka mackerel and Pacific cod total TACs. Elimination of the seasonal apportionments of the jig gear allocations of Pacific cod will be implemented consistent with Council intent.

5b. *Exempt vessels less than 60 ft (18.3 m) LOA that are fishing the fixed gear Pacific cod allocation around Akutan and Unalaska from the Steller sea lion protection measures.* NMFS has determined that this exemption can be implemented in all areas of the BSAI without concern for Steller sea lions and their critical habitat. The amount of Pacific cod harvested in 2000 in the BSAI by these small vessels using fixed gear was 501 mt, which, by comparison, amounts to only 0.3 percent of the 2001 Pacific cod ABC (188,000 mt).

However, the amount of GOA Pacific cod harvested in 2000 by small vessels using fixed gear was 11,260 mt, which is 16.6 percent of the 2001 Pacific cod ABC (67,800 mt). Given this large of a percentage harvested, NMFS cannot exempt the GOA fixed gear fleet less than 60 ft (18.3 m) LOA without further analysis of impact on Steller sea lions and their critical habitat, which will be forthcoming within the next several months. Council and agency analysts currently are assessing the historic groundfish harvest by these vessels in different critical habitat areas for future consideration by the Council when assessing alternative Steller sea protection measures for implementation in 2002 and beyond.

6. *Defer until 2002 the closure areas scheduled to be implemented on June 10, 2001.* NMFS will not change the open/closed critical habitat areas prior to the completion of the Council process described above (See response to item 1).

7. *Any other measures that will meet the intent of Pub. L. 106-554 section 209(c)(6).* At this time, NMFS will not implement any other changes to the 2001 Steller sea lion protection measures. Additional changes may be considered for the second half of 2001

under a separate emergency rule that will extend the 2001 protection measures through the end of 2001. Adjustment of 2001 Harvest Specifications

On page 7288, Table 7 to the preamble, published in the emergency rule January 22, 2001 (66 FR 7276), is revised as set forth below. This revision results from the removal of seasonal

harvest limits for the BSAI Pacific cod jig gear fleet and vessels participating in the directed fishery for BSAI Pacific cod using fixed gear and that are less than 60 ft (18.3 m) LOA.

TABLE 7.— 2001 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

Gear sector	Percent	Share ¹ (mt)	Subtotal per- centages for gear sectors	Share of gear sector total (mt)	Seasonal apportionment ²	
					Date	Amount (mt)
Total hook-and-line and pot gear allocation of Pacific cod TAC	51	88,689	.....	.....	.....	.....
Incidental Catch Allowance	.....	.....	.....	500	.....	.....
Processor and Vessel sub-total	.....	.....	.....	88,189	.....	.....
Hook-and-line Catcher Processors	.....	.....	80	70,551	.....	.....
Hook-and-line Catcher	.....	.....	80	70,551	Jan 1 to Jun 10	42,331
					Jun 10 to Dec 31	28,220
Hook-and-Line Catcher Vessels	.....	.....	0.3	265	Jan 1 to Jun 10	159
					Jun 10 to Dec 31	106
Pot Gear Vessels	.....	.....	18.3	16,139	Jan 1 to Jun 10	9,683
					Jun 10 to Dec 31	6,455
Catcher Vessels < 60 feet (18.3 m) LOA using Hook-and-line or Pot gear	.....	.....	1.4	1,235	.....	.....
Trawl gear Total	47	81,733	.....	.....	.....	.....
Trawl Catcher Vessel	.....	.....	50	40,867	Jan 1 to Jun 10	24,520
					Jun10 to Dec 31	16,347
Trawl Catcher Processor	.....	.....	50	40,867	Jan 1 to Jun 10	24,520
					Jun10 to Dec 31	16,347
Jig	2	3,478	.....	.....	.....	.....
Total	.....	.....	.....	173,900	.....	.....

¹The reserve has been released for Pacific cod see (Table 4).

² The first season is allocated 60 percent of the TAC and the second season is allocated 40 percent of the TAC. Any unused portion of the first seasonal Pacific cod allowance will be reapportioned to the second seasonal allowance.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this amended emergency rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This action has been determined to be not significant for purposes of Executive Order 12866. This rule contains no reporting, recordkeeping, or compliance requirements, and no relevant Federal rules exist which may duplicate, overlap, or conflict with this action.

This amended emergency rule is intended to enact section 209(c)(6) of Public Law 106-554 in a manner that is consistent with the ESA. This action relieves restrictions on the use of jig or fixed gear by certain vessels, and immediate implementation will result in economic benefits to those vessels, while presenting no significant harm to Steller sea lions. Accordingly, it would

be contrary to the public interest to provide prior notice and an opportunity for public comment. Therefore, good cause exists to waive those requirements pursuant to 5 U.S.C. 553(b)(2). Moreover, because this rule is not subject to the requirement to provide notice or an opportunity for comment by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Therefore, no initial or final regulatory flexibility analysis has been prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 23, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries,
national Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub.L. 10-277; Sec. 3027, Pub. L. 106-31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106-554.

2. In § 679.22, paragraphs(a)(13) and (b)(6) are suspended, and paragraphs (a)(14), (a)(15), (b)(7) and (b)(8) are added to read as follows:

§ 679.22 Closures.

(a) * * *

(14) *No fishing zones.* Until 1200 hours, A.L.T., June 10, 2001, except for vessels described in paragraphs (a)(14)(i) and (ii) of this section, directed fishing for groundfish by all federally permitted vessels is prohibited within 3 nm of selected Steller sea lion haulout sites in the BSAI. These sites are listed in Table 21 to this part and are identifiable by a designation “Bering

Sea" or "Aleutian Islands" in column 2, "H" or "RPA" in column 7, and "Y" in column 14. After 1200 hours, A.l.t., June 10, 2001, refer to paragraph (a)(11)(v) of this section for fishing prohibitions in the Bering Sea subarea and the Bogoslof district and paragraph (a)(12)(v) of this section for fishing prohibitions in the Aleutian Islands subarea.

(i) Vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear.

(ii) Vessels using jig gear.

(15) Applicable 1200 hours A.l.t., June 10, 2001, through July 17, 2001, vessels using jig gear and vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear are exempt from the prohibitions described in paragraphs (a)(11)(v)(B), (a)(11)(v)(C), (a)(12)(v)(B) and (a)(12)(v)(C) of this section.

* * * * *

(b) * * *

(7) *No fishing zones.* Until 1200 hours, A.l.t., June 10, 2001, except for vessels using jig gear, directed fishing for groundfish by all federally permitted vessels is prohibited within 3 nm of selected Steller sea lion haulout sites in the GOA west of 144° W. longitude. These sites are listed in Table 21 to this part and are identifiable by a designation "Gulf of Alaska" in column 2, "H" or "RPA" in column 7, and "Y" in column 14. After 1200 hours, A.l.t., June 10, 2001, refer to paragraph (b)(3)(iv) of this section for fishing prohibitions.

(8) Applicable 1200 hours A.l.t., June 10, 2001, through July 17, 2001, vessels using jig gear are exempt from the prohibitions described in paragraphs (b)(3)(iv)(B) and (b)(3)(iv)(C) of this section.

* * * * *

3. In § 679.23, paragraph (e)(6)(i) is suspended and paragraph (e)(6)(iii) is added to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(6) * * *

(iii) *Fixed gear.* Except for vessels using jig gear and for vessels less than 60 ft (18.3 m) LOA using pot and hook-and-line gear, subject to other provisions of this part, directed fishing for Pacific cod with fixed gear in the BSAI is authorized only during the following two seasons:

(A) *A season.* From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., June 10; and

(B) *B season.* From 1200 hours, A.l.t., June 10, through 2400 hours, A.l.t., December 31.

* * * * *

[FR Doc. 01-7668 Filed 3-23-01; 4:30 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013-1073-03; I.D. 020901F]

Fisheries of the Exclusive Economic Zone Off Alaska; Final Rule; Adjustment to Emergency Interim Rule

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

ACTION: Final Rule; adjustment to the emergency interim rule for Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska.

SUMMARY: NMFS issues a final rule adjusting the seasonal apportionments of the 2001 Pacific halibut bycatch limits specified for the trawl and hook-and-line groundfish fisheries of the Gulf of Alaska (GOA). This action is necessary to optimize the harvest of Pacific cod under new Steller sea lion protection measures implemented under an emergency interim rule, which was effective on January 18, 2001.

DATES: Effective March 23, 2001, through 2400 hrs, A.l.t., July 17, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

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

In December 2000, the Council's Advisory Panel recommended seasonal

Pacific halibut prohibited species catch (PSC) apportionments in order to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of Pacific halibut PSC. The seasonal apportionments of the Pacific halibut PSC were published in Tables 24 and 25 in the preamble of the emergency interim rule implementing the Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001). At an emergency January 12, 2001, meeting, NMFS presented the Council with the 2001 Steller sea lion protection measures, one of which separates the GOA Pacific cod total allowable catch (TAC) into two separate seasonal allowances. The A season, January 1, 2001, through noon, A.l.t., June 10, 2001, is allocated 60 percent of the annual TAC. The B season, starting at noon, A.l.t., June 10, 2001, through midnight, A.l.t., December 31, 2001, is allocated 40 percent of the annual TAC. Trawl gear bycatch of Pacific halibut in the GOA Pacific cod fishery is deducted from the Pacific halibut PSC seasonal allowance established for the shallow-water species trawl fishery. Hook-and-line gear bycatch of Pacific halibut in the GOA Pacific cod fishery is deducted from the Pacific halibut PSC seasonal allowance established for the hook-and-line gear fishery, other than the demersal shelf rockfish fishery. Under § 679.21(d)(5), in order to accommodate the new Pacific cod seasons and optimize the harvest of Pacific cod, the Council recommended, and NMFS concurred, to move 100 metric tons of the Pacific halibut trawl PSC limit for the shallow-water species trawl fishery from the June 10 through July 1 seasonal allowance to the January 20 through April 1 seasonal allowance. Also, the Council recommended, and NMFS concurred, to move 30 mt of the Pacific halibut hook-and-line PSC limit from May 18 through August 31 seasonal allowance to the January 1 through May 17 seasonal allowance.

Tables 24 and 25 of the Steller Sea Lion Protection Measures for the Groundfish Fisheries Off Alaska; Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) are adjusted to read as follows:

TABLE 24.—FINAL 2001 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. THE HOOK-AND-LINE SABLEFISH FISHERY IS EXEMPT FROM HALIBUT PSC LIMITS. (VALUES ARE IN MT.)

Trawl gear		Hook-and-line gear			
Dates	Amount	Other than DSR		DSR	
		Dates	Amount	Dates	Amount
Jan 1–Apr 1	550 (28%)	Jan 1–May 17	205 (70%)	Jan 1–Dec 31	10 (100%)
Apr 1–Jun 10	400 (20%)	May 17–Aug 31	Any rollover		
Jun 10–Jul 1	150 (7%)	Aug 31–Dec 31	85 (30%)		
Jul 1–Oct 1	600 (30%)				
Oct 1–Dec 31	300 (15%)				
Total	2,000 (100%)		290 (100%)		10 (100%)

TABLE 25 - FINAL 2001 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX. (VALUES ARE IN MT.)

Season	Shallow-water	Deep-water	Total
Jan. 20–Apr. 1	450	100	550
Apr. 1–Jun. 10	100	300	400
Jun. 10–Jul. 1	150	0	150
Jul. 1–Oct. 1	200	400	600
Subtotal			
Jan. 20–Sep. 30	900	800	1,700
Oct. 1–Dec. 31			300
Total			2,000

No apportionment between shallow-water and deep-water fishery complexes during the 4th quarter.

Classification

The Administrator, Alaska Region (Regional Administrator), NMFS, has determined that this rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This rule contains no reporting, recordkeeping, or compliance requirements, and no relevant Federal rules exist which may duplicate, overlap, or conflict with this rule.

This adjustment must be implemented immediately to avoid foregone catch in the A season GOA Pacific cod fishery. GOA Pacific cod is typically harvested in the first 3 months of the year. By increasing the amount of halibut PSC available in the first few months of the year, this adjustment will accommodate the new Pacific cod seasons and optimize the harvest of Pacific cod. Therefore, NMFS finds that good cause exists to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5

U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to optimize the harvest of GOA Pacific cod constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Because prior notice and opportunity for public comment are not required for this final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Thus no initial or final regulatory flexibility analysis has been prepared.

Dated: March 23, 2001.

William T. Hogarth,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 01-7667 Filed 3-23-01; 4:30 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 032301B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels 60 Feet Length Overall and Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 ft (18.3 m) length overall (LOA) and longer using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2001 total allowable catch (TAC) of Pacific cod allocated to vessels using pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 27, 2001, until 1200 hrs, A.l.t., June 10, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

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

The A season apportionment of the 2001 Pacific cod TAC allocated to vessels using pot gear in the BSAI was established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) as a directed fishing allowance of 9,683 metric tons. See § 679.20(c)(3)(iii), § 679.20(c)(7), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2001 Pacific cod TAC allocated to vessels using pot gear as a directed fishing allowance in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using pot gear and catcher vessels 60 ft (13.5 m) LOA and longer using pot gear in the BSAI. Catcher vessels less than 60 ft (18.3 m) LOA using either hook-and-line or pot gear are still allowed to harvest Pacific cod until further notice.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the A season apportionment of the 2001 Pacific cod TAC allocated to vessels using pot gear constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the A season apportionment of the 2001 Pacific cod TAC allocated to vessels using pot gear constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: March 23, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-7666 Filed 3-23-01; 4:30 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 032301A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2001 total allowable catch (TAC) of Pacific cod allocated for catcher processor vessels using hook-and-line gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 25, 2001, until 1200 hrs, A.l.t., August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

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

The A season apportionment of the 2001 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear in the BSAI was established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) as a directed fishing allowance of 42,331 metric tons. See § 679.20(c)(3)(iii), § 679.20(c)(7), and § 679.20(a)(7)(i)(A) and (C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season apportionment of the 2001 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear as a directed fishing allowance in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for

Pacific cod by catcher processor vessels using hook-and-line gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information obtained recently from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the A season apportionment of the 2001 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to

the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the A season apportionment of the 2001 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: March 23, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-7665 Filed 3-23-01; 4:30 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 66, No. 61

Thursday, March 29, 2001

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-302-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric Model CF6-45 or -50 Series Engines; or Pratt & Whitney Model JT9D-3, -7, or -70 Series Engines; and 747-E4B (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes equipped with General Electric Model CF6-45 or -50 series engines; or Pratt & Whitney Model JT9D-3, -7, or -70 series engines; and all 747-E4B (military) airplanes. That AD currently requires repetitive inspections to detect cracking or fracture of the steel attachment fittings of the diagonal brace to the nacelle struts; and replacement of the attachment fittings with new steel fittings, if necessary. This action would add new repetitive inspections of the fasteners of the steel attachment fittings of the diagonal brace to the inboard and outboard nacelle struts to find discrepancies; and mandate certain one-time inspections of the existing attachment fittings, installation of new fasteners, and replacement or rework of the fittings, which would terminate the repetitive inspections. This proposal is prompted by a report of fatigue cracking in a steel attachment fitting of a diagonal brace to the number 2 nacelle strut. The actions specified by the proposed AD are intended to prevent such cracking, which could result in failure of a nacelle strut diagonal brace

load path and possible separation of the nacelle from the wing.

DATES: Comments must be received by May 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-302-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-302-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2771; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to

change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-302-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-302-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On April 16, 1999, the FAA issued AD 99-09-11, amendment 39-11144 (64 FR 19883, April 23, 1999), applicable to certain Boeing Model 747 series airplanes and all 747-E4B (military) airplanes, to require repetitive inspections to detect cracking or fracture of the steel attachment fittings of the diagonal brace to the nacelle struts; and replacement of the attachment fittings with new steel fittings, if necessary. That action was prompted by a report indicating that a steel attachment fitting of a diagonal brace to the number 2 nacelle strut had fractured; such fracturing has been attributed to fatigue cracking. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in failure of a nacelle strut diagonal brace load path and possible separation of the nacelle from the wing.

Actions Since Issuance of AD 99-09-11

In the preamble to AD 99-09-11, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

Subsequent to the issuance of AD 99-09-11, the manufacturer has issued, and the FAA has reviewed and approved, Boeing Service Bulletin 747-54A2196, Revision 1, dated August 17, 2000, which describes procedures for the accomplishment of the following actions:

- Repetitive detailed visual inspections of the inboard and outboard steel attachment fittings of the diagonal brace to the nacelle struts to detect damage (wear, fretting deposits, cracked or broken fittings, loose or broken fasteners). Such inspections would eliminate the need for the (less extensive) repetitive detailed visual inspections of the inboard and outboard steel attachment fittings of the diagonal brace to the nacelle struts specified in the existing AD;

- Replacement of damaged fasteners and inspection and rework of fastener holes;

- If cracking of the fitting is found, a high frequency eddy current inspection of the fastener holes or, for the inboard attachment fittings, an ultrasonic inspection of the area around the suspected crack locations, to verify the cracking;

- Repetitive torque checks of fasteners common to the horizontal and vertical flanges of the fittings;

- Replacement or rework of the existing steel fittings, and installation of new fasteners, which would eliminate the need for the repetitive detailed visual inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99-09-11 to continue to require repetitive inspections to detect cracking or fracture of the steel attachment fittings of the diagonal brace to the nacelle struts; and replacement of the attachment fittings with new steel

fittings, if necessary. This proposed AD also would add new repetitive inspections of the fasteners of the steel attachment fittings of the diagonal brace to the inboard and outboard nacelle struts to find discrepancies; and would mandate certain one-time inspections of the existing attachment fittings, the installation of new fasteners, and replacement or rework of the fittings, which would terminate the repetitive inspections. The actions would be required to be accomplished per the service bulletin described previously, except as discussed below.

Differences Between This Proposed AD and the Service Bulletin

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain conditions, this proposed AD requires those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Other Relevant Rulemaking

The FAA previously issued AD 95-10-16, amendment 39-9233 (60 FR 27008, May 22, 1995), applicable to certain Boeing Model 747 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D-70 engines); and AD 95-13-07, amendment 39-9287 (60 FR 33336, June 28, 1995), applicable to certain Boeing Model 747 series airplanes equipped with General Electric Model CF6-45 or -50 series engines, or Pratt & Whitney Model JT9D-70 series engines. These AD's require modification of the nacelle strut and wing structure. Accomplishment of the modification required by the applicable AD, before the effective date of this proposed AD, extends the compliance time for certain requirements of this proposed AD.

Cost Impact

There are approximately 745 airplanes of the affected design in the worldwide fleet. The FAA estimates that 173 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 99-09-11 take approximately 4 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$41,520, or \$240 per airplane, per inspection cycle.

The new detailed visual inspections/torque checks that are proposed in this AD action would take approximately 12 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed inspections/torque checks of this AD on U.S. operators is estimated to be \$124,560, or \$720 per airplane, per inspection cycle.

The new terminating actions (for the inboard pylon includes inspection of the existing steel fittings for cracks or damage; replacement if cracked; rework or replacement if damaged; or installation of new fasteners if no cracks; for the outboard pylon, detailed visual inspection of the fitting for damage, high frequency eddy current inspection of fastener holes and installation of new fasteners), that are proposed in this AD action would take approximately 76 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts would cost \$13,776 (for airplanes equipped with Pratt & Whitney JT9D series engines) or \$31,083 (for airplanes equipped with GE CF6-45 or -50 series engines). Based on these figures, the cost impact of the proposed terminating actions of this AD is estimated to be \$18,336 per airplane (for airplanes equipped with Pratt & Whitney JT9D series engines) or \$35,643 per airplane (for airplanes equipped with General Electric CF6-45 or -50 series engines).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action"

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-11144 (64 FR 19883, April 23, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000-NM-302-AD. Supersedes AD 99-09-11, amendment 39-11144.

Applicability: Model 747 series airplanes equipped with General Electric Model CF6-45 or -50 series engines or Pratt & Whitney Model JT9D-3, -7, or -70 series engines, and all 747-E4B (military) airplanes; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking or fracture of the steel attachment fittings of the diagonal

brace to the nacelle struts, which could result in failure of a nacelle strut diagonal brace load path and possible separation of the nacelle from the wing, accomplish the following:

Restatement of Requirements of AD99-09-11: Repetitive Inspections

(a) Gain access to the attachment fittings of the diagonal brace to the inboard and outboard nacelle struts through the aft fairing doors, and do a detailed visual inspection to find cracking or fracture of the steel attachment fittings of the diagonal brace to the inboard and outboard nacelle struts, at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes on which the strut and wing modification required by AD 95-10-16, amendment 39-9233, or AD 95-13-07, amendment 39-9287, has not been accomplished: Within 10 days after May 10, 1999 (the effective date of AD 99-09-11, amendment 39-11144), accomplish the detailed visual inspection.

(i) For airplanes equipped with General Electric Model CF6-45 or -50 series engines and/or Pratt & Whitney JT9D-3 or -7 series engines, repeat the inspection thereafter at intervals not to exceed 180 flight cycles.

(ii) For airplanes equipped with Pratt & Whitney JT9D-70 series engines, repeat the inspection thereafter at intervals not to exceed 250 flight cycles.

(2) For airplanes on which the strut and wing modification required by AD 95-10-16, or AD 95-13-07, has been accomplished: Within 30 days after May 10, 1999, or within 150 flight cycles after accomplishment of the modification, whichever occurs later, accomplish the detailed visual inspection.

(i) For airplanes equipped with General Electric Model CF6-45 or -50 series engines or Pratt & Whitney JT9D-70 series engines, repeat the inspection thereafter at intervals not to exceed 600 flight cycles.

(ii) For airplanes equipped with Pratt & Whitney JT9D-3 or -7 series engines, repeat the inspection thereafter at intervals not to exceed 350 flight cycles.

New Requirements of this AD: Initial/Repetitive Inspections/Checks

(b) For all airplanes: Do a detailed visual inspection and a torque check of the fasteners of the steel attachment fittings of the diagonal brace to the inboard and outboard nacelle struts to find discrepancies (cracks, loose or broken fasteners, etc.), at the latest of the times specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD; per Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 747-54A2196, Revision 1, dated August 17, 2000. Repeat the inspections/checks thereafter as specified in paragraph (c) of this AD. Accomplishment of the inspections/checks specified in this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) Before the accumulation of 3,000 total flight cycles on any diagonal brace attachment fitting.

(2) Within 30 days after the effective date of this AD.

(3) Within 150 flight cycles after accomplishment of AD 95-10-16 or AD 95-13-07.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Detailed visual inspections and torque checks accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747-54A2196, dated April 2, 1999, are considered acceptable for compliance with the inspections/checks specified in paragraph (b) of this AD.

(c) Except as provided by paragraph (d) of this AD: Repeat the detailed visual inspection required by paragraph (b) of this AD, as specified in Table 1 of this AD. Repeat the torque check required by paragraph (b) of this AD at intervals not to exceed 18 months. Repeat the inspections/checks until accomplishment of paragraph (h) of this AD. Table 1 follows:

TABLE 1—REPETITIVE DETAILED VISUAL INSPECTION INTERVALS

For the . . .	For airplanes in Group. . .	Then repeat at the earlier of
(1) Inboard nacelle struts.	(i) 1 or 4 ..	Intervals not to exceed 350 flight cycles or 18 months.
	(ii) 2, 3, or 5.	Intervals not to exceed 600 flight cycles or 18 months.
(2) Outboard nacelle struts.	(i) 1, 2, or 4.	Intervals not to exceed 350 flight cycles or 18 months.
	(ii) 3 or 5 ..	Intervals not to exceed 600 flight cycles or 18 months.

(d) For the attachment fittings of the diagonal brace to the inboard nacelle struts only: Instead of doing the repetitive detailed visual inspections per paragraph (c) of this AD, before further flight following the inspections required by paragraph (b) of this AD, do an ultrasonic inspection of the fasteners of the steel attachment fittings to find discrepancies, per Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747-54A2196, Revision 1, dated August 17, 2000.

(1) Repeat the ultrasonic inspection at intervals not to exceed 1,200 flight cycles, until accomplishment of paragraph (h) of this AD.

(2) Repeat the detailed visual inspection and torque check required by paragraph (b)

of this AD at intervals not to exceed 18 months, until accomplishment of paragraph (h) of this AD.

Corrective Actions

(e) If any crack indication is found during any inspection/check required by this AD, before further flight, verify the indication per Part 3 or Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747-54A2196, Revision 1, dated August 17, 2000, as applicable. If any cracking is verified, before further flight, replace the fasteners with new fasteners, and rework or replace the fitting, as applicable, per Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747-54A2196, Revision 1, dated August 17, 2000; which terminates the repetitive inspections required by this AD. Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair actions, this AD requires such repair to be done per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(f) If any loose or broken fastener is found during any inspection/check required by this AD, before further flight, do a high frequency eddy current inspection of the fastener hole to find cracking or damage, per Figure 6 of the Accomplishment Instructions of Boeing Service Bulletin 747-54A2196, Revision 1, dated August 17, 2000. If no cracking or damage is found, before further flight, oversize the fastener hole and install a new fastener per Part 5 of the Accomplishment Instructions of the service bulletin. If any cracking or damage is found, before further flight, repair per a method approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(g) If any discrepancy of any attachment fitting is detected during any inspection/check required by this AD, before further flight, replace the fitting with a new steel fitting per a method approved by the Manager, Seattle ACO, or per data meeting the type certification of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Terminating Action

(h) Do the terminating action (for the inboard nacelle struts, includes inspection of the existing steel fittings for cracks or damage

and replacement if cracked, rework or replacement if damaged, or installation of new fasteners if no cracks; for the outboard nacelle struts, includes a detailed visual inspection of the fitting for damage, HFEC inspection of fastener holes, and installation of new fasteners), per Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747-54A2196, Revision 1, dated August 17, 2000, at the times specified in paragraph (h)(1) or (h)(2) of this AD, as applicable. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive detailed visual inspections/torque checks specified in paragraph (c) of this AD.

(1) For steel attachment fittings of the diagonal brace to the inboard nacelle struts: Within 36 months after the effective date of this AD.

(2) For steel attachment fittings of the diagonal brace to the outboard nacelle struts: Within 48 months after the effective date of this AD.

Alternative Methods of Compliance

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously per AD 99-09-11, amendment 39-11144, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(j) Special flight permits may be issued per §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 22, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-7707 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-33-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B19 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL-600-2B19 series airplanes, that currently requires repetitive ultrasonic inspection to detect damage of the actuator lugs of the flight spoiler center hinge; and corrective action, if necessary. This proposal would mandate the previously optional terminating action by requiring replacement of the flight spoilers with new improved spoilers. The actions specified by the proposed AD are intended to prevent uncommanded deployment of a flight spoiler, which could result in reduced controllability of the airplane. This proposed action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-33-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2001-NM-33-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington, or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7512; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-33-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-33-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On February 6, 2001, the FAA issued AD 2001-03-04, amendment 39-12107 (66 FR 10187, February 14, 2001), applicable to certain Bombardier Model CL-600-2B19 series airplanes, to require repetitive ultrasonic inspection to detect damage of the actuator lugs of the flight spoiler center hinge; and corrective action, if necessary. That action also specifies an optional

terminating action that entails replacement of certain right- and left-hand flight spoilers with new, improved flight spoilers. The requirements of AD 2001-03-04 are intended to prevent uncommanded deployment of a flight spoiler, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

In the preamble of AD 2001-03-04, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking was being considered to require replacement of both flight spoilers with new, improved spoilers, which would constitute terminating action for the requirements of that AD. We have now determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 601R-57-029, dated May 30, 2000, which describes installation of new enhanced flight spoilers. Installation of the new, improved flight spoilers eliminates the need for the repetitive inspections specified in AD 2001-03-04.

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has classified this service bulletin as mandatory and issued Canadian airworthiness directive CF-2000-15R1, dated February 22, 2001, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would continue

to require repetitive ultrasonic inspections to detect damage of the actuator lugs of the flight spoiler center hinge; and corrective action, if necessary. The proposed AD also would continue to require that operators report the results of the inspection findings to Bombardier, Inc. However, we have extended the reporting time from "within 10 days of the inspection," to "within 30 days of the inspection," as specified in the the Canadian airworthiness directive. This proposal also would require replacement of the left- and right-hand flight spoilers with new, improved spoilers, which would constitute terminating action for the repetitive ultrasonic inspections. The replacement would be required to be accomplished in accordance with the service bulletin described previously.

Editorial Changes

The FAA has noted that AD 2001-03-04 contained incorrect numbering of the subparagraphs of paragraph (b) of that AD. Therefore, we revised the subparagraphs numbering of that paragraph for this proposed rule.

Cost Impact

There are approximately 195 Bombardier Model CL-600-2B19 series airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are currently required by AD 2001-03-04, and retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$23,400, or \$120 per airplane, per inspection cycle.

The new replacement that is proposed by this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. The required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be \$46,800, or \$240 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12107 (66 FR 10187, February 14, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair):

Docket 2001–NM–33–AD. Supersedes AD 20001–03–04 Amendment 39–12107.

Applicability: Model CL–600–2B19 series airplanes, 7003 through 7340 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded deployment of a flight spoiler, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 2001–03–04

Inspections

(a) Prior to the accumulation of 3,000 total flight cycles or within 30 days after March 1, 2001 (the effective date of AD 2001–03–04, amendment 39–12107): Perform nondestructive evaluation procedure NDE UT–35 (ultrasonic inspections) to detect damage (e.g., cracking) of the actuator lugs on both of the center hinge fittings of flight spoilers part numbers (P/N) 600–10602–1001 and –1002, at spoiler stations 195.36 and 204.36; in accordance with Section 2, Accomplishment Instructions, Part A of Bombardier Alert Service Bulletin A601R–57–027, Revision C, dated May 30, 2000. If no damage is detected, repeat the inspection at intervals not to exceed 500 flight cycles until the requirements of paragraph (c) of this AD have been accomplished.

Note 2: Accomplishment of the nondestructive evaluation procedure in accordance with Bombardier Alert Service Bulletin A601R–57–027, dated April 19, 1999, Revision A, dated July 23, 1999, or Revision B, dated December 8, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Corrective Actions

(b) If any damage (e.g., cracking) is detected during the inspection required by paragraph (a) of this AD: Prior to further flight, remove the damaged flight spoiler and perform nondestructive evaluation procedure NDE ET–27 of the lug, per Section 2 of the Accomplishment Instructions of Part B of Bombardier Alert Service Bulletin A601R–57–027, Revision C, dated May 30, 2000.

(1) If no damage is detected, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 500 flight cycles until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any damage is detected, prior to further flight, replace the damaged flight spoiler with a new or serviceable flight spoiler, per Bombardier Service Bulletin 601R–57–029, dated May 30, 2000.

(i) For a flight spoiler with no damage or one that is replaced with a new or serviceable flight spoiler: Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 500 flight cycles, until the requirements of paragraph (c) of this AD have been accomplished.

(ii) If both flight spoilers are replaced with new improved spoilers, no further action is required by this AD.

New Requirements of This AD

Replacement of Certain Flight Spoilers

(c) Within 36 months after the effective date of this AD, replace any flight spoiler having part number (P/N) 600–10602–1001 or 600–10602–1002 with a new improved left-hand flight spoiler having P/N 600–10602–73 or a new right-hand flight spoiler having P/N 600–10602–74, as applicable; in accordance with Bombardier Service Bulletin 601R–57–029, dated May 30, 2000. Such replacement of both the left-hand and right-hand flight spoilers constitutes terminating action for the repetitive inspection requirements of this AD.

Reporting Requirements

(d) Within 30 days of accomplishing the inspection required by paragraph (a) of this AD: Submit a report of any findings of cracking to Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–15R1, dated February 22, 2001.

Issued in Renton, Washington, on March 22, 2001.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 01–7706 Filed 3–28–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2001–NM–25–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–200 and –300 Series Airplanes**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–200 and –300 series airplanes, that currently requires repetitive inspections to detect chafing or arcing damage to the cable/wire and fuel tube assemblies on the right-hand side of each engine, and replacement with new components, if necessary. That AD also provides for an optional terminating action for the repetitive inspections required by that AD. This proposal would require accomplishment of the previously optional terminating action. This action is necessary to prevent chafing of the cable/wire bundles against the fuel line, which could result in arcing and a consequent fire or explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain “Docket No. 2001–NM–25–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2001–NM–25–AD.” The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–25–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 12, 2001, the FAA issued AD 2001–02–02, amendment 39–12086 (66 FR 6454, January 22, 2001), applicable to certain Bombardier Model DHC–8–200 and –300 series airplanes, to require repetitive inspections to detect chafing or arcing damage to the cable/wire and fuel tube assemblies on the right-hand side of each engine, and replacement with new components, if necessary. That AD also provides for an optional terminating action for the repetitive inspections required by that AD. That action is necessary to prevent chafing of the cable/wire bundles against the fuel line, which could result in arcing and a consequent fire or explosion.

Actions Since Issuance of Previous Rule

In the preamble to AD 2001–02–02, the FAA indicated that certain actions required by that AD were considered “interim action” and that further rulemaking action was being considered to require modification of the cable assembly, which would constitute terminating action for the repetitive inspections required by that AD. However, the planned compliance time for the installation of the modification was sufficiently long so that notice and opportunity for prior public comment was practicable. The FAA now has determined that further rulemaking action is indeed necessary, this proposed AD follows from that determination.

Explanation of Relevant Service Information

Bombardier has issued Revision A, dated December 12, 2000, and Revision B, dated January 30, 2001, of Alert Service Bulletin A8–73–23. These revisions describe procedures for repetitive general visual inspections to detect chafing or arcing damage to the cable and the fuel tube assemblies on the right hand side of each engine, and replacement with new components, if necessary. These revisions also describe procedures for an optional modification that entails, among other things, rerouting the existing wire harness to the opposite side of the oil cooler, and shortening and securing the wire harness, if necessary. That modification eliminates the need for the repetitive inspections. Revisions A and B of the alert service bulletin (ASB) specify certain corrections to the original ASB regarding part numbers and certain

other accomplishment instructions. (The original version of ASB A8-73-23, dated November 3, 2000, was previously specified as the appropriate service information in AD 2001-02-02.)

Accomplishment of the actions specified in either Revision A or Revision B of the ASB is intended to adequately address the identified unsafe condition. Transport Canada Civil Aviation (TCCA), which is the airworthiness authority of Canada, has classified Revisions A and B of ASB A8-73-23 as mandatory and issued Canadian airworthiness directive CF-2000-33, dated November 14, 2000, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2001-02-02 to continue to require repetitive inspections to detect chafing or arcing damage to the cable/wire and fuel tube assemblies on the right-hand side of each engine, and replacement with new components, if necessary. The proposed AD also would require certain modification procedures that specify, among other actions, rerouting the existing wire harness to the opposite side of the oil cooler. Accomplishment of the modification would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the ASB's described above.

Cost Impact

There are approximately 150 airplanes of U.S. registry that would be affected by this proposed AD.

The repetitive inspections that are currently required by AD 2001-02-02, and retained in this proposed AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be \$18,000, or \$120 per airplane, per inspection cycle.

The new action, incorporation of the modification, that is proposed in this AD action, would take approximately 4 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$350 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$88,500, or \$590 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-12086 (66 FR 6454, January 22, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2001-NM-25-AD. Supersedes AD 2001-02-02, Amendment 39-12086.

Applicability: Model DHC-8-201, -202, -301, -311, and -315 series airplanes, having serial numbers 100 through 552 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent possible arcing between the electrical wiring and the fuel tube, which could result in a fire or explosion, accomplish the following:

Inspection Requirements of AD 2000-02-02

(a) Within 50 flight hours or 10 days after February 6, 2001 (the effective date of AD 2001-02-02), whichever occurs first: Do a general visual inspection to detect chafing or arcing damage to the cable and the fuel tube assemblies on the right hand side of each engine, per Bombardier Alert Service Bulletin A8-73-23, Revision A, dated December 12, 2000, or Revision B, dated January 30, 2001. Repeat the inspection every 500 flight hours or 3 months, whichever occurs first.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repair

(b) If any damage to the fuel tube or cable assembly is detected, before further flight, replace the damaged component per Bombardier Alert Service Bulletin A8-73-23, Revision A, dated December 12, 2000, or Revision B, dated January 30, 2001. Thereafter, repeat the inspection required by paragraph (a) of this AD every 500 flight hours or 3 months, whichever occurs first.

Note 3: Accomplishment of the replacement actions specified in paragraph (b) of this AD or terminating action required by paragraph (c) of this AD, per Bombardier Alert Service Bulletin A8-73-23 (original version), dated November 30, 2000, before the effective date of this AD, is acceptable for compliance with paragraphs (b) or (c) of this AD, as applicable.

Terminating Action

(c) Within 1,000 flight hours or 6 months after the effective date of this AD, whichever occurs first: Accomplish the modification instructions described in Bombardier Alert Service Bulletin A8-73-23, Revision A, dated December 12, 2000, or Revision B, dated January 30, 2001, that specify, among other actions, rerouting the existing wire harness to the opposite side of the oil cooler. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF-2000-33, dated November 14, 2000.

Issued in Renton, Washington, on March 22, 2001.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 01-7705 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2000-NM-386-AD]

RIN 2120-AA64

Airworthiness Directives; Dornier Model 328-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328-300 series airplanes. This proposal would require replacement of the hydraulic line between the main hydraulic pump and the pulsation damper in hydraulic system "B" with a new hydraulic flex hose. This action is necessary to prevent cracking in the hydraulic line (due to a production defect), leading to heavy leakage in hydraulic system "B," which could impair the functioning of the airplanes's flaps, roll spoilers, inner ground spoilers, and nose wheel steering. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-386-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-386-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, ANM-116,

FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-386-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-386-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain

Dornier Model 328–300 series airplanes. The LBA advises that during production bending forces may have been applied to the hydraulic line between the main hydraulic pump and the pulsation damper in hydraulic system “B.” These forces could cause the hydraulic line to crack. This condition, if not corrected, could result in heavy leakage in hydraulic system “B,” which could impair the functioning of the airplane’s flaps, roll spoilers, inner ground spoilers, and nose wheel steering.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328J–29–040, dated June 8, 2000, which describes procedures for replacing the hydraulic line between the main hydraulic pump and the pulsation damper in hydraulic system “B” with a new hydraulic flex hose. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 2000–378, dated December 14, 2000, in order to assure the continued airworthiness of these airplanes in Germany.

FAA’s Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed

replacement, and that the average labor rate is \$60 per work hour. There is no charge for required parts. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$1,020, or \$60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GmbH: Docket 2000–NM–386–AD.

Applicability: Model 328–300 series airplanes, serial numbers 3105 to 3175 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a crack in the hydraulic line, leading to heavy leakage in hydraulic system “B,” which could impair the functioning of the airplane’s flaps, roll spoilers, inner ground spoilers, and nose wheel steering, accomplish the following:

Replacement

(a) Within 45 days from the effective date of this AD: Remove the hydraulic hose having part number (P/N) 001D291A2050010 between the main pump 50DA and the pulsation damper, and replace it with a new hose having P/N 001D291A1102000, in accordance with Dornier Service Bulletin SB–328J–29–040, dated June 8, 2000.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in German airworthiness directive 2000–378, dated December 14, 2000.

Issued in Renton, Washington, on March 22, 2001.

Vi L. Lipski,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 01-7704 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-336-AD]

RIN 2120-AA64

Airworthiness Directives; Aerospatiale Model ATR42-200, -300, -320, and -500 Series Airplanes, and Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42-200, -300, -320, and -500 series airplanes and all Model ATR72 series airplanes. This proposal would require temporarily revising the Airplane Flight Manual (AFM) to add tests of the engine fire protection system and conducting those tests prior to each flight. This proposal would also require replacement of defective engine fire handles with serviceable fire handles, which would terminate the revision of the AFM and the repetitive tests of the engine fire protection system. This action is necessary to prevent improper functioning of the engine fire handles, due to a machining defect of the control shaft bore guide, which could result in failure of the engine fire extinguisher to operate properly. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-336-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-

anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-336-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1112; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket Number 2000-NM-336-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-336-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42 and ATR72 series airplanes. The DGAC advises that, during functional tests on the assembly lines, inspectors have observed that some engine fire handles were defective, functioning only intermittently. Further investigation revealed that one production batch of the fire handles could have a machining defect in the control shaft guide bore. This condition, if not corrected, could result in improper functioning of the engine fire handles, which could result in failure of the engine fire extinguisher to operate properly.

Explanation of Relevant Service Information

Avions de Transport Regional has issued Service Bulletins ATR42-26-0023 (for Aerospatiale Model ATR42 series airplanes) and ATR72-26-1014 (for Aerospatiale Model ATR72 series airplanes), both dated July 7, 2000. The service bulletins describe procedures for inspection to determine the serial numbers of the engine fire handle to establish whether they may be defective. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2000-281-078(B) (for Model ATR42 series airplanes) and 2000-282-050(B) (for Model ATR72), both with an effective date of July 8, 2000, in order to assure the continued airworthiness of these airplanes in France. The French airworthiness directives also require temporary revision of the Aircraft Flight Manual (AFM) and performance of a test of the engine fire protection system.

The two service bulletins reference Labinal Aero Systems Service Bulletin 26-26-11-001, dated June 2000, as an additional source of service information to detect defective engine fire handles.

If defective handles are detected, any corrective action is to be performed only by Labinal.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require temporarily revising the AFM to add tests of the engine fire protection system and conducting these tests prior to each flight. The proposed AD would also require inspection of the engine fire handles to identify their serial numbers and replacement of defective engine fire handles with serviceable handles, which would terminate the temporary revision of the AFM and the pre-flight tests of the engine fire protection system.

Difference Between Proposed Rule and Foreign Airworthiness Directives

The proposed AD would differ from the parallel French airworthiness directives in that it would require temporary revision of the AFM within 10 days. The parallel French airworthiness directives recommend accomplishment of the temporary revision of the AFM within 3 days. In developing an appropriate compliance time for this AD, the FAA considered not only the DGAC's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition. The FAA finds a 10-day compliance time for temporary revision of the AFM to be warranted in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 69 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the temporary revision of the AFM, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed temporary revision of the AFM on U.S. operators is estimated to be \$4,140, or \$60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the pre-flight test of the engine fire protection system, at an average labor cost of \$60. Based on these figures, the cost impact of the proposed test on U.S. operators is estimated to be \$4,140, or \$60 per airplane, per test.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection for defective engine fire handles, at an average labor cost of \$60. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$8,280, or \$120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 2000-NM-336-AD.

Applicability: All Model ATR42-200, -300, -320, and -500 series airplanes, and Model ATR72 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent improper function of the engine fire handles, due to a machining defect of a control shaft bore guide, which could result in failure of the engine fire extinguisher to operate properly, accomplish the following:

Temporary Revision of the Aircraft Flight Manual (AFM)

(a) Within 10 days from the effective date of this AD: Revise the Normal Procedures section of the FAA-approved AFM by inserting the following. This may be accomplished by inserting a copy of this AD into the AFM.

"Before each flight

Engine 2 fire protection

Depress SQUIB TEST pushbutton and check that both AGENT SQUIB lights illuminate.

Engine 1 fire protection

Depress SQUIB TEST pushbutton and check that both AGENT SQUIB lights illuminate."

Test of Engine Fire Protection System

(b) After accomplishing paragraph (a) of this AD and prior to each flight thereafter: Perform a test of the engine fire protection system, in accordance with the temporary revision of the AFM specified in paragraph (a) of this AD, until accomplishment of paragraph (c) of this AD.

Terminating Action

(c) Within 21 months from the effective date of this AD: Remove the engine fire handles and inspect them to determine the serial number, in accordance with Avions de Transport Regional Service Bulletin ATR42-26-0023 (for Aerospatiale Model ATR42 series airplanes) or ATR72-26-1014 (for Model ATR72 series airplanes), both dated July 7, 2000, and accomplish paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For any engine fire handle having a serial number listed in paragraph 1.C.(2) of the Planning Information of the applicable service bulletin: Perform the Labinal Service Bulletin 26-26-11-001, dated June 2000, and re-install the fire handle.

(2) For any engine fire handle identified in paragraph 1.C.(3) of the Planning Information of the applicable service bulletin: Re-install the fire handles, per the applicable service bulletin.

Note 2: After accomplishment of paragraph (c)(1) or (c)(2) of this AD, the temporary revision to the AFM required by paragraph (a) of this AD may be removed from the AFM, and the pre-flight tests of the engine fire protection system required by paragraph (b) of this AD may be discontinued.

Spare Parts

(d) As of the effective date of this AD, no person may install an engine fire handle having part number (P/N) 19-51-41 or P/N 19-51-51 and having a serial number listed in paragraph 1.C.(2) of the Planning Information of Avions de Transport Regional Service Bulletin ATR42-26-0023 (for ATR42 series airplanes) or ATR72-26-1014 (for Model ATR72 series airplanes), both dated July 7, 2000, unless the engine fire handle has been repaired, in accordance with the applicable service bulletin.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM-116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directives 2000-282-050(B) and 2000-281-078(B), both with an effective date of July 8, 2000.

Issued in Renton, Washington, on March 22, 2001.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-7703 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2000-NM-176-AD]

RIN 2120-AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP series airplanes. This proposal would require an inspection to confirm the installation of rivets at fuselage stations 251.975, 262.35, 272.725, and 283.10, and installation of new rivets, if necessary. This action is necessary to detect and correct fatigue cracking of the fuselage skin, and consequent loss of cabin pressurization. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-176-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments

sent via fax or the Internet must contain "Docket No. 2000-NM-176-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT:

David Ostrodka, Aerospace Engineer, Airframe Branch, ACE-118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4129; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-176-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-176-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports indicating that, during production, rivets were found to be missing from the fuselage skin/frame joint in the area of the hydraulic duct attachment angle of Raytheon Model Hawker 800XP series airplanes. Missing rivets at this location could result in reduced fatigue life of the joint, which could increase fatigue crack propagation rates. Fatigue cracking of the fuselage skin, if not detected and corrected, could result in loss of cabin pressurization.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin 51-3336, Revision 1, dated January 2001, which describes procedures for a one-time detailed visual inspection to confirm the installation of rivets at fuselage stations 251.975, 262.35, 272.725, and 283.10, and installation of new rivets, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Cost Impact

There are approximately 124 airplanes of the affected design in the worldwide fleet. The FAA estimates that 87 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is

estimated to be \$10,440, or \$120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company: Docket 2000-NM-176-AD.

Applicability: Model Hawker 800XP series airplanes, certificated in any category, having the following serial numbers: 258266, and 258277 through 258399 inclusive.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage skin, and consequent loss of cabin pressurization, accomplish the following:

Inspection and Corrective Action

(a) Within 600 flight hours or 12 months after the effective date of this AD, whichever occurs first: Do a one-time detailed visual inspection to confirm the installation of rivets at fuselage stations 251.975, 262.35, 272.725, and 283.10. Do the inspection per the Accomplishment Instructions of Raytheon Service Bulletin 51-3336, Revision 1, dated January 2001. If any rivet is missing, before further flight, install a new rivet per the Accomplishment Instructions of the service bulletin.

Note 2: Accomplishment of the actions in accordance with Raytheon Service Bulletin 51-3336, dated May 2000, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on March 22, 2001.

Vi L. Lipski,

*Manager., Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 01-7702 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-SW-13-AD]

RIN 2120-AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 47B, 47B-3, 47D, 47D-1, 47G, 47G-2, 47G2A, 47G-2A-1, 47G-3, 47G-3B, 47G-3B-1, 47G-3B-2, 47G-3B-2A, 47G-4, 47G-4A, 47G-5, 47G-5A, 47H-1, 47J, 47J-2, 47J-2A, and 47K Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for Bell Helicopter Textron, Inc. (BHTI) Model 47B, 47B-3, 47D, 47D-1, 47G, 47G-2, 47G2A, 47G-2A-1, 47G-3, 47G-3B, 47G-3B-1, 47G-3B-2, 47G-3B-2A, 47G-4, 47G-4A, 47G-5, 47G-5A, 47H-1, 47J, 47J-2, 47J-2A, and 47K helicopters. That AD currently requires either recurring liquid penetrant or eddy current inspections of the main rotor blade grip (grip) threads for a crack. If a crack is detected, that AD requires, before further flight, replacing the cracked grip with an airworthy grip. That AD also establishes a retirement life of 1200 hours time-in-service (TIS) for each grip. This AD contains the same requirements but adds two part numbers (P/N) to the applicability and requires only recurring eddy current inspections of the grip threads. This AD also requires reporting any results of the grip inspections to the FAA Rotorcraft Certification Office. This proposal is prompted by the results of an accident investigation, an operator survey conducted by a trade association, various comments concerning the current AD, and a further analysis of field service data. The actions specified by this AD are intended to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 29, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001-SW-13-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193-0170, telephone (817) 222-5177, fax (817) 222-5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2001-SW-13-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001-SW-13-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On May 12, 1987, the FAA issued AD 86-06-08R1 (52 FR 24135, June 29, 1987) that amended AD 86-06-08 (51 FR 11300, April 2, 1986). Those AD's required an initial and repetitive fluorescent dye penetrant inspection of each grip. On August 31, 2000, the FAA issued Emergency AD 2000-18-51 that superseded AD's 86-06-08 and 86-06-08R1. AD 2000-18-51 requires initial and recurring liquid penetrant or eddy current inspections of the grip threads for a crack and, before further flight, replacing any cracked grip with an airworthy grip. That AD also establishes a retirement life of 1200 hours TIS for each grip.

That action was prompted by the results of an investigation of an August 1998 accident in which a grip failed on a BHTI Model 47G-2 helicopter due to a fatigue crack. An analysis of Australian field service data revealed fatigue cracks in the majority of the grips inspected. The requirements of that AD are intended to prevent failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Since issuance of Emergency AD 2000-18-51, other cracked grips with less than 1200 hours TIS have been discovered including one grip with a 2-inch crack through the grip. Therefore, the FAA has determined that the liquid penetrant inspection is not adequate for finding cracks in the grip threads and proposes requiring eddy current procedures only. Because the eddy current procedure will find smaller cracks, the FAA proposes increasing the inspection interval from 200 hours TIS to 300 hours TIS for each grip. In addition, two parts produced under Parts Manufacturer Approval (PMA) were omitted from the applicability section of the current AD but are added to this AD.

Disposition of Comments

The FAA received additional data and comments about the current AD from 31 commenters, including the Experimental Aircraft Association (EAA), Helicopter Association International (HAI), and the National Agricultural Aviation Association (NAAA). We have reviewed each comment. Since many of the comments are similar, we will discuss each group of comments.

A commenter states that AD 2000-18-51 should be rescinded because the extent of cracked grips in the United States fleet is not as extensive as the 70 percent of cracked grips found in the Australian survey. The FAA does not

concur with the request to rescind the AD. Although only 11 cracked grips have been found in the United States thus far, each of these grips is unairworthy and could result in a total fracture of the grip in flight. The FAA attributes the difference in the number of cracked grips found to be due to the unreliability of the dye penetrant inspection used by most U.S. operators versus the eddy current inspection used by the Australian operators. The FAA proposes that U.S. operators only use eddy current inspections for finding cracks in the grip threads.

Other commenters state that AD 2000-18-51 should be rescinded because the FAA Rotorcraft Directorate failed to apply United States BHTI Model 47 owner/operator user data to the equation when issuing the AD. The FAA does not concur. The FAA's Rotorcraft Directorate researched this safety concern before determining that an emergency AD was necessary. We continuously monitor in-service problems of the worldwide BHTI Model 47 fleet, taking into account accident data and service difficulty information from the entire fleet. The FAA received data, most recently from Australia and Canada, indicating that BHTI Model 47 grips were cracking. We asked BHTI to submit all the field service information they had on the BHTI Model 47 grips. The airworthiness authorities in Australia and Canada had also extensively researched and analyzed the grip problem. Using this information, the FAA determined that fatigue cracks in the grips are likely to exist on the BHTI Model 47 helicopters. This condition, if not corrected, could result in failure of a grip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

Several commenters also state that the United States user data will show that there has not been one accident, incident, or other maintenance issue concerning the BHTI Model 47 blade grip in over 40 years. The FAA does not concur. The United States data actually shows two accidents in the United States because of fatigue cracking in the grip threads. One resulted in a fatality in New Jersey during 1971 and the other involved injuries in Iowa during 1972. The United States data also shows 11 grips with cracks and 5 of those had less than 1200 hours TIS. An EAA survey shows that one operator found a 2-inch crack through the threads of his grip as a result of complying with AD 2000-18-51.

A commenter also states that AD 2000-18-51 should be rescinded because the basis for the AD was a Bell 47 accident that occurred in Canada on

August 13, 1998. That commenter states that neither the accident investigation report, Transportation Board of Canada (TSB) Report No. A9800214, the accident, nor the resulting Transport Canada AD called for the extreme measures the FAA took when it issued the AD's. Other commenters offer similar comments. The FAA does not concur. The TSB suggested in Report No. A9800214 under "Safety Action" the possible need for a fatigue crack examination at an interval that provides a greater margin of safety than the existing inspection cycle. Transport Canada changed the initial inspection from 1200 hours to 600 hours TIS and thereafter at intervals not to exceed 300 hours TIS.

Without providing substantiating data, many commenters state that AD 2000-18-51 should be rescinded because they think the history on the helicopter that crashed August 13, 1998, in Canada is questionable. The FAA does not concur because the records indicate that the helicopter was certified, equipped, and maintained in accordance with existing regulations and approved procedures.

Some commenters state that the AD should differentiate between the grips. They state that it was one of the smaller grips, P/N 47-120-135-5, that was involved in the 1998 Canadian accident and that the larger grips were only involved in one accident and that grip had over 5600 TIS when it fractured. The FAA does not concur because 41 of the larger grips were found with cracks. Based on this service history, we have determined that both smaller and larger grips require the same inspection interval.

Some commenters state that the inspection intervals should be increased to 300 hours TIS similar to the previous United States AD and to the current Canadian AD to allow operators more operational use between inspections. The FAA partially concurs. The Canadian AD only allows eddy current inspections. The FAA believes liquid penetrant inspections may not be effective in detecting a small crack. Therefore, we propose to require the use of eddy current inspection exclusively. Similarly, because we now believe that it is unlikely that a crack will propagate to failure within 300 hours TIS for either the smaller or larger grip, we propose to increase the inspection intervals for eddy current inspections from 200 hours TIS to 300 hours TIS.

Commenters state that the AD should be rescinded and allow AD 86-06-08R1 to be effective because that AD has adequately eliminated the unsafe fatigue cracking condition. The FAA does not

concur because AD 86-06-08-R1 does not address the cracking found in grips with less than 1200 hours TIS.

Other commenters state that during recurring inspections, the reinstallation of the steel adapter nuts to the aluminum grip would damage the aluminum grip and create an unsafe condition. The FAA does not concur. Both the adapter and the grip must be cleaned and inspected for any burrs, damage, or out-of-tolerance threads. These grips have had recurring inspections since 1985, and the service history suggests that reinstalling the adapter to the grip threads produces no damage if done properly. Plus, we are extending the TIS intervals for inspecting the grips.

A commenter states that the AD should be rescinded because 36 of the grips identified in the field survey were P/N 47-120-252-3, and these grips only have a 300-hour retirement life. They believe that cracks found on these grips should not be considered since the grips should have been retired at 300 hours TIS. The data the FAA reviewed does not support that supposition, and we do not concur. The grip, P/N 47-120-252-3, is identical to the grips, P/N 47-120-252-7 and 47-120-252-11, except the grip, P/N 47-120-252-3, does not have bushings installed. The threaded area of these grips is identical to the threaded area on grips, P/N 47-120-252-7 and 47-120-252-11; therefore, a crack found in the threads of a grip, P/N 47-120-252-3, is relevant to the FAA's analysis.

A commenter states that the AD should be rescinded because the reason the grip fractured in Canada during 1998 was due to water lodged in the grip's thread and pitting in the roots of the threads. The FAA does not concur. The accident report stated water was dislodged during disassembly of the grip from the hub. This does not mean that water was in the threads, and the report does not suggest water in the threads. The report states there was extensive pitting in the threads. These pits were 0.0008 inch or less and cannot be seen with the naked eye. This kind of micro pitting is allowed by military specifications and manufacturing procedures. The FAA believes that the main reason the fatigue cracks have started in the root of the threads is because the root radii are not controlled and have been shown to be as sharp as 0.001 inch.

Numerous commenters state that the AD should be rescinded because the economic impact was underestimated and did not address that replacement parts were unavailable. The commenters also state that this AD created an unnecessary financial hardship on

operators, possibly forcing numerous operators out of business. The FAA understands these concerns. Several operators comment that the average economic impact per BHTI Model 47 helicopter ranged from \$8,000 to \$32,000. Their economic impact cost may be indicative of most costs associated with a business having to comply with the AD. However, normally AD cost calculations do not go beyond initial labor and parts costs and do not include costs that operators may incur in individual maintenance or cost that operators might pass on to others. The FAA recognizes that there are additional costs associated with a shorter retirement life on these rotorcraft. Assuming the helicopter is operated for 300 hours TIS per year, the cost of replacing the grips at 1200 hours vs. 5000 hours and changing the inspection requirements is calculated as follows:

Additional part replacement cost:

$((300\text{hr/yr})/(5000\text{hr}))((2\text{ea/set})\$4000))=\$480$ per 300hr TIS year for original set.

$((300\text{hr/yr})/(1200\text{hr}))((2\text{ea/set})\$4000))=\$2000$ per 300hr TIS year for reduced life set.

$\$2000-\$480=\$1520$ per 300hr TIS year per set replacement.

Additional inspections and installations (job) cost:

$((300\text{hr/yr})/(5000\text{hr}))(10\text{hr/job})(\$60\text{ per hr})((1\text{job(initial)}+(5000\text{hr}-1200\text{hr})/(300\text{hr/job})))=\$504$ per 300hr TIS year.

$((300\text{hr/yr})/(1200\text{hr}))(10\text{hr/job})(\$60\text{ per hr})((1\text{job(initial)}+(1200\text{hr})/(200\text{hr/job})))=\$1050$ per 300hr TIS year.

$\$1050-\$504=\$546$ per 300hr TIS year.

Total additional cost per 300hr TIS yr $\$1520+\$546=\$2066$ per 300hr TIS year.

Total additional cost per hr TIS is $\$2066/300\text{hr TIS}=\$7$ per hr TIS.

These additional costs do not include the economic impact to the operator if the parts are not available. The FAA recognizes that if parts are not available, an operator's helicopter may become grounded and result in an overwhelming financial burden on the operator. When adopting a regulation, the FAA must determine that the benefits of the intended regulation justify the cost. The FAA did not anticipate that a significant shortage of parts existed and the subsequent grounding of a portion of the fleet. Even though the FAA did not anticipate the shortage, despite the shortage of parts, we would still have issued the AD based on the extent of the unsafe condition. The AD was intended to restore the

level of safety established in the certification basis and the type design. If this part failed, the result could be catastrophic. For example, one operator reported finding a 2-inch crack in a grip as a result of the current AD.

One commenter states that the AD should be rescinded because the manufacturer stated that the AD is unwarranted. The FAA does not agree. There has been enough data reviewed that shows cracks have occurred prior to the 1200-hour life limit. The FAA does not allow flight with a crack in a critical component. Cracks do develop at less than 1200 hours TIS, and neither the initiation mechanism nor the crack growth characteristics have been determined; therefore, the recurring inspection mitigates risk. The FAA is also concerned that without design changes, newly produced parts could also develop cracks before the manufacturer's recommended 1200-hour life limit. The manufacturer has agreed to a crack propagation test on one of the existing grips, P/N 47-120-135-5, which had cracks show up during an eddy current inspection. The manufacturer has also agreed to redesign the grip to at least include a change to MIL-S-8879 threads with controlled root radius.

Several commenters state that the AD should not have gone out as an Emergency AD because the Rotorcraft Directorate did not follow the risk assessment process in the Small Airplane Directorate's "Airworthiness Concerns Process Guide" (guide). The FAA agrees that we did not follow the risk assessment process in that guide because that process was originally developed to address small airplanes under a type certificate whose owner no longer provides engineering support for the type certificate. Since that guide as it currently exists may not be appropriate for rotorcraft, we do plan to evaluate a procedure that could be used for rotorcraft. The FAA decided to issue the Emergency AD because of an in-flight failure of a grip at approximately 200 hours TIS.

We have identified an unsafe condition that is likely to exist or develop on other BHTI Model 47B, 47B-3, 47D, 47D-1, 47G, 47G-2, 47G2A, 47G-2A-1, 47G-3, 47G-3B, 47G-3B-1, 47G-3B-2, 47G-3B-2A, 47G-4, 47G-4A, 47G-5, 47G-5A, 47H-1, 47J, 47J-2, 47J-2A, and 47K helicopters of the same type designs. The proposed AD would supersede AD 2000-18-51 with the following requirements:

- For grips, P/N 47-120-135-2, 47-120-135-3, 47-120-135-5, 47-120-252-1, 47-120-252-7, 47-120-252-11, and for grips manufactured under PMA,

P/N 74-120-252-11, 74-120-135-5, R74-120-252-11, and R74-120-135-5, conduct eddy current inspections of the threads of both grips as follows:

- Within 300 hours TIS since initial installation on any helicopter or within 10 hours TIS for grips with 300 or more hours TIS, or within 200 hours TIS since last liquid penetrant or eddy current inspection, whichever comes first, conduct an eddy current inspection in accordance with Appendix 1 or an equivalent FAA-approved procedure that contains the requirements of the procedure in Appendix 1. Thereafter, conduct the eddy current inspection at intervals not to exceed 300 hours TIS.

- Report the results of each inspection to the FAA Rotorcraft Certification Office by providing the information requested in the sample format report in Appendix 3. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120-0056.

- Before further flight, replace any cracked grip with an airworthy grip.

The proposed AD would require maintaining the current retirement life of 1200 hours TIS for each affected grip.

The FAA estimates that 1130 helicopters of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per helicopter to accomplish the disassembly, inspection, and reassembly of the grips from the helicopter, and that the average labor rate is \$60 per work hour. Required parts, if a grip needs to be replaced, will cost approximately \$4,000 per grip (there are two grips on each helicopter). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$9,718,000, assuming one inspection per helicopter and replacement of both grips on each helicopter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-11983 and by adding a new airworthiness directive to read as follows:

Bell Helicopter Textron, Inc.: Docket No. 2001-SW-13-AD. Supersedes AD 2000-18-51, Amendment 39-11983, Docket No. 2000-SW-35-AD.

Applicability: Model 47B, 47B-3, 47D, 47D-1, 47G, 47G-2, 47G2A, 47G-2A-1, 47G-3, 47G-3B, 47G-3B-1, 47G-3B-2, 47G-3B-2A, 47G-4, 47G-4A, 47G-5, 47G-5A, 47H-1, 47J, 47J-2, 47J-2A, and 47K helicopters, with main rotor blade grips, part number (P/N) 47-120-135-2, 47-120-135-3, 47-120-135-5, 47-120-252-1, 47-120-252-7, 47-120-252-11, 74-120-252-11, 74-120-135-5, R74-120-252-11, and R74-120-135-5, installed, certified in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade grip (grip), separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Conduct an eddy current inspection of the threads of both grips for a crack in accordance with Appendix 1 of this AD or an equivalent FAA-approved procedure containing the requirements of the procedure in Appendix 1 within 300 hours time-in-service (TIS) since initial installation on any helicopter or within 10 hours TIS for grips with 300 or more hours TIS or within 200 hours TIS since the last liquid penetrant or eddy current inspection of grip threads, whichever comes first.

(1) Thereafter, conduct the eddy current inspection in accordance with Appendix 1 of the AD or an equivalent FAA-approved procedure containing the requirements of the procedure in Appendix 1 at intervals not to exceed 300 hours TIS.

(2) Report the results of each inspection to the FAA Rotorcraft Certification Office within 7 calendar days. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120-0056.

Note 2: See Appendix 2 of this AD for a list of known eddy current inspection facilities.

(b) If a crack is detected, before further flight, replace any cracked grip with an airworthy grip.

(c) On or before 1200 hours TIS, replace each grip with an airworthy grip.

(d) This AD establishes a retirement life of 1200 hours TIS for the grips, P/N 47-120-135-2, 47-120-135-3, 47-120-135-5, 47-120-252-1, 47-120-252-7, 47-120-252-11, 74-120-252-11, 74-120-135-5, R74-120-252-11, and R74-120-135-5.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Appendix 1—Nondestructive Inspection Procedure

Task: Eddy Current (ET) Inspection of Mast Threads for Cracks

1.0 AREA OF INSPECTION

1.1 The inboard inside diameter machined threads (reference figure 1).

2.0 EQUIPMENT

2.1 Zetec Miz-20/22, Phasec 2200 or equivalent piece of equipment.

2.2 Match molded ET probe SPC-193 (100kHz) or equivalent. (See Figure 3.)

2.3 Reference standard EC-010-021, or equivalent. (See Figures 4 and 5.)

2.4 Light oil.

3.0 PERSONNEL REQUIREMENTS

3.1 Personnel performing the ET inspection must be minimally qualified to a Level II in ET inspection, certified in accordance with an industry accepted standard (such as, ATA-105, NAS-410, or MIL-STD-410) or an FAA accepted company procedure.

4.0 STANDARDIZATION

4.1 Connect probe to flaw detector and turn power on.

4.2 Adjust the Phasec 2000 as shown in table 1. Adjust all other equipment as necessary.

4.3 Adjust the V:H gain ratio to 1.5:1—2:1.

4.4 Monitor the crack response when moving the probe in one direction only across each EDM notch of the standard. Adjust the coarse gain for a crack response of 2-3 units from the smallest (0.04") notch. Record the number units of displacement and noise level for each of the EDM notches.

5.0 PRE INSPECTION

5.1 The part shall be clean and free of loose debris.

5.2 A thin coating of clean oil may be applied to the teeth to help the ET probe slide easily.

6.0 INSPECTION

6.1 Place the probe into the threaded area and slide it in the same direction as was done on the standard while monitoring the screen for root cracks. Moving the probe in the same direction produces a repeatable display that allows for more accurate flaw size determination. Scan the probe along each individual thread until all the threads are inspected. (See Figures 2 and 3.)

7.0 EVALUATION

7.1 Repeat standardization and rescan any areas where there is a vertical crack-like deflection.

7.2 If indication persists, mark the location on the part. Record the number units of displacement, phase orientation, and noise level.

8.0 ACCEPT/REJECT CRITERIA

8.1 All repeatable crack-like indications above the noise level detected shall be cause for rejection.

BILLING CODE 4910-13-U

Zetec M12 - 20/22, Phasec 2200 Settings

Dialogue: English	Alarm Stretch: 1S	Probe: Standard
Printer: HP PCL	Alarm Shape: Off	Drive: +10dB 6.3V
◀Bright Bal▶ Low Split	Apply to: Trace 1	Analogue 1: Out Off
Graticule: Rect. A	◀Alarm action▶ Run Silent	Analogue 2: Out Off
Ser'l	Conf. Alarm I/O	Time Batt.
Hi-pass: DC	CH1 Freq: 100KHz	◀ Mode: Diff 1Ch
Lo-pass: 20 Hz	CH1 PHASE: 193.0°	Display: XY
Inp. Gain: +20dB	CH1 GAIN: 46.0Db	View: Ch1
Optimize: ◀ + ▶	CH1 X:Y: X -3.0dB	Persist: Permn't

Table 1, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

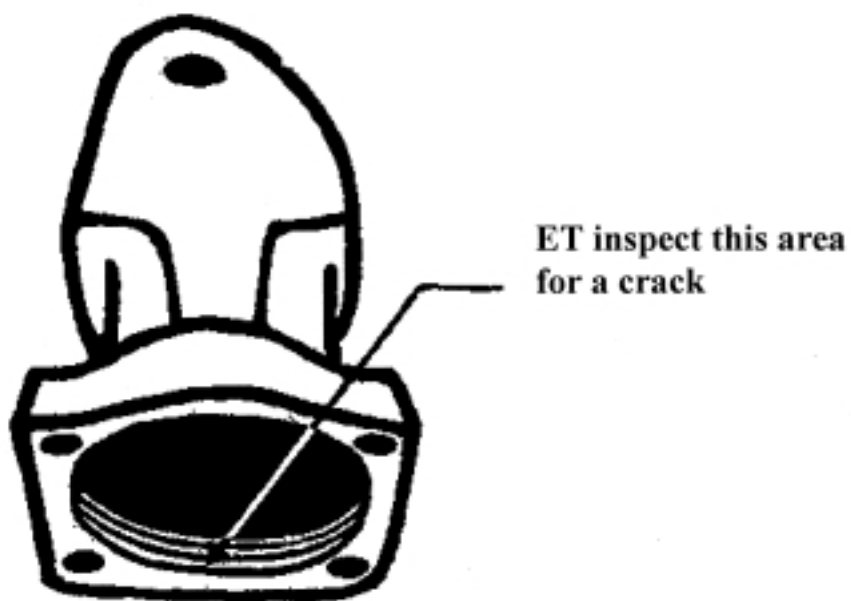


Figure 1, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

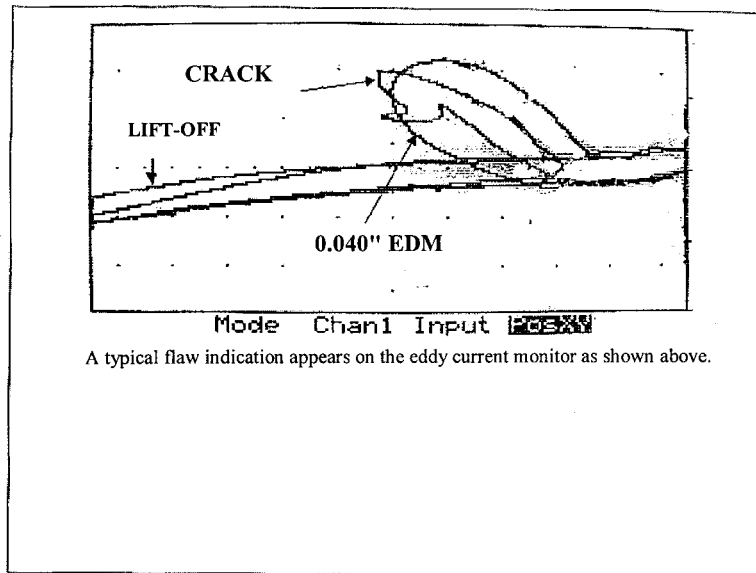


Figure 2, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

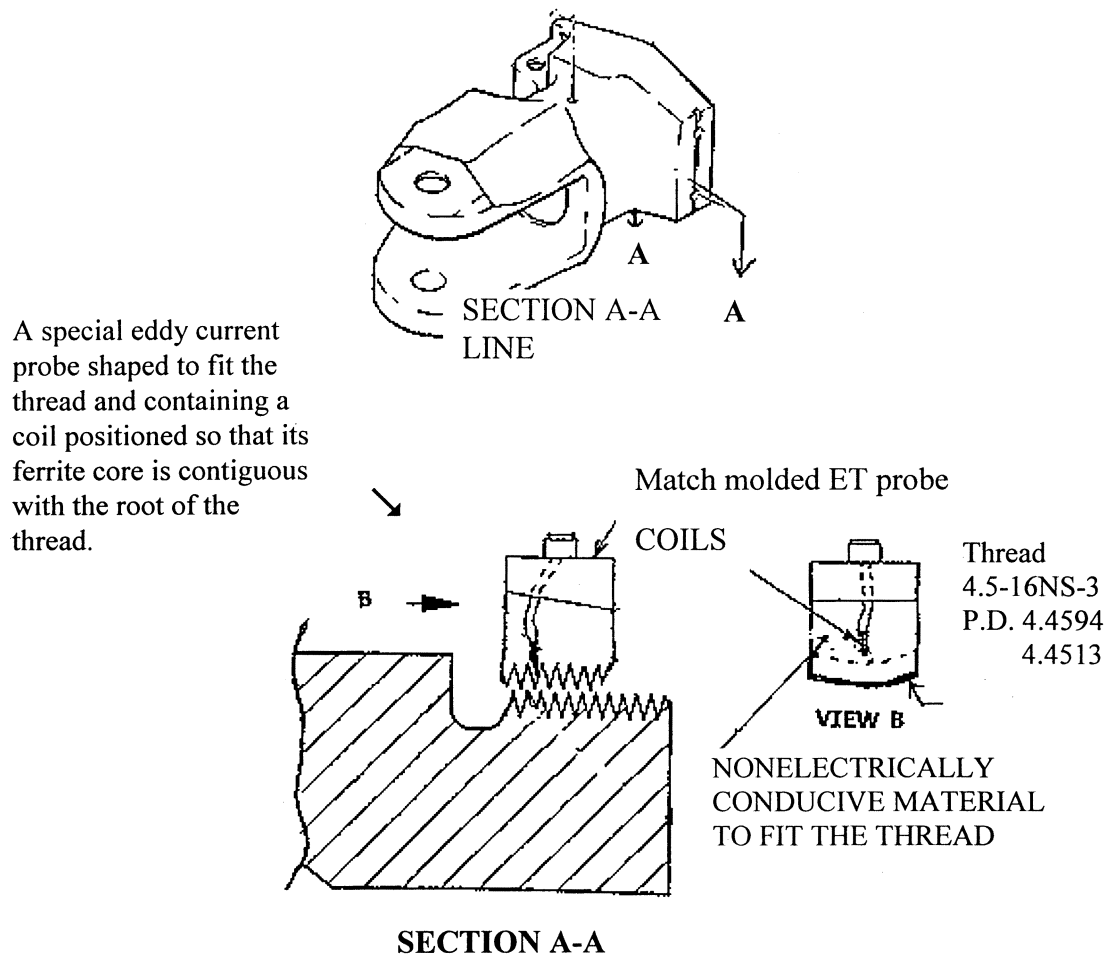


Figure 3, Appendix 1

NONDESTRUCTIVE TESTING PROCEDURE (CONT.)

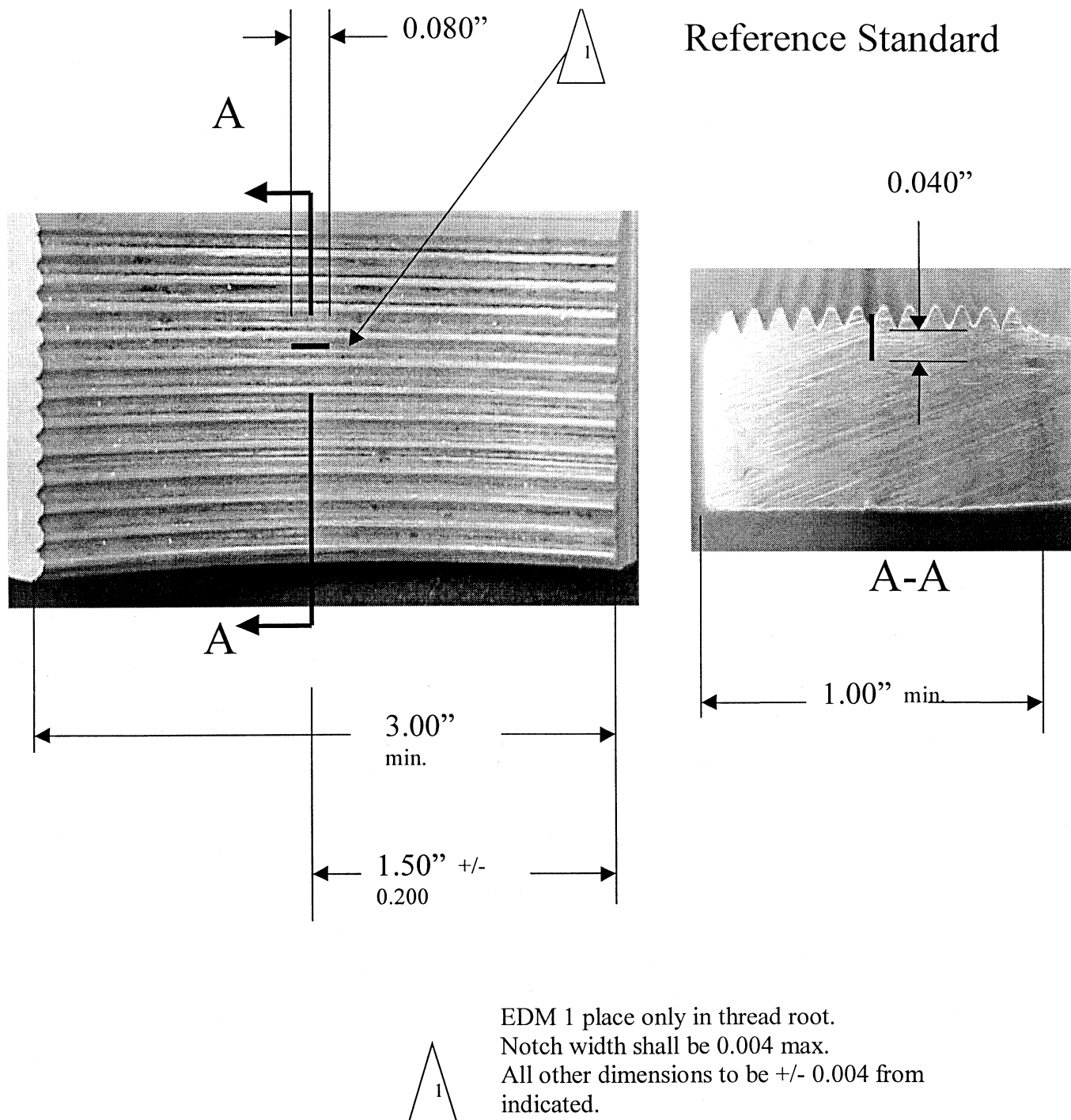


Figure 4, Appendix 1

NONDESTRUCTIVE INSPECTION PROCEDURE (CONT.)

Reference Standard

MACHINING NOTES:

1. Standard may be machined from aluminum tube stock.
2. The standard shall contain a minimum of four teeth per the tooth dimensions specified.
3. The EDM notch shall be placed in the center most tooth root as measured across the width of the standards. There shall be no less than two teeth and one root on either side of the EDM notch.

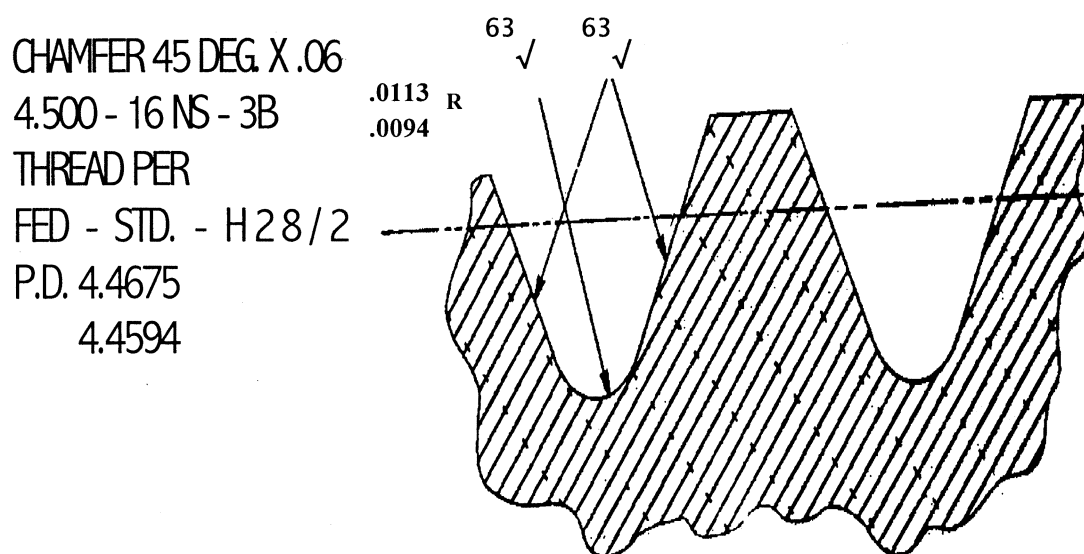


Figure 5, Appendix 1

BILLING CODE 4910-13-C

Appendix 2—Partial List of Nondestructive Inspection Testing Facilities Identified by Operators and FAA

Met Chem Testing Laboratories Inc., 369 W.
 Gregson Ave. (3085 S.), Salt Lake City,
 Utah 84115-3440, Phone: (801) 487-0801,
 FAX: (801) 466-8790
www.metchemtesting.com

Galactic NDT Services, 10728 D. South
 Pipeline RD, Hurst, Texas 76053, Phone:
 (800) 458-6387.

Global Testing Technologies, 1173 North
 Service Rd. Unit D3, Oakville Toronto
 Canada, Phone: (905) 847-9300, FAX: (905)
 847-9330.

Paragon Services, Inc., 1015 S. West St.,
 Wichita, KS 67213, Phone: (316) 945-5285,
 FAX: (316) 945-0629.

NOE Services, 8775 E. Orchard Rd., #809,
 Englewood, CO, Phone: (303) 741-0518,
 FAX: (303) 741-0519.

Applied Technical Services, Inc., 1190
 Atlanta Industrial Drive, Marietta, GA
 30066, Phone: (770) 423-1400, FAX: (770)
 514-3299.

Rotorcraft Support, Van Nuys CA 91406,
 Phone: (818) 997-7667, FAX: (818) 997-
 1513.

Other FAA Approved repair facilities may
 be used.

Appendix 3—AD Compliance Inspection Report (Sample Format), Bell Model 47 Main Rotor Blade Grip

Provide the following information and mail or fax it to: Manager, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas, 76193-0170, USA, Fax: 817-222-5783.

Aircraft Registration No: _____

Helicopter Model: _____

Helicopter Serial Number: _____

Owner and Operator of the Helicopter: _____

	Grip #1	Grip #2
Part Number: Serial Number: Hours TIS on the part at Inspection: Crack Found (Y/N) (If yes, describe below.)		

Description of Findings

Who performed the inspections? _____

If a crack was found, describe the crack size, location, and orientation (provide a sketch or pictures with the grip part and serial number).

Provide any other comments. _____

Issued in Fort Worth, Texas, on March 23, 2001.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.

[FR Doc. 01-7741 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-236-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767-300 Series Airplanes Modified by Supplemental Type Certificate ST00118SE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767-300 series airplanes modified by supplemental type certificate ST00118SE. This proposal would require modification of the in-flight entertainment (IFE) system and revision of the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of

appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-236-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-236-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Matsushita Avionics System Corporation, 22333 29th Drive SE, Bothell, Washington 98021. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2793; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-236-AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-236-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Federal Aviation Administration (FAA) recently completed a review of in-flight entertainment (IFE) systems certified by supplemental type certificate (STC) and installed on transport category airplanes. The review focused on the interface between the IFE system and airplane electrical system, with the objective of determining if any unsafe conditions exist with regard to the interface. STC's issued between 1992 and 2000 were considered for the review.

The type of IFE systems considered for review were those that contain video monitors (cathode ray tubes or liquid crystal displays; either hanging above the aisle or mounted on individual seat backs or seat trays), or complex circuitry (i.e., power supplies, electronic distribution boxes, extensive wire routing, relatively high power consumption, multiple layers of circuit protection, etc.). In addition, in-seat power supply systems that provide power to more than 20 percent of the total passenger seats were also considered for the review. The types of

IFE systems not considered for review include systems that provide only audio signals to each passenger seat, ordinary in-flight telephone systems (e.g., one telephone handset per group of seats or bulkhead-mounted telephones), systems that only have a video monitor on the forward bulkhead(s) (or a projection system) to provide passengers with basic airplane and flight information, and in-seat power supply systems that provide power to less than 20 percent of the total passenger seats.

Items considered during the review include the following:

- Can the electrical bus(es) supplying power to the IFE system be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing?
- Can IFE system power be removed when required without pulling IFE system circuit breakers? [i.e., is there a switch (dedicated to the IFE system or a combination of loads) located in the flight deck or cabin that can be used to remove IFE power?]
- If the IFE system requires changes to flight crew procedures, has the airplane flight manual (AFM) been properly amended?
- If the IFE system requires changes to cabin crew procedures, have they been properly amended?
- Does the IFE system require periodic or special maintenance?

In all, approximately 180 IFE systems approved by STC were reviewed by the FAA. The review results indicate that potential unsafe conditions exist on some IFE systems installed on various transport category airplanes. These conditions can be summarized as:

- Electrical bus(es) supplying power to the IFE system cannot be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing.
- Power cannot be removed from the IFE system when required without pulling IFE system circuit breakers (i.e., there is no switch dedicated to the IFE

system or combination of systems for the purpose of removing power).

- Installation of the IFE system has affected crew (flight crew and/or cabin crew) procedures, but the procedures have not been properly revised.

FAA's Determination

As part of its review of IFE systems, the FAA has determined that an unsafe condition exists on Boeing Model 767–300 series airplanes modified by STC ST00118SE. The IFE system on these airplanes is connected to an electrical bus that cannot be deactivated without also removing power from airplane systems necessary for safe flight and landing. Additionally, the airplane manufacturer's published flight crew and cabin crew emergency procedures do not provide for the removal of power from the IFE system. This condition, if not corrected, could result in inability to remove power from the IFE system during a non-normal or emergency situation, and consequent inability to control smoke or fumes in the airplane flight deck or cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved Matsushita Avionics Systems Corporation Service Bulletin S2GFAB767–23–1, dated February 7, 2001, which describes procedures for modification of the IFE system. This modification involves installation of additional wiring and a new relay so that the “master power switch” will remove power from the IFE system. (Currently, the “master power switch” removes power from high-energy components, but does not remove power from the overhead video, passenger service, and economy-class audio systems.)

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would

require accomplishment of the actions specified in the service bulletin described previously, except as discussed in the “Differences Between Service Bulletin and This Proposed AD” section, below. The proposed AD also would require revising procedures to be followed in the event of “Electrical Smoke or Fire,” as contained in the “Emergency Procedures” section of the Airplane Flight Manual, to ensure that the flight crew is advised of instructions for removing power from the IFE system during an emergency related to smoke or fumes. Accomplishment of these actions is intended to adequately address the identified unsafe condition.

Differences Between Service Bulletin and This Proposed AD

Operators should note that the service bulletin states that the actions are to be completed “at the earliest opportunity where manpower and facilities are available.” The FAA finds that such a compliance time will not ensure that the proposed actions are accomplished in a timely manner.

In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the amount of time necessary to accomplish the proposed actions, and the practical aspect of accomplishing the proposed actions within an interval of time that parallels normal scheduled maintenance for the affected operators. In consideration of these factors, the FAA has determined that 18 months after the effective date of this AD represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained.

Other Relevant Proposed Rulemaking

This proposed action is one of a number of proposed AD's on airplanes modified by STC's that have been determined to be subject to similar unsafe conditions. Other currently proposed AD's include the following airplanes and STC's:

Model/Series	STC No.	Docket No.
Boeing 757–200	SA1727GL	2000–NM–228–AD
McDonnell Douglas DC–9–51 and DC–9–83	SA8026NM	2000–NM–229–AD
McDonnell Douglas DC–10–30	ST00054SE	2000–NM–231–AD
Boeing 767–300 and 767–300ER	SA5765NM	2000–NM–232–AD
	SA5978NM	
Boeing 767–300	ST00157SE	2000–NM–233–AD
Boeing 747–100 and –200	ST00196SE	2000–NM–234–AD
Boeing 767–200	SA5134NM	2000–NM–235–AD
Boeing 737–300	ST00171SE	2000–NM–237–AD
Boeing 767–200	SA4998NM	2000–NM–238–AD
Boeing 767–300	SA7019NM–D	2000–NM–239–AD
Boeing 747–100 and –200	SA8622SW	2000–NM–240–AD
McDonnell Douglas DC–10–30	SA8452SW	2000–NM–241–AD

Model/Series	STC No.	Docket No.
Boeing 737-700	ST09100AC-D ST09104AC-D ST09105AC-D ST09106AC-D	2000-NM-242-AD
Boeing 767-200	ST09022AC-D	2000-NM-243-AD
Boeing 747SP	ST09097AC-D	2000-NM-244-AD
Boeing 747-400	SA8843SW	2000-NM-245-AD
Airbus A340-211	ST0902AC-D	2000-NM-246-AD

Cost Impact

There are approximately 20 airplanes of the affected design in the worldwide fleet. The FAA estimates that no airplanes of U.S. registry would be affected by this proposed AD. All airplanes included in the applicability of this proposed AD currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this AD is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 50 work hours per airplane to accomplish the proposed modification, at an average labor rate of \$60 per work hour. Required parts would be provided at no charge to the operator. Based on these figures, the cost impact of the proposed modification would be \$3,000 per airplane.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed AFM revision would be \$60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000-NM-236-AD.

Applicability: Model 767-300 series airplanes modified by supplemental type

certificate (STC) ST00118SE; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action; accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the IFE system installed on the airplane in accordance with Matsushita Avionics Systems Corporation Service Bulletin S2GFAB767-23-1, dated February 7, 2001.

(2) Revise the procedures under "Electrical Smoke or Fire" in the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

"If Smoke Source Cannot Be Located

Utility bus switches—OFF.

Establish communications with cabin crew.

Instruct cabin crew to place in-flight entertainment (IFE) system Master Power Switch in "OFF" position.

Obtain confirmation from cabin crew that electrical power to the IFE system has been removed."

Spares

(b) As of the effective date of this AD, no person shall install an IFE system in accordance with STC ST00118SE on any airplane, unless it is modified and the AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on March 23, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-7740 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-234-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-100 and -200 Series Airplanes Modified by Supplemental Type Certificate ST00196SE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 747-100 and -200 series airplanes modified by supplemental type certificate ST00196SE. This proposal would require modification of the in-flight entertainment (IFE) system and revision of the Airplane Flight Manual. This action is necessary to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-234-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-234-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from JAMCO America, Inc., 1018-80th Street SW, Everett, Washington 98023. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2793; fax (425) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-234-AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-234-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Federal Aviation Administration (FAA) recently completed a review of in-flight entertainment (IFE) systems certified by supplemental type certificate (STC) and installed on transport category airplanes. The review focused on the interface between the IFE system and airplane electrical system, with the objective of determining if any unsafe conditions exist with regard to the interface. STC's issued between 1992 and 2000 were considered for the review.

The type of IFE systems considered for review were those that contain video monitors (cathode ray tubes or liquid crystal displays; either hanging above the aisle or mounted on individual seat backs or seat trays), or complex circuitry (i.e., power supplies, electronic distribution boxes, extensive wire routing, relatively high power consumption, multiple layers of circuit protection, etc.). In addition, in-seat power supply systems that provide power to more than 20 percent of the total passenger seats were also considered for the review. The types of IFE systems not considered for review include systems that provide only audio signals to each passenger seat, ordinary in-flight telephone systems (e.g., one telephone handset per group of seats or bulkhead-mounted telephones), systems that only have a video monitor on the forward bulkhead(s) (or a projection system) to provide passengers with basic airplane and flight information,

and in-seat power supply systems that provide power to less than 20 percent of the total passenger seats.

Items considered during the review include the following:

- Can the electrical bus(es) supplying power to the IFE system be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing?

- Can IFE system power be removed when required without pulling IFE system circuit breakers? [i.e., is there a switch (dedicated to the IFE system or a combination of loads) located in the flight deck or cabin that can be used to remove IFE power?]

- If the IFE system requires changes to flight crew procedures, has the airplane flight manual (AFM) been properly amended?

- If the IFE system requires changes to cabin crew procedures, have they been properly amended?

- Does the IFE system require periodic or special maintenance?

In all, approximately 180 IFE systems approved by STC were reviewed by the FAA. The review results indicate that potential unsafe conditions exist on some IFE systems installed on various transport category airplanes. These conditions can be summarized as:

- Electrical bus(es) supplying power to the IFE system cannot be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing.

- Power cannot be removed from the IFE system when required without pulling IFE system circuit breakers (i.e., there is no switch dedicated to the IFE system or combination of systems for the purpose of removing power).

- Installation of the IFE system has affected crew (flight crew and/or cabin crew) procedures, but the procedures have not been properly revised.

FAA's Determination

As part of its review of IFE systems, the FAA has determined that an unsafe condition exists on Boeing Model 747-100 and -200 series airplanes modified by STC ST00196SE. The IFE system on these airplanes is connected to an electrical bus that cannot be deactivated without also removing power from airplane systems necessary for safe flight and landing. Additionally, the airplane manufacturer's published flight crew and cabin crew emergency procedures do not provide for the removal of power from the IFE system. This condition, if not corrected, could result in inability to remove power from the IFE system during a non-normal or emergency situation, and consequent inability to control smoke or fumes in the airplane flight deck or cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved JAMCO America Service Bulletin 747-25-M025, dated August 30, 2000, which describes procedures for modification of the IFE system. The procedures involve modifying electrical power supply circuits of the IFE system to provide a means of removing power from the IFE system without also removing power from systems necessary for safe flight and landing.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The proposed AD also would require revising the Airplane Flight Manual (AFM) to ensure that the flight crew is advised of proper procedures for removing power from the IFE system. Accomplishment of these proposed actions is intended to adequately address the identified unsafe condition.

Calculation of Compliance Time

In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the amount of time necessary to accomplish the proposed actions, and the practical aspect of accomplishing the proposed actions within an interval of time that parallels normal scheduled maintenance for the affected operators. In consideration of these factors, the FAA has determined that 18 months after the effective date of this AD represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained.

Other Relevant Proposed Rulemaking

This proposed action is one of a number of proposed AD's on airplanes modified by STC's that have been determined to be subject to similar unsafe conditions. Other currently proposed AD's include the following airplanes and STC's:

Model/Series	STC No.	Docket No.
Boeing 757-200	SA1727GL	2000-NM-228-AD
McDonnell Douglas DC-9-51 and DC-9-83	SA8026NM	2000-NM-229-AD
McDonnell Douglas DC-10-30	ST00054SE	2000-NM-231-AD
Boeing 767-300 and 767-300ER	SA5765NM	2000-NM-232-AD
	SA5978NM	
Boeing 767-300	ST00157SE	2000-NM-233-AD
Boeing 767-200	SA5134NM	2000-NM-235-AD
Boeing 767-300	ST00118SE	2000-NM-236-AD
Boeing 737-300	ST00171SE	2000-NM-237-AD
Boeing 767-200	SA4998NM	2000-NM-238-AD
Boeing 767-300	SA7019NM-D	2000-NM-239-AD
Boeing 747-100 and -200	SA8622SW	2000-NM-240-AD
McDonnell Douglas DC-10-30	SA8452SW	2000-NM-241-AD
Boeing 737-700	ST09100AC-D	2000-NM-242-AD
	ST09104AC-D	
	ST09105AC-D	
	ST09106AC-D	
Boeing 767-200	ST09022AC-D	2000-NM-243-AD
Boeing 747SP	ST09097AC-D	2000-NM-244-AD
Boeing 747-400	SA8843SW	2000-NM-245-AD
Airbus A340-211	ST0902AC-D	2000-NM-246-AD

Cost Impact

There are approximately 11 airplanes of the affected design in the worldwide fleet. None of the airplanes affected by this proposed rule are on the U.S. Register. All airplanes included in the applicability of this proposed rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 8 work hours per airplane to accomplish the proposed modification, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$450 per airplane. Based on these figures, the cost impact of the proposed modification would be \$930 per airplane.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed AFM revision would be \$60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–234–AD.

Applicability: Model 747–100 and –200 series airplanes modified by supplemental type certificate (STC) ST00196SE, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the IFE system in accordance with JAMCO America Service Bulletin 747–25–M025, dated August 30, 2000.

Airplane Flight Manual Revision

(2) Revise the procedures for "Electrical System Smoke or Fire" of the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

"If Smoke Source is Undetermined

Galley Power, Recirculating and Gasper Fans, and supplemental vent fans (if installed)—OFF.

Establish communications with cabin crew.

Instruct cabin crew to depress in-flight entertainment (IFE) system Master Control System Power "OFF" switch.

Obtain confirmation from cabin crew that electrical power to the IFE system has been removed."

Spares

(b) As of the effective date of this AD, no person shall install an IFE system in accordance with STC ST00196SE on any airplane, unless it is modified and the FAA-approved AFM is revised in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on March 23, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–7739 Filed 3–28–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 2000–NM–233–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Modified by Supplemental Type Certificate ST00157SE**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767–300 series airplanes modified by supplemental type certificate ST00157SE. This proposal would require modification of the electrical circuits that supply power to the in-flight entertainment (IFE) system. This action is necessary to prevent the inability of the flight crew to remove power from the IFE system when necessary. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain “Docket No. 2000–NM–233–AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from JAMCO America, Inc., 1018–80th Street, SW., Everett, Washington 98023. This information may be examined at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:**Comments Invited**

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2000–NM–233–AD.” The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–233–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Federal Aviation Administration (FAA) recently completed a review of in-flight entertainment (IFE) systems certified by supplemental type certificate (STC) and installed on transport category airplanes. The review focused on the interface between the IFE system and airplane electrical system, with the objective of determining if any unsafe conditions exist with regard to the interface. STC's issued between 1992 and 2000 were considered for the review.

The type of IFE systems considered for review were those that contain video monitors (cathode ray tubes or liquid crystal displays; either hanging above the aisle or mounted on individual seat backs or seat trays), or complex circuitry (*i.e.*, power supplies, electronic distribution boxes, extensive wire routing, relatively high power consumption, multiple layers of circuit protection, etc.). In addition, in-seat power supply systems that provide power to more than 20 percent of the total passenger seats were also considered for the review. The types of IFE systems not considered for review include systems that provide only audio signals to each passenger seat, ordinary in-flight telephone systems (*e.g.*, one telephone handset per group of seats or bulkhead-mounted telephones), systems that only have a video monitor on the forward bulkhead(s) (or a projection system) to provide passengers with basic airplane and flight information, and in-seat power supply systems that provide power to less than 20 percent of the total passenger seats.

Items considered during the review include the following:

- Can the electrical bus(es) supplying power to the IFE system be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing?
- Can IFE system power be removed when required without pulling IFE system circuit breakers? [*i.e.*, is there a switch (dedicated to the IFE system or a combination of loads) located in the flight deck or cabin that can be used to remove IFE power?]
- If the IFE system requires changes to flight crew procedures, has the airplane flight manual (AFM) been properly amended?
- If the IFE system requires changes to cabin crew procedures, have they been properly amended?
- Does the IFE system require periodic or special maintenance?

In all, approximately 180 IFE systems approved by STC were reviewed by the

FAA. The review results indicate that potential unsafe conditions exist on some IFE systems installed on various transport category airplanes. These conditions can be summarized as:

- Electrical bus(es) supplying power to the IFE system cannot be deenergized when necessary without removing power from systems that may be required for continued safe flight and landing.
- Power cannot be removed from the IFE system when required without pulling IFE system circuit breakers (*i.e.*, there is no switch dedicated to the IFE system or combination of systems for the purpose of removing power).
- Installation of the IFE system has affected crew (flight crew and/or cabin crew) procedures, but the procedures have not been properly revised.

FAA's Determination

As part of its review of IFE systems, the FAA has determined that an unsafe condition exists on Boeing Model 767–300 series airplanes modified by STC ST00157SE. The IFE system on these airplanes is connected to an electrical bus that cannot be deactivated without also removing power from airplane systems necessary for safe flight and landing. Additionally, the airplane

manufacturer's published flight crew and cabin crew emergency procedures do not provide for the removal of power from the IFE system. This condition, if not corrected, could result in inability to remove power from the IFE system during a non-normal or emergency situation, and consequent inability to control smoke or fumes in the airplane flight deck or cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved JAMCO America Service Bulletin 767–25–M019, dated August 30, 2000, which describes procedures for modification of the electrical circuits that supply power to the IFE system. The modification involves disconnection of certain wires and installation of certain new wires. This modification will result in power for the IFE system being obtained from a utility bus. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same

type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Calculation of Compliance Time

In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the amount of time necessary to accomplish the proposed actions, and the practical aspect of accomplishing the proposed actions within an interval of time that parallels normal scheduled maintenance for the affected operators. In consideration of these factors, the FAA has determined that 18 months after the effective date of this AD represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained.

Other Relevant Proposed Rulemaking

This proposed action is one of a number of proposed AD's on airplanes modified by STC's that have been determined to be subject to similar unsafe conditions. Other currently proposed AD's include the following airplanes and STC's:

Model/Series	STC No.	Docket No.
Boeing 757–200	SA1727GL	2000–NM–228–AD
McDonnell Douglas DC–9–51 and DC–9–83	SA8026NM	2000–NM–229–AD
McDonnell Douglas DC–10–30	ST00054SE	2000–NM–231–AD
Boeing 767–300 and 767–300ER	SA5765NM	2000–NM–232–AD
	SA5978NM	
Boeing 747–100 and –200	ST00196SE	2000–NM–234–AD
Boeing 767–200	SA5134NM	2000–NM–235–AD
Boeing 767–300	ST00118SE	2000–NM–236–AD
Boeing 737–300	ST00171SE	2000–NM–237–AD
Boeing 767–200	SA4998NM	2000–NM–238–AD
Boeing 767–300	SA7019NM–D	2000–NM–239–AD
Boeing 747–100 and –200	SA8622SW	2000–NM–240–AD
McDonnell Douglas DC–10–30	SA8452SW	2000–NM–241–AD
Boeing 737–700	ST09100AC–D	2000–NM–242–AD
	ST09104AC–D	
	ST09105AC–D	
	ST09106AC–D	
Boeing 767–200	ST09022AC–D	2000–NM–243–AD
Boeing 747SP	ST09097AC–D	2000–NM–244–AD
Boeing 747–400	SA8843SW	2000–NM–245–AD
Airbus A340–211	ST0902AC–D	2000–NM–246–AD

Cost Impact

There are approximately 49 airplanes of the affected design in the worldwide fleet. The FAA estimates that 49 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Required parts would cost approximately \$80 per

airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$12,740, or \$260 per airplane.

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

cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–233–AD.

Applicability: Model 767–300 series airplanes modified by supplemental type certificate (STC) ST00157SE, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of

the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of flight crew to remove power from the in-flight entertainment (IFE) system when necessary; which, during a non-normal or emergency situation, could result in inability to control smoke or fumes in the airplane flight deck or cabin; accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, modify the electrical circuits that supply power to the IFE system in accordance with JAMCO America Service Bulletin 767–25–M019, dated August 30, 2000.

Spares

(b) As of the effective date of this AD, no person shall install an IFE system in accordance with STC ST00157SE on any airplane, unless it is modified in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Special Flight Permits

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

Issued in Renton, Washington, on March 23, 2001.

Vi L. Lipski,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 01–7738 Filed 3–28–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–318–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 707 and 720 series airplanes. This proposal would require replacement of wiring for the fuel boost pumps and override pumps with new wiring, installation of Teflon sleeving on the wiring, and associated actions. This proposal also would require repetitive inspections to detect damage of the wiring or evidence of a fuel leak. This action is necessary to detect and correct damaged wiring for the fuel boost pumps and override pumps, which could cause electrical arcing that could puncture the conduit containing the wire, and result in an explosion or fire adjacent to the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 14, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–318–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–318–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-318-AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-318-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a report that, while investigating a fuel leak around the bolts on the number 1 fuel boost pump on a Boeing Model 707 series airplane, an operator found wire damage where the fuel boost pump wiring exited the boost pump and entered the boost pump access area. (The damage is generated by movement of the wire against an adjacent surface, which is due to normal vibrations of the airplane.) Electrical wiring for the fuel boost pump is contained inside a metallic conduit installed in the fuel

tank. Damaged wiring for the fuel boost pumps, if not corrected, could cause electrical arcing that could puncture the conduit containing the wiring, and result in an explosion or fire adjacent to the fuel tank. The installation of wiring for the fuel override pumps is similar; thus, wiring for the fuel override pumps could also be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin A3500, dated July 27, 2000, which describes procedures for replacement of wiring for the fuel boost pumps and override pumps, and associated actions. The associated actions described in the service bulletin include the following:

- Inspecting the area of the fuel boost pumps and override pumps to find evidence of a fuel leak, and locating the source of any fuel leak detected in that area;
- Removing the wiring of the fuel boost pumps and override pumps and inspecting it for damage, such as evidence of electrical arcing or exposed copper wire, or evidence of a fuel leak;
- Replacing the conduit where any electrical arcing or fuel leakage has occurred;
- Installing new wiring for each fuel boost pump and override pump; and
- Installing Teflon sleeving over the new wiring.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

The proposed AD would also require repetitive detailed visual inspections for damage (*e.g.*, evidence of electrical arcing or exposed copper wire) of the fuel boost pump and override pump wiring or evidence of a fuel leak at least every 30,000 flight hours after replacement of the wiring. The FAA based the decision to propose these repetitive inspections on several factors, including the degree of urgency associated with this unsafe condition. In view of the considerations associated with wiring of the fuel boost pumps and override pumps, the FAA finds it

necessary to propose repetitive inspections.

Explanation of Compliance Time

This proposed AD would require accomplishment of the initial inspection and replacement of wiring within 1 year or 4,000 flight hours after the effective date of the AD, whichever occurs first. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition and the average utilization of the affected fleet. In light of all of these factors, the FAA finds this compliance time warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 261 airplanes of the affected design in the worldwide fleet. The FAA estimates that 65 airplanes of U.S. registry would be affected by this proposed AD.

The proposed replacement and initial associated actions would take approximately 27 work hours per airplane, at the average labor rate of \$60 per work hour. Based on these figures, the FAA estimates the cost impact of these proposed actions on U.S. operators to be \$105,300, or \$1,620 per airplane.

The inspection for damage of the wiring or evidence of a fuel leak would take approximately 3 work hours per airplane, at the average labor rate of \$60 per work hour. Based on these figures, the FAA estimates the cost impact of this inspection on U.S. operators to be \$11,700, or \$180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000-NM-318-AD.

Applicability: Model 707 and 720 series airplanes, line numbers 1 through 941 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damaged wiring for the fuel boost pumps and override pumps, which could cause electrical arcing that could puncture the conduit containing the wire and result in an explosion or fire adjacent to the fuel tank, accomplish the following:

Replacement of Wiring, Installation of Sleeving, and Associated Actions

(a) Within 1 year or 4,000 flight hours after the effective date of this AD, whichever occurs first, replace the wiring for the fuel boost pumps and override pumps, install Teflon sleeving over the wiring, and do all associated actions, per the Accomplishment Instructions of Boeing Alert Service Bulletin A3500, dated July 27, 2000. The associated actions include performing a general visual inspection of the area around each fuel boost pump and override pump for evidence of a fuel leak; finding the source of any fuel leak and repairing the affected area; replacing the conduit, if required; and performing a detailed visual inspection of the wiring installed in the conduit for evidence of electrical arcing or a fuel leak, or exposed copper wire. If replacement of the conduit is deferred per the service bulletin, repeat the inspection for fuel leaks every 500 flight hours until the conduit is replaced, and replace the conduit within 6,000 flight hours or 18 months, whichever occurs first.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections

(b) After replacement of the wiring per paragraph (a) of this AD, repeat the detailed visual inspection of the wiring for the fuel boost pumps and override pumps for damage, such as evidence of electrical arcing or exposed copper wire, or evidence of a fuel leak. Repeat the inspection at least every 30,000 flight hours, per the Accomplishment Instructions of Boeing Alert Service Bulletin A3500, dated July 27, 2000. If any discrepancy is detected during any inspection per this paragraph, before further flight, replace the wiring and conduit, and install new Teflon sleeving.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Issued in Renton, Washington, on March 23, 2001.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-7737 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NM-358-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires modification of the autopilot mode engagement/disengagement lever of the rudder artificial feel unit. This action would require a different modification of the lever. It would also revise the applicability to include Airbus Model A319 and A321 series airplanes, as well as all Model A320 series airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane due to the failure of the rudder artificial feel unit to disengage properly from autopilot mode during approach and landing.

DATES: Comments must be received by April 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-358-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-358-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone: (425) 227-2141; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-358-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-358-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On October 7, 1999, the FAA issued AD 99-21-29, amendment 39-11375 (64 FR 56158, October 18, 1999), applicable to certain Airbus Model A320 series airplanes, to require modification of the autopilot mode engagement/disengagement lever of the rudder artificial feel unit. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent reduced controllability of the airplane due to the failure of the rudder artificial feel unit to disengage from autopilot mode during approach and landing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, several new cases of failure of the rudder artificial feel unit to disengage from autopilot mode have been reported on airplanes that had incorporated the required modification. To address these new cases, Airbus developed a new modification.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320-27-1130, dated March 14, 2000, which describes procedures for a new modification of the autopilot mode engagement/disengagement lever of the rudder artificial feel unit. This new modification includes replacing the standard bolt/bushes with shouldered

bolts, honing the central bore of the lever, marking the new lever, and conducting a test to check if the piston rod is free to fall after tightening of the nut. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued French airworthiness directive 2000-372-151(B), dated September 6, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusion

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99-21-29 to require a new modification of the autopilot mode engagement/disengagement lever of the rudder artificial feel unit. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Change to Applicability of Existing AD

The proposed AD expands the applicability of the existing AD to add Airbus Model A319 and A321 series airplanes. These airplanes had Airbus Modification 22624 or 21999 accomplished in production and, therefore, were not included in the applicability of AD 99-21-29.

In addition, the proposed AD expands the applicability of the existing AD in terms of Model A320 series airplanes. AD 99-21-29 did not apply to those Model A320 series airplanes on which Airbus Modification 22624 or 21999 was accomplished in production. Because several additional cases of

failure of the autopilot engagement/disengagement lever of the rudder artificial feel unit occurred on airplanes with those modifications, those airplanes are subject to the proposed AD.

Difference Between Proposed Rule and Foreign AD

The French airworthiness directive includes an interim requirement for airplanes without modification 22624 or 21999 embodied in production to modify the autopilot engagement/disengagement lever of the rudder artificial feel unit, in accordance with Airbus Service Bulletin A320-27-1042 or A320-27-1130. The proposed AD does not require modification in accordance with Airbus Service Bulletin A320-27-1042, because that modification has not been effective in preventing failure of the lever.

Cost Impact

There are approximately 291 airplanes of U.S. registry that would be affected by this proposed AD.

The new modification that is proposed in this AD action would take approximately 9 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts would be provided by the manufacturer at no cost. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be \$157,140, or \$540 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-11375 (64 FR 56158, October 18, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 2000-NM-358—AD Supersedes AD 99-21-29, Amendment 39-11375.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category, on which Airbus modification 28909 was not accomplished during production;

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, due to the failure of the rudder artificial feel unit to disengage properly from autopilot mode during approach and landing, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, modify the autopilot mode engagement/disengagement lever of the rudder artificial feel unit, in accordance with paragraphs 3.B. and 3.C. of the

Accomplishment Instructions of Airbus Service Bulletin A320-27-1130, dated March 14, 2000.

Spares

(b) As of the effective date of this AD, no person may install a rudder artificial feel unit having any of the following part numbers on any airplane: D2727040000600, D2727040000651, D2727040000695, D2727040000696, D2727040000800, D2727040000851, D2727040001000, D2727040001051.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directive 2000-372-151(B), dated September 6, 2000.

Issued in Renton, Washington, on March 23, 2001.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-7736 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NM-234-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A310 series airplanes. This proposal would require repetitive

inspections of the metallic vapor seals in the center fuel tank to detect holes, tears, or a change in shape; corrective action, if such damage is detected; and follow-up tests for leaks. The proposal is prompted by reports of damaged metallic vapor seals observed during routine maintenance. This action is necessary to detect and correct damage to the metallic vapor seal in the center fuel tank, which could lead to leakage of fuel from the center tank into the air conditioning pack bay located below the center tank, providing a potential for fuel to be in contact with fuel ignition sources. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 30, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-234-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 99-NM-234-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Ave. SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99-NM-234-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 99-NM-234-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A310 series airplanes. The DGAC advised that during routine maintenance, damage to metallic vapor seals in the center fuel tank on several airplanes had been observed. Inspection of the seals indicated that the damage resulted from metal fatigue, caused by vibration. This damage, if not corrected, could lead to leakage of fuel from the center tank into the air conditioning pack bay located below the center tank, providing a potential for fuel to be in contact with fuel ignition sources.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310-28-2138, dated June 28, 2000, which describes procedures for repetitive inspections of the metallic vapor seals on the center tank; corrective action, if damage is detected; and follow-up testing for leaks. The inspections include an initial detailed visual inspection and periodic follow-up inspections of the metallic vapor seals to detect holes, tears, or a change in shape. The corrective actions include temporary repair, permanent repair, and replacement of a damaged metallic vapor seal, as well as repair of the center fuel tank. The tests include a pressurization test of the vapor seal system and a leak test of the center fuel tank.

The service bulletin recommends that any temporary repair of a metallic vapor seal be replaced by a permanent repair within 15 months and that replacement of all 7 parts of a metallic vapor seal by new parts eliminates the need for inspection of that seal during the next 16,000 flight hours.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000-336-311(B), dated July 26, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 47 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish each inspection, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed detailed visual inspections on U.S. operators is estimated to be \$22,560, or \$480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–234–AD.

Applicability: All Model A310 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage to the metallic vapor seal on the center fuel tank, which could lead to leakage of fuel from the center tank, providing a potential for fuel to be in contact with fuel ignition sources, accomplish the following:

Initial and Repetitive Inspection

(a) Prior to the accumulation of 16,000 total flight hours, or within 600 flight hours following the effective date of this AD, whichever occurs later: Conduct an initial detailed visual inspection of the metallic vapor seal for damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2138, dated June 28, 2000. Repeat the detailed visual inspection of the metallic vapor seal for damage thereafter at intervals not to exceed 600 flight hours.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Accomplishment of an initial inspection and applicable corrective actions in accordance with Airbus All Operators Telex (AOT) A310–28A2139, dated April 8, 1999, or AOT A310–28A2139, Revision 01, dated April 26, 1999, is acceptable for

compliance with the initial inspection required by paragraph (a) of this AD.

Corrective Action

(b) If damage to the metallic vapor seal is detected during any inspection required by paragraph (a) of this AD: Perform applicable corrective actions (including a temporary repair, a permanent repair, or replacement of a damaged metallic vapor seal) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2138, dated June 28, 2000. Any such corrective action must be performed within the compliance time specified in Figure 1 of the service bulletin. If no compliance time is specified in Figure 1, the applicable corrective action must be performed prior to the next flight.

(1) If a temporary repair is made to a metallic vapor seal: Perform the requirements of both paragraphs (b)(1)(i) and (b)(1)(ii).

(i) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 600 flight hours.

(ii) Within 15 months after the date of the temporary repair, accomplish a permanent repair with removal of the metallic vapor seal. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 600 flight hours.

(2) If all parts of a metallic vapor seal are replaced simultaneously with new parts: The inspection required by paragraph (a) of this AD may be deferred during the next 16,000 flight hours. Thereafter, repeat the inspection at intervals not to exceed 600 flight hours.

Alternative Methods of Compliance

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 5: The subject of this AD is addressed in French airworthiness directive 2000–336–311(B), dated July 26, 2000.

Issued in Renton, Washington, on March 23, 2001.

Donald L. Riggins,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 01–7735 Filed 3–28–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Chapter I****[Docket No. RM01-5-000]****Electronic Tariff Filings**

March 23, 2001.

AGENCY: Federal Energy Regulatory Commission.**ACTION:** Notice of informational conference.

SUMMARY: In its order issued on March 14, 2001, 66 FR 15673 (March 20, 2001), the Federal Energy Regulatory Commission directed its staff to convene an informational conference with interested members of the public and industry in order to discuss issues related to the electronic filing of electric, gas, and oil tariffs, to demonstrate the use of its current electronic natural gas tariff system (FASTR) and to discuss the possibility of using an Extensible Markup Language (XML) tagged format. The informational conference will also provide a venue for questions, comments, and clarifications regarding the matters raised in the March 14, 2001 order.

DATES: The conference will be held April 24, 2001. Those interested in making presentations should indicate their interest by April 6, 2001 by a letter addressed to the Secretary, Federal Energy Regulatory Commission.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Barbara Bourque, Technology and Data Group Manager, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208-2338.

SUPPLEMENTARY INFORMATION:**Notice of Informational Conference**

Take notice that on April 24, 2001, the Staff of the Federal Energy Regulatory Commission will hold a public conference, as directed by the Commission in its Notice of Inquiry (NOI), issued March 14, 2001, in the above captioned proceeding. The conference will begin at 9:30 a.m. at the Commission's offices, 888 First Street, NE., Washington, DC. All interested persons are invited to attend.

As stated in the NOI, the purpose of the conference is for the Staff to discuss issues related to the electronic filing of electric, gas, and oil tariffs, to

demonstrate the use of its current electronic natural gas tariff system (FASTR) and to discuss the possibility of using an Extensible Markup Language (XML) tagged format. The Staff will also discuss the limitations of a paper based tariff system, the goals for a FERC electronic tariff system, and related operational and implementation issues. The conference will also provide a venue for questions, comments, and clarifications regarding the matters raised in the NOI.

The Commission is inviting interested persons to make short presentations on the topics discussed in the NOI. Such presentations should focus on either providing possible solutions, or on highlighting potential problems. Persons interested in making presentations should indicate their interest by April 6, 2001, by a letter addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM01-5-000. Each request to participate must include a contact person, telephone number and e-mail address. The request to make a presentation should indicate what topics the presentation will cover. Those with common interests are encouraged to choose a single spokesperson to represent their interests.

After receipt of the requests, a subsequent notice will be issued setting forth the conference format. Depending on the number of presentations, it may be necessary for presenters to meet with Staff prior to the conference or through conference calls to coordinate the presentations.

The Capitol Connection offers all Open and special FERC meetings live over the Internet as well as via telephone and satellite. For a reasonable fee, you can receive these meetings in your office, at home or anywhere in the world. To find out more about The Capitol Connection's live Internet, phone bridge or satellite coverage, contact David Reininger or Julia Morelli at (703) 993-3100 or visit the website (www.capitolconnection.gmu.edu). The Capitol Connection also offers FERC Open Meetings through its Washington, DC area television service.

Additionally, live and archived audio of FERC public meetings are available for a fee via National Narrowcast Network's Hearings.com(sm) and Hearings-On-The-Line(r) Services. Live audio is available by telephone and on the Web at www.Hearings.com. The Web audio will be archived and available for listening on demand after the event is completed. Billing is based

on listening time. Call (202) 966-2211 for further details.

Questions about the conference should be directed to: Barbara Bourque, Technology and Data Group Manager, Office of Markets, Tariffs and Rates, 888 First Street, NE., Washington, DC 20426, 202-208-2338; e-mail barbara.bourque@ferc.fed.us.

Linwood A. Watson, Jr.,*Acting Secretary.*

[FR Doc. 01-7720 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-U

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****[REG-106446-98]****RIN 1545-AW64****Relief From Joint and Several Liability; Correction****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Correction to proposed regulations.

SUMMARY: This document contains corrections to proposed regulations that were published in the **Federal Register** on January 17, 2001 (66 FR 3888). The regulations provide guidance to married individuals filing joint returns who may seek relief from joint and several liability.

FOR FURTHER INFORMATION CONTACT: Bridget E. Finkenaur (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

These proposed regulations that are the subject of this correction are under section 6015 of the Internal Revenue Code.

Need for Correction

As published, these proposed regulations (REG-106446-98) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (REG-106446-98), which were the subject of FR. Doc 01-8, is corrected as follows:

§ 1.6015-3 [Corrected]

1. On page 3900, column 1, § 1.6015-3, paragraph (d)(5), paragraph (iii) of *Example 5*, line 1, the language "W's liability is limited \$4,400 ($\frac{4}{5} \times$)" is

corrected to read “W’s liability is limited to \$4,400 (4/5 x)”.

2. On page 3900, column 2, § 1.6015–3, paragraph (d)(5), paragraph (ii) of *Example 6*, line 9, the language “is limited to \$3,900 (3/4 of \$5,200). If H also” is corrected to read “is limited to \$4,160 (4/5 of \$5,200). If H also”.

3. On page 3900, column 2, § 1.6015–3, paragraph (d)(5), paragraph (ii) of *Example 6*, line 11, the language “election to allocate the \$3,900 of the” is corrected to read “election to allocate the \$4,160 of the”.

4. On page 3900, column 2, § 1.6015–3, paragraph (d)(5), paragraph (ii) of *Example 6*, line 5, the language “as in *Example 7*, except that H deducts” is corrected to read “as in *Example 6*, except that H deducts”.

Cynthia E. Grigsby,

Chief, Regulations Unit Office of Special Counsel (Modernization and Strategic Planning).

[FR Doc. 01–7825 Filed 3–28–01; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0226; FRL–6960–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing a limited approval to revisions to the Ventura

County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) concerning particulate matter (PM–10) emissions and carbon monoxide (CO) emissions from incineration and from fuel burning equipment.

The intended effect of proposing a limited approval of these rules is to strengthen the federally approved SIP by incorporating this revision. EPA’s final action on this proposal will incorporate these rules into the SIP. While strengthening the SIP, this revision contains deficiencies which the VCAPCD must address before EPA can grant full approval under section 110(k)(3).

We are also proposing full approval of a revision to the BAAQMD portion of the California SIP concerning nitrogen oxide (NO_x) emissions from boilers, steam generators, and process heaters.

We are following the CAA requirements for actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for attainment and nonattainment areas.

DATES: Any comments must arrive by April 30, 2001.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA’s technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building,

1200 Pennsylvania Avenue, NW., Washington, DC 20460
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 “I” Street, Sacramento, CA 95814
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94105
Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1135.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

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I. The State’s Submittal

A. What Rules did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted to us by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local Agency	Rule #	Rule Title	Adopted	Submitted
BAAQMD	Manual of Procedures, volume I, chapter 5.	Boiler, Steam Generator, and Process Heater Tuning Procedure.	09/15/93	07/23/96
VCAPCD	57	Combustion Contaminants—Specific	06/14/77	01/21/00
VCAPCD	68	Carbon Monoxide	06/14/77	01/21/00

On October 30, 1996, March 1, 2000, and March 1, 2000, respectively, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of BAAQMD Manual of Procedures, volume I, chapter 5 in the SIP.

We previously approved a version of VCAPCD Rule 57 into the SIP on August 15, 1977 (42 FR 41121).

We previously approved a version of VCAPCD Rule 68 into the SIP on September 22, 1972 (37 FR 19806).

C. What are the Purposes or Changes in the Submitted Rules?

BAAQMD Rule Manual of Procedures, volume I, chapter 5 is a step-wise procedure for tuning boilers, steam generators, and process heaters to provide sufficient oxygen for complete combustion, but not too much oxygen for minimization of NO_x formation. The tuning procedure is required by BAAQMD Rule 9–7, Nitrogen Oxides

and Carbon Monoxide from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.

VCAPCD Rules 57 and 68 both add an exemption for jet engine and rocket engine test stands to the fuel burning equipment sections of the rules.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rules?

We evaluated these rules for enforceability and consistency with the CAA as amended in 1990, with 40 CFR part 51, and with EPA's RACT Guidance, NO_x policy, and PM-10 policy. BAAQMD is a NO_x attainment area and an ozone nonattainment area.¹ Ozone nonattainment areas must meet the requirements of RACT according to section 172(c)(1) of the CAA. VCAPCD is a PM-10 maintenance attainment area and a CO attainment area.

Guidance and policy documents that we used to evaluate the rules are as follows:

- *PM-10 Guideline Document* (EPA-452/R-93-008).
- *Sourcebook: NO_x Control Technical Data* (EPA-600/2-91-029).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register* (52 FR 45044) (The Blue Book).

B. Do the Rules Meet the Evaluation Criteria?

BAAQMD Manual of Procedures, volume I, chapter 5 meets the evaluation criteria.

The adoption of revised VCAPCD Rules 57 and 68 improves the SIP by bringing the SIP into conformance with long historical practice in the District.

Although, the addition of an exemption may, under certain circumstances, lessen the stringency of the SIP, approval of the revised Rules VCAPCD 57 and 68 is not inconsistent with sections 110(l) and 193 of the CAA for the following reasons:

- There are two sources of jet engine and rocket engine test stand PM-10 emissions in the VCAPCD that are regulated by permit and are allowed to emit up to 2.13 and 5.44 tons/year PM-10, respectively. These small uncontrolled sources are included in the air quality management plan for the District without any credit taken for controls. Therefore, exempting these small sources from Rule 57 will not cause a violation of the NAAQS for PM-10.
- There are two sources of jet engine and rocket engine test stand CO emissions in the VCAPCD that are regulated by permit are allowed to emit up to 839 and 17 tons/year CO, respectively. These uncontrolled sources are included in the air quality management plan for the District without any credit taken for controls. In a letter from CARB to EPA Region IX dated May 7, 1979, CARB concluded that the exemption to Rule 68 would not prevent attainment or maintenance of the NAAQS for CO. Therefore, we do not expect these sources to cause a violation of the NAAQS for CO.

C. What are the Rule Deficiencies?

VCAPCD Rules 57 and 68 have the following deficiencies that prevent full approval:

- The enforceability is limited, because EPA-approved test methods are not included in the rules.

- The enforceability is limited, because monitoring is not required by the rules.

- The enforceability is limited, because recordkeeping is not required by the rules.

D. EPA Recommendations to Further Improve the Rules

The TSD for VCAPCD Rule 68 describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, we are proposing a limited approval of VCAPCD Rules 57 and 68 to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP. No sanctions under section 179 are associated with this proposed action.

As authorized in section 110(k) of the Act, we are proposing a full approval of BAAQMD Manual of Procedures, volume I, chapter 5 to improve the SIP.

We will accept comments from the public on the proposed full approval and proposed limited approvals for the next 30 days.

III. Background Information

Why Were These Rules Submitted?

PM-10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM-10 rules.

TABLE 2.—PM-10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM-10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
November 15, 1990	PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 189(a). States are required by section 110(a) to submit rules regulating PM-10 emissions in order to achieve the attainment dates specified in section 188(c).

CO harms human health and the environment. Section 110(a) of the CAA

requires states to submit regulations that control CO emissions. Table 3 lists some

of the national milestones leading to the submittal of local agency CO rules.

¹ On July 10, 1998 (63 FR 37258), EPA published the final rule redesignating the San Francisco Bay Area to nonattainment with the federal 1-hour ozone NAAQS. The redesignation was authorized

under the general nonattainment provisions of subpart 1 of the Act. The Bay Area, therefore, does not have a subpart 2 classification. When comparing air quality in the Bay Area to the

traditional subpart 2 classification system, the Bay Area's design value is equivalent to that of a moderate area.

TABLE 3.—CO NONATTAINMENT MILESTONES

Date	Event
March 3, 1987	EPA promulgated a list of CO nonattainment areas under the Clean Air Act as amended in 1977. 40 CFR 81.305.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671g.
November 15, 1990	CO areas meeting the qualifications of section 107(d)(4)(A) of the CAA were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 186(a). States are required by section 110(a) to submit rules regulating CO emissions in order to achieve the attainment dates specified in section 186(a)(1).

NO_x helps produce ground-level ozone, smog and particulate matter, which harm human health and the

environment. Section 110(a) of the CAA requires states to submit regulations that control NO_x emissions. Table 4 lists

some of the national milestones leading to the submittal of these local agency NO_x rules.

TABLE 4.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1987	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671g.
May 15, 1991	Section 182(a)(2)(a) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132

requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it

merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent

with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the

private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: March 14, 2001.

Mike Schulz,

Acting Regional Administrator, Region IX.
[FR Doc. 01-7793 Filed 3-28-01; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 66, No. 61

Thursday, March 29, 2001

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

Commodity Credit Corporation

Poult Enteritis Mortality Syndrome (PEMS)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to inform all interested parties who were affected by turkey depopulation due to Poult Enteritis Mortality Syndrome (PEMS) in southwestern Missouri of the availability of assistance for such losses through Livestock Indemnity Program for Contract Growers (LIP-CG).

FOR FURTHER INFORMATION CONTACT: Sharon Biastock, (202) 720-6336.

SUPPLEMENTARY INFORMATION:

Background

During the period since April 2000, several turkey contract growers in the southwestern Missouri counties of Jasper, Newton, Barry, McDonald, and Barton, were forced to depopulate their turkey houses for several weeks due to an outbreak of PEMS. PEMS is an intestinal infection that causes dehydration and high mortality in young turkeys. To end the disease, growers must depopulate their turkey houses and leave them empty for two growing cycles, or about 20 weeks.

Section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, Public Law 106-387, as amended by section 101(5) of H.R. 5666, Miscellaneous Appropriations Act, 2001, as enacted in the Consolidated Appropriations Act, 2001, Public Law 106-554, provides that the Secretary shall not use more than \$2 million to carry out a program for income losses as a result of PEMS sustained before April 30, 2001, by

individuals who raise poultry owned by other individuals.

Purpose

The purpose of this notice is to inform affected parties that to receive benefits, contract growers must file application CCC-661 and provide the necessary documentation showing the number of birds that were destroyed and the number that would have been raised if there had been no need to depopulate the turkey houses. Subject to the availability of funds under the \$2 million limit, applications will be accepted and approved using the same terms and conditions that apply to the Livestock Indemnity Program for Contract Growers (LIP-CG) that were published in the **Federal Register** on December 29, 2000, (65 F.R. 82892) revising 7 CFR Part 1439, Subpart E—Livestock Indemnity Program for Contract Growers with the following exceptions:

(a) Eligibility applies only to turkey contract growers who depopulated their turkey houses at any time during the period of March 1, 2000 through April 30, 2001 because of PEMS; and

(b) Presidential or Secretarial natural disaster declarations are not necessary.

Application for benefits due to PEMS for Jasper, Newton, Barry, McDonald, and Barton Counties in Missouri must be filed with the Farm Service Agency (FSA) in the local USDA Service Center servicing the county in which the affected turkey population is located no later than the final signup date yet to be determined by the Secretary but not before May 1, 2001.

Contract growers of turkeys affected by PEMS in counties other than Jasper, Newton, Barry, McDonald, and Barton of Missouri, may contact Sharon Biastock by May 1, 2001, for further guidance on applying for benefits.

After all applications are received, final eligibility determinations will be made. To the extent that eligible claims exceed the \$2 million available, the agency will apportion the claims accordingly.

Signed at Washington, DC, on March 22, 2001.

James R. Little,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01-7788 Filed 3-28-01; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Health Screening Questionnaire

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to establish a new information collection. The collected information will enable the Forest Service to evaluate current employees, who are seeking certification or recertification for firefighter positions, as well as individuals, who are applying for firefighter positions, to determine if they meet the qualifications to safely perform assigned duties as a Forest Service firefighter.

DATES: Comments must be received in writing on or before May 29, 2001.

ADDRESSES: All comments should be addressed to Wini Sorensen, National Safety Officer, National Interagency Fire Center, Forest Service, USDA, 3833 South Development Avenue, Boise, ID 83705-5354.

Comments also may be submitted via facsimile to (208) 387-5398 or by email to wsorensen@fs.fed.us.

The public may inspect comments received at the National Safety Office, National Interagency Fire Center, Forest Service, USDA, 3833 South Development Avenue, Boise, Idaho, from 8 a.m. to 4:30 p.m. Monday thru Friday MST.

FOR FURTHER INFORMATION CONTACT: Wini Sorensen, National Safety Officer, at (208) 387-5102.

SUPPLEMENTARY INFORMATION:

Background

The Protection Act of 1922 (16 U.S.C. 594) authorizes the Forest Service to fight fires on National Forest System lands.

Individuals must complete the Health Screening Questionnaire (HSQ) when seeking employment as a new firefighter with the Forest Service or recertification as a Forest Service firefighter. Forest Service employees will evaluate the collected information to determine if the individual seeking certification or recertification may begin a physical

fitness program to train for the arduous level "Pack Test" of the Work Capacity Test. If Forest Service employees determine, based on the collected information, that an individual may not be physically able to train for the arduous level of the Work Capacity Test, the agency will require the individual to undergo a physical examination from a physician.

Description of Information Collection

The following describes the information collection to be established:
Title: Health Screening Questionnaire (HSQ).

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: This is a new information collection that has not yet received approval from the Office of Management and Budget.

Abstract: Forest Service personnel at Forest Service Ranger Districts, Forest Service Supervisors' Offices, Forest Service Research Stations, or the Area Office will evaluate the collected data to ensure that individuals seeking recertification as a Forest Service firefighter, as well as those applying to become certified, will meet the physical and health requirements of the position.

Forest Service employees will collect information on the current general health of the individual, such as height, weight, and current level of physical activity; previous serious health conditions, such as life threatening injury, diseases, or heart conditions; and special current conditions, such as diabetes or allergies. Individuals determined to be in sufficient health will be asked to complete the "Work Capacity Tests," which would include testing the level of the individual's aerobic fitness, level of muscular strength, and muscle endurance.

The information provided by an individual will be placed in the individual's Official Employee Medical File. As required under The Privacy Act (5 USC 552a), the information will not be available to any other agency or individual.

Data gathered in this information collection is not available from other sources.

Estimate of Annual Burden: 5 minutes.

Type of Respondents: Current employees requesting certification or recertification as a firefighter (Red-Card) and applicants seeking Forest Service firefighter positions.

Estimated Annual Number of Respondents: 15,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,250 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget Approval.

Dated: March 21, 2001.

Michael T. Rains,

Deputy Chief, State and Private Forestry.

[FR Doc. 01-7724 Filed 3-28-01; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, Apache-Sitgreaves, Coconino, Kaibab, Prescott, and Tonto National Forests; Amendment to National Forest Land and Resource Management Plans To Determine How and if Cross-Country Travel by Off Highway Vehicles (OHVs) Should Be Allowed

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Apache-Sitgreaves, Coconino, Kaibab, Prescott, and Tonto National Forests will prepare an environmental impact statement to address cross-country travel by motorized wheeled vehicles and how to standardize road and trail signing conventions for OHVs. These five forests differ in their current direction for this type of recreational use. Confusion among OHV users over

permitted types of travel and road and trail signs is common. The EIS will evaluate the growing popularity of OHVs and their impacts to the Forests. Existing direction for OHV use will be replaced with these Forest Plan amendments if supported by the analysis. The intention of the EIS is to preserve options for OHV use in local transportation planning while reducing impacts to resources.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing by May 15, 2001.

ADDRESSES: Send written comments to USDA Forest Service, Apache-Sitgreaves National Forest, P.O. Box 640, Springerville, Arizona 85938, ATTN: Land Management Planning.

RESPONSIBLE OFFICIALS: The Forest Supervisors of the Apache-Sitgreaves, Coconino, Kaibab, Prescott and Tonto National Forests will decide if it is necessary to more restrictively manage cross-country travel by OHVs and how to do so while standardizing signing for open roads and trails that may be used by OHVs.

FOR FURTHER INFORMATION CONTACT: Land Management Planner, Apache-Sitgreaves National Forest (520) 333-6370.

SUPPLEMENTARY INFORMATION: The five national forests involved in this currently have different management direction for cross-country use by Off Highway Vehicles (OHVs). This diversity of approaches has led to some confusion by the public as to where they may use OHVs. The growing numbers of OHVs used on national forest has also increased the impacts to land and resources within national forests. The growing popularity of this use has created conflicts with other forest uses and prompted many individuals and groups to express concerns over this matter.

Many types of OHVs are common in Arizona's National Forests. Pickup trucks, motorcycles, and all-terrain vehicles have all become more prevalent and now are beyond the scope considered for their use in forest plans. According to industry experts more than half of all vehicles sold in Arizona are sport utility vehicles (SUVs) or light trucks. Additionally, all-terrain vehicles have increased in sales between 1995 and 1998 an average of 29% per year. The use of such vehicles on national forests has been a concern of government agencies, organized environmental and OHV groups and individuals. This concern has accelerated in a pattern similar to the expanded population of OHVs.

Roads and trails created by wheeled OHVs are proliferating on all national forests in several regions. Agency personnel and the public note new user created trails on many national forests and roads almost every week. These trails arise from repetitive use of areas with fragile soils.

National forests in Arizona are experiencing noticeable impacts. Communities adjacent to national forests have become focal points for a large amount of unapproved roads and trails created by OHV users. These trails lack engineering and environmental elements of design and many contributed disproportionate environmental impact. Away from communities, similar impacts occur near popular recreation destinations. The EIS will deal with alternative strategies for OHV's cross country travel and how to develop a standardized signing convention for open roads, trails and user created travelways.

Additional concerns occur in environmentally sensitive areas. Specially designated wildlife protection areas are becoming crisscrossed with OHV tracts. Wilderness areas have frequently been impacted by OHV tracks; often immediately adjacent to closure signs. Riparian areas also attract a large number of people and provide key habitat elements to wildlife. OHV tracks and use areas have strongly impacted many of these ecological communities.

Off highway vehicles allow many people to enjoy the national forests and contribute significantly to the economy of communities. They have become very popular because of high quality recreational experiences they provide and the amount of land they open up to persons who formerly saw little of national forests.

Preliminary issues include: Confusion of OHV users over road and trail sign conventions, confusion over availability of areas open to OHVs, effects of OHV use on the environment, effects on jobs, effects on cultural resources, effects on species protected under the Endangered Species Act. Access to resource and access by mobility-limited persons seeking recreation opportunities are also preliminary issues.

An interdisciplinary team has been appointed by the Responsible Officials. They have examined documents of other agencies and Forest Service Regions to develop preliminary alternatives for analysis in an environmental impact statement. Comment on these preliminary alternatives during scoping could help the team analyze the alternatives and might suggest others that would ensure

a complete analysis of reasonable and feasible strategies for providing recreation for OHV recreationists.

The preliminary alternatives include: "No Action" which would keep the existing forest plan direction on all five forests. Another alternative would strictly prohibit all cross-country travel. Under this alternative only officially sanctioned government created roads and trails would be available for OHV use. These roads would be a portion of roads within national forests that are not state, county or city highways or roads. A pair of alternatives would close forests to cross country travel with certain exceptions. These would include travel to a camping spot within 300 feet of a road or trail, retrieving previously tagged big game, disabled access, and permitted forest products. In one of the alternatives, the trails and roads within the forest would be open if they had a sign designating them open and the other alternative would only sign roads and trails that are closed to OHV traffic. One other alternative under consideration is designating areas open to OHV use.

Significant information has been obtained from "Arizona Trails 2000, State Motorized and Non-motorized Trails Plan" in determining preliminary issues and possible alternatives. Cooperation with Arizona State agencies who have OHV management roles has been excellent.

A preliminary scoping and public involvement plan has been developed. Comments on the nature and timing of scoping and public participation activities would be helpful to the team. Additional public notice will be given of specific planned activities when the scoping and public involvement plan is developed.

It is anticipated that environmental analysis and preparation of the draft and final environmental impact statements will take about one year. The Draft environmental Impact statement can be expected in the summer of 2001 and the Final EIS in the early winter. A 90-day comment period pursuant to 36 CFR 219.10b will be provided following the Notice of Availability for the public to make comments on the Draft Environmental Impact statement.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. To be the most helpful, comments on the draft environmental review process. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or

the merits of the alternatives discussed (see Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers; position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC* 435 US 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon v. Hodel* 9th Circuit, 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them in the final environmental impact statement.

Dated: March 22, 2001.

John C. Bedell,

Forest Supervisor, Apache-Sitgreaves National Forest.

[FR Doc. 01-7742 Filed 3-28-01; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Monticello and Blanding Municipal Watershed Improvement Projects Manti-La Sal National Forest, San Juan County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed actions to:

(1) Amend existing special use permits for the Monticello City Secondary and Culinary Water Systems to allow reconstruction of the collection and conveyance (pipeline) system (including clearing of vegetation and ground disturbance for construction equipment access along the pipeline and collection areas) to allow them to repair, replace, and relocate the system to correct sources of water loss and quality degradation in the system.

(Authority: Federal Land Policy and Management Act (FLMP) of 1976 (P.L. 94-579).)

(2) In cooperation with San Juan County, improve approximately 16 miles of Forest Road (FR) 50079 to provide improved and safer access for public use and management of the area and to provide a passable road for equipment needed for the reconstruction, care, and maintenance of municipal water systems and for implementation of proposed vegetation treatments.

(3) Implement harvest treatments on approximately 2,000 acres of spruce, spruce-fir, and aspen forest to develop a more diverse, open ecosystem. Proposed harvest methods are approximately 65% helicopter, 32% tractor and tractor-forwarder, and 3% cable. Allow construction and use of approximately 1/2 mile of temporary road and clearing of two miles of forwarder skid trail needed to implement proposed vegetation treatments.

The Monticello and Blanding Municipal Watershed Improvement Projects area includes portions of the North Creek, Bankhead Creek, Pole Creek, South Creek, Indian Creek, and Johnson Creek drainages in the Abajo Mountains and some adjacent area (Spring Creek) that has moderate levels of spruce beetle infestation with potential to contribute to insect population within the watersheds. These areas are managed as municipal watershed (MWS) under the Manti-La Sal National Forest Land and Resource Management Plan (USDA, 1986). They are the primary water source for the communities of Monticello, Blanding, and their surrounding area. It is a scenic area that includes the Horsehead (an Engelmann spruce and aspen stand in the form of a horse head that overlooks Monticello), which has special scenic, historic, and cultural significance to the individuals that live in the area.

Forest Road (FR) 50079 provides access through the area. It is the only direct mountain access between Monticello and Blanding and is important for tourism and day recreation use. It also provides access to private property within the Forest boundary. Much of the road is inadequate for use by larger vehicles, pickups with trailers, and some passenger cars due to tight curves/switchbacks and lack of turnouts. San Juan County has proposed that the road be improved to remove hazards, make public use easier, improve safety, reduce maintenance costs, and improve access for management of water systems.

The City of Monticello's water collection and pipeline system is in need of extensive repair and replacement due to leakage, contamination areas, and poor placement in relation to the road.

An outbreak of spruce bark beetle (*Dendroctonus rufipennis*) has recently occurred in and around the area. High levels of Engelmann spruce mortality within the area are imminent. Spruce beetle populations are expected to expand and may reach epidemic levels. If this occurs, most of the larger spruce component on the Abajo Mountains could be lost.

Because of the dependence of the local communities on this area and the importance of its resources, Monticello City, Blanding City, and San Juan County government officials have requested that we begin efforts to address the concerns identified. This proposal has been developed through consultation with them, Forest Service specialists, and other individuals and agencies with interest in the resources of the area. The Purpose and Need of the Proposed Action is as follows:

- Purpose #1: Cooperate with local government agencies to permit them to provide continued and more efficient collection and removal of water to the Monticello and Blanding municipal water systems for public uses.
- Purpose #2: Improve the transportation system to provide dependable public access on FR 50079, and to reduce sedimentation/erosion occurring on portions of FR 50079.
- Purpose #3: Move towards restoration of the ecological structure, function, processes, and composition of the spruce and aspen component of the landscape.

DATES: Written comments concerning the scope of the analysis described in this notice should be received on or before April 30, 2001. The date planned for release of the final EIS is November 2001.

ADDRESSES: Questions or written comments concerning the proposed action or requests for copies of the proposal should be addressed to Glenn P. Casamassa or Greg Montgomery at the following address: Moab/Monticello Ranger District, Manti-La Sal National Forest, P.O. Box 820, Monticello, Utah 84535, phone: 435-587-2041.

FOR FURTHER INFORMATION CONTACT: An Internet site is available that provides a detailed description of the purpose and need and proposed action. It includes maps and pictures of the area showing existing conditions, and copies of information available by mail. This information can be accessed on the

Manti-La Sal National Forest Internet site (<http://www.fs.fed.us/r4/mantilasal/>).

SUPPLEMENTARY INFORMATION: This EIS will tier to the final EIS for the Manti-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Manti-La Sal Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest.

Tentative or preliminary issues that have been identified include: Water resources; Visuals; Vegetation resources; Transportation; Recreation; Undeveloped Charter; Wildlife and Fisheries resources, Fuels and Fire Risk; Steep slopes; Economics; Cultural resources; and Air quality.

Other tentative or preliminary alternatives that have been identified include: (1) Implementation of only the water system construction/reconstruction portion of the proposed action; (2) Implementation of only the road improvement portion of the proposed action; (3) Implementation of the water system construction/reconstruction in conjunction with the road improvement portion of the proposed action; (4) Continuation of trapping and baiting treatments (timber harvest); and (5) No Action.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations that may be interested in, or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**. Comments should include your name, address, telephone number, organization represented (if any), title of the proposal, and specific facts and supporting reasons for us to consider in the analysis. Names and comments received are public information and will be released to those who request them. This will include names, addresses, and any other personal information provided with the comments.

The proposed management activities would be administered by the Moab/Monticello Ranger District, Manti-La Sal National Forest, San Juan County, Utah.

Agency representatives and other interested people are invited to visit

with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are: (1) During the scoping process, the next 30 days following publication of this notice in the **Federal Register**, and (2) During the formal review period of the Draft EIS.

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

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

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

The Forest Supervisor for the Manti-La Sal National Forest, who is the responsible official for the EIS, will then

make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision. The Forest Supervisor's office of the Manti-La Sal National Forest is located at 599 West Price River Drive, Price, Utah 84501, phone: 435-637-2817.

Authority: The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4346); Council on Environmental Quality of Regulations, Title 40, Code of Federal Regulations, Parts 1500-1508 (40 CFR 1500-1508); and U.S. Department of Agriculture NEPA Regulations, Title 7, Code of Federal Regulations, Part 1b (7 CFR 1b).

Dated: March 23, 2001.

Elaine J. Zieroth,

Forest Supervisor, Manti-La Sal National Forest.

[FR Doc. 01-7728 Filed 3-28-01; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement To Disclose the Environmental Impacts of Proposed Changes to the Kennecott Greens Creek Mine Tailings Disposal Site; Tongass National Forest, Admiralty National Monument, Juneau, AK

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the USDA Forest Service, Tongass National Forest, under the direction of the Juneau Ranger District, will prepare a environmental impact statement (EIS) to analyze and display the effects of proposed changes to the Kennecott Greens Creek Mine, located on public and private lands in southeastern Alaska. The Mine is operated by Kennecott Greens Mining Company and is located approximately 40 miles southwest of downtown Juneau. An Environmental Impact Statement was completed and a Record of Decision signed on January 21, 1983 for operation of the Greens Creek Mine.

DATES: Comments will be accepted throughout the EIS process but, to be most useful during the analysis they should be received in writing by April 30, 2001.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Eric Ouder Kirk, Landscape Architect, Juneau Ranger District, 8465 Old Dairy Road, Juneau, Alaska; 99801 or e-mail to eouderkirk@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Eric Ouder Kirk, Landscape Architect, Juneau Ranger District, 8465 Old Dairy Road, Juneau, Alaska 99801; phone (907) 586-8800; fax (907) 586-8808 or e-mail to eouderkirk@fs.fed.us

SUPPLEMENTARY INFORMATION: The proposed operations are subject to approval of a Plan of Operations under 36 CFR, Part 228, which is intended to ensure that adverse environmental effects on National Forest System lands and resources are minimized. The United States Department of Agriculture, Forest Service (USFS) proposes to approve an amendment to the Kennecott Greens Mining Company's (KGCMC) General Plan of Operations to authorize the construction of additional dry tailings storage beginning in the late spring of 2002. The additional disposal area would be designed to provide tailings storage for the remaining life of the mine (approximately 14 years), including development of potential new reserves. Permitting this expansion will require modifying the existing lease.

The proposed action would include an 84.5 acre expansion of the boundaries of the existing tailings facility to the west/southwest, including additional area for rock quarries, water management pond, and a storage area for reclamation materials. The actual tailings placement area, as proposed, would occupy approximately 40 acres, with the remaining 44.5 acres used for infrastructure, quarry and borrow sources and potential long-term tailings disposal needs.

In general, the proposed action would authorize the following:

1. Expansion of the existing Pit 5 quarry to provide within the tailings disposal area.
2. Development of two new quarries within bedrock ridges at the south end of the proposed lease boundary. These two quarries would be used as a source of construction materials for infrastructure development, and for road construction as needed.
3. Construction of a new water management pond system for storm water storage and treatment/
4. Installation of surface water and groundwater controls and diversions, for expansion of the tailings pile.
5. Placement of tailings in a "de-watered" state to the maximum

elevation of 330 ft. with 3H:1V (horizontal to vertical) external slopes in the same manner currently used. Tailing will be on the dame material as is currently being placed.

6. Use of the existing Containment pond No. 6 for containment and storage of sludge materials produced during tailings placement, and eventually placement of tailings.

7. Development of a storage area for excavated reclamation materials (topsoil and organics).

8. Development of borrow areas (sand and gravel) for infrastructure development and reclamation materials storage.

The disposal facility would be designed to meet the following criteria:

1. Interception and diversion systems would be designed and constructed to control non-contact water around the treatment facility.

2. Approved containment structures either manmade or natural (e.g., liner, slurry walls, low permeability deposit) would be utilized to protect groundwater.

3. Tailings contact water would be collected and treated during operations.

4. To meet geotechnical requirements, appropriate phreatic levels will be maintained within the tailings pile by means of drainage infrastructure.

5. Non-contact water will continue to be diverted around the tailings and contact water will be treated through the existing permitted discharge system.

A reclamation plan, subject to approval by the Forest Service and agencies with permitting jurisdiction, would be required prior to implementation to set performance criteria for achieving water quality standards. As proposed, KGCMC would place an engineered cover on the tailings pile to minimize air and water infiltration. The final lift of tailings would be covered with a sequence of capillary breaks, compacted material and a growth media for concurrent reclamation, in compliance with the General Plan of Operations.

The purpose and need for the Proposed Action is to consider changes to the 1983 approved Plan of Operations for the Greens Creek Mining Company regarding tailings disposal in order to allow for continued operations.

In addition to the Forest Service, the Environmental Protection Agency and U.S. Army Corps of Engineers have jurisdiction and will participate as cooperating agencies in the preparation of the EIS. The Forest Service has agreed to be the lead agency. EPA will be responsible for assuring that the analysis provides sufficient information for revision of the National Pollutant

Discharge Elimination System permit under authority of the Clean Water Act. The Corps will be responsible for ensuring that the analysis provides sufficient information for issuance of permits required under Section 404 of the Clean Water Act permit and Section 10 of the Rivers and Harbors Act of 1899 permit, and for compliance with Executive Order 11990 and 11900 related to wetlands and floodplains. Memorandums of Understanding will be initiated with both of the cooperating agencies.

The decision to be made is whether or not to approve the Plan of Operations as amended or require the operator to revise its proposal. The 1983 EIS analyzed the effects of developing the Greens Creek Mine and the Record of Decision approved the conditions under which the project could proceed. This EIS will analyze the effects of proposed changes to the Plan of Operations for expansion of the tailings facility that differ from those approved in the 1983 decision.

Key resources to be analyzed include water quality; impacts to wetlands; impacts to fisheries from the discharge; and potential for impacts to the wilderness values of Admiralty National Monument.

Fred S. Salinas, Assistant Forest Supervisor, Tongass National Forest, is the responsible official.

The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by the proposed action. Public scoping meetings are planned in Juneau at Juneau Assembly Chamber Thursday, April 19 at 7 p.m.

The draft environmental impact statement should be available for public review by July 30, 2001. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice is availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised

until after the completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final environmental impact statement is scheduled to be completed by December 10, 2001. The Assistant Forest Supervisor for the Tongass National Forest will, as the responsible official for the EIS, make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and supporting reasons will be documented in a Record of Decision.

Dated: March 22, 2001.

Fred S. Salinas,

Assistant Forest Supervisor.

[FR Doc. 01-7729 Filed 3-28-01; 8:45 am]

BILLING CODE 3410-11-M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Privacy Act of 1974; Publication of Notice of Systems of Records and Proposed Routine Uses

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, and its Privacy Act regulations, the Chemical Safety and Hazard

Investigation Board ("CSB" or "Board") is publishing a notice of the systems of records the CSB maintains on individuals. In this notice, the CSB provides the required information on seven such systems of records. A final rule containing the Board's Privacy Act regulations is published elsewhere in this issue of the **Federal Register**.

DATES: The systems of records included in this notice will take effect on April 30, 2001, unless the Office of Management and Budget (OMB) gives notice before that date that the systems are not approved for implementation. The proposed routine uses will become effective without further notice on May 3, 2001, unless changes are required by public comments or OMB review. The Board will publish any such changes to the routine uses.

ADDRESSES: Written comments on the proposed routine uses may be sent to: Christopher Kirkpatrick, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037-1809.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkpatrick, (202) 261-7619.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), directs each federal agency to provide notice to the public of systems of records it maintains on individuals. Notice is hereby given of seven systems of records maintained by the CSB, as described below. This notice also describes proposed routine uses of each system and provides contact information for inquiries.

The Board is concurrently publishing a final rule containing its Privacy Act regulations in the Rules section of this issue of the **Federal Register**. In the interim before the regulations take effect, access to and correction of individual records will be available by contacting the Board's Privacy Act Officer.

Following is the complete text of the seven Chemical Safety and Hazard Investigation Board systems of records. (Authority: 5 U.S.C. 552a(e)(4); 42 U.S.C. 7412 et seq.)

Dated: March 21, 2001.

Christopher W. Warner,
General Counsel.

Notice of Systems of Records, Preliminary Statement

Government-wide Systems of Records

In addition to the internal systems of records described below, the CSB also maintains certain records covered by government-wide systems of records. Government-wide systems of records are

established by Federal agencies, such as the Office of Personnel Management (OPM) and the Equal Employment Opportunity Commission (EEOC), that are responsible for government-wide functions. These systems are described in notices published by the establishing agency. While the establishing agency creates and administers the system, the actual records are physically maintained at agencies throughout the government, such as the CSB. Requests for CSB records covered by a government-wide system of records should be directed to the CSB. In accordance with the directive of Office of Management and Budget (OMB) Circular No. A-130, the CSB is not creating or publishing internal systems of records that wholly or partly duplicate existing government-wide systems of records.

The CSB currently maintains, or may in the future maintain, records covered by the following government-wide systems of records: EEOC/GOVT-1 (Equal Employment Opportunity in the Federal Government Complaint and Appeal Records); GSA/GOVT-4 (Contracted Travel Services Program); MSPB/GOVT-1 (Appeals and Case Records); OGE/GOVT-1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records); OGE/GOVT-2 (Confidential Statements of Employment and Financial Interests); OPM/GOVT-1 (General Personnel Records); OPM/GOVT-2 (Employee Performance File System Records); OPM/GOVT-3 (Records of Adverse Actions, Performance Based Reductions in Grade and Removal Actions, and Termination of Probationers); OPM/GOVT-5 (Recruiting, Examining, and Placement Records); OPM/GOVT-9 (File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals); OPM/GOVT-10 (Employee Medical File System Records).

Statement of General Routine Uses

The following general routine uses are incorporated by this reference into each system of records set forth herein, unless such incorporation is specifically limited in the system description.

1. In the event that a record in a system indicates any violation or potential violation of the law, whether civil, criminal, or regulatory in nature, and whether arising by statute, or by regulation, rule, or order issued pursuant thereto, the relevant record may be referred by authorized CSB personnel as a routine use to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or

prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall also include and be deemed to authorize any and all appropriate and necessary uses of such record in a court of law or before an administrative board or hearing.

2. A record covered by a system may be disclosed by authorized CSB personnel as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the individual for employment purposes, including the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract, or the issuance of license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved.

3. Disclosure of information by authorized CSB personnel to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the CSB is authorized to appear, when:

a. The CSB, or any component thereof; or

b. Any employee of the CSB in his or her official capacity; or

c. Any employee of the CSB in his or her individual capacity where the Department of Justice or the CSB has agreed to represent the employee; or

d. The United States, when the CSB determines that litigation is likely to affect the CSB or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the CSB is deemed by the CSB to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

4. Any record in any system of records may be disclosed by authorized CSB personnel as a routine use to the National Archives and Records Administration in the course of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

5. Information from any system of records may be released by authorized CSB personnel to auditors in the conduct of an audit of CSB operations or accounts, but only to the extent it is relevant and necessary to the conduct of the audit.

6. Information from any system of records may be released by authorized CSB personnel to the Federal

Emergency Management Agency, Office of Inspector General (OIG), to the extent necessary to comply with the OIG's authorized oversight functions.

CSB-1

SYSTEM NAME:

Non-competitive Appointment Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located at the CSB offices, 2175 K Street, NW, Suite 400, Washington, DC 20037-1809. Some records may also be located at the Department of the Treasury, Bureau of the Public Debt, Administrative Resource Center, Parkersburg, West Virginia 26106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Successful and unsuccessful applicants for employment with the CSB in positions that were actually filled by non-competitive appointment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information, such as name(s), social security number, sex, date of birth, home address, mailing address, and home telephone number; applications for employment with the CSB in positions that were actually filled by non-competitive appointment (records relating to competitive appointments are covered by the government-wide system of records OPM/GOVT-5) and related records, such as application letters, resumes, Optional Application for Federal Employment (OF-612), and correspondence between applicants and the CSB; and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3101; 5 CFR part 293.

PURPOSE(S):

Records in this system are used to screen the qualifications of and make selections from applicants for employment in positions filled by non-competitive appointment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Evaluation by CSB managers of applicants' qualifications and selection of applicants for positions.
2. Provision by authorized CSB personnel of summary information on personnel for budgetary purposes.
3. Disclosure of information by authorized CSB personnel to the Merit Systems Protection Board or the Office

of the Special Counsel in connection with appeals, and such other functions as may be authorized by law.

4. Administrative Resource Center, Bureau of the Public Debt: May receive information from this system as needed to maintain official personnel records for and provide personnel management services to the CSB.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on lists and forms.

RETRIEVABILITY:

These records are retrieved by name and/or social security number.

SAFEGUARDS:

Records are located in locked file cabinets with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the National Archives and Records Administration General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

The records in this system are managed by the Directors of the individual offices which solicited the applications and filled the position. All office directors may be reached at the U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite 400, Washington, DC 20037.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Director of the office to which they applied for a position:

INDIVIDUALS MUST FURNISH THE FOLLOWING INFORMATION FOR THEIR RECORDS TO BE LOCATED AND IDENTIFIED:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the CSB, as specified in the Notification Procedure, above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and access to records.

CONTESTING RECORDS PROCEDURES:

Individuals wishing to request amendment of their records in this system should contact the appropriate system manager, as described above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and amendment of records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

- a. The individual on whom the record is maintained.
- b. Educational institutions.
- c. Agency officials and other individuals or entities.

CSB-2

SYSTEM NAME:

Payroll and Pay Administration Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located at the CSB offices, 2175 K Street, NW., Suite 400, Washington, DC 20037-1809. Records may also be located at the Department of the Treasury, Bureau of the Public Debt, Administrative Resource Center, Parkersburg, West Virginia 26106; or at the United States Department of Agriculture, National Finance Center, New Orleans, Louisiana 70161.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CSB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information, such as name(s), social security number, sex, date of birth, home address, mailing address, and home telephone number; individual employee pay records; time and attendance source records, such as individual employee time sheets; time and attendance input records, used to input data into a payroll system; employee tax records, such as IRS form W-4 and state equivalents; direct deposit records, such as Direct Deposit Sign-Up Form (SF-1199A); records related to the authorization and use of leave, such as Application for Leave (SF-71); records related to payroll actions, financial transactions, and deductions; overtime and premium pay authorization records; and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512.

PURPOSE(S):

The payroll and pay administration records provide the basic source of factual data about CSB employees' entitlement to pay and related administrative matters. Records in this system have various uses, including processing employee payroll; authorizing overtime, premium pay, and leave; determining status, eligibility, and employees' rights and benefits under pertinent laws and regulations governing Federal employees' pay; satisfying the tax reporting obligations of the CSB and its employees; and providing other information needed for pay administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Use by authorized CSB personnel for verification of pay status and other basic information regarding employee pay for the general purposes set forth above.
2. Use by authorized CSB personnel for preparation of time and attendance reports and other documentation required to process the biweekly payroll.
3. Provision by authorized CSB personnel of summary information on personnel for budgetary purposes.
4. Disclosure of information by authorized CSB personnel to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, and such other functions as may be authorized by law.
5. Administrative Resource Center, Bureau of the Public Debt: May receive information from this system as needed to process payroll and provide other pay administration services to the CSB.
6. Department of Defense: May receive information from this system as needed to adjust military retirement.
7. Department of Labor: May receive information from this system as needed to process workers' compensation claims.
8. Financial institutions: May receive information from this system as needed to credit accounts for deposits and/or allotments made through payroll deductions.
9. General Accounting Office: May receive information from this system as needed to verify accuracy and legality of disbursements.
10. Internal Revenue Service: May receive information from this system as needed to process Federal income tax.
11. National Finance Center, USDA: May receive information from this

system as needed to process payroll and provide other pay administration services to the CSB.

12. Office of Personnel Management: May receive information from this system as needed to maintain records of transfer, retirement, and benefits; and collect anonymous statistical reports.

13. Social Security Administration: May receive information from this system as needed to maintain Social Security records and benefits.

14. State and local government: May receive information from this system as needed to process state and local income tax.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

These records are maintained in file folders and on lists and forms.

RETRIEVABILITY:

These records are retrieved by name and/or social security number.

SAFEGUARDS:

Records are located in locked file cabinets with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

CSB payroll and pay administration files are maintained for the period of the employee's service and thereafter in accordance with the National Archives and Records Administration General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Management Operations, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite 400, Washington, DC 20037.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager listed above.

INDIVIDUALS MUST FURNISH THE FOLLOWING INFORMATION FOR THEIR RECORDS TO BE LOCATED AND IDENTIFIED:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the CSB, as specified in the Notification Procedure, above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also

comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and access to records.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records related to their pay should contact the system manager listed above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and amendment of records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

- a. The individual on whom the record is maintained.
- b. Agency officials and other individuals or entities.

CSB-3**SYSTEM NAME:**

Staff Resume Book.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located at the CSB offices, 2175 K Street, NW, Suite 400, Washington, DC 20037-1809.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the CSB's Investigations and Safety Programs staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information, such as name(s), social security number, sex, date of birth, home address, mailing address, and home telephone number; resumes; and other records summarizing employees' educational background and work experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

These records provide a source of factual data about investigative employees' mission-related work and educational experience.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Use by authorized CSB personnel for verification of basic information regarding employees.
2. Authorized CSB personnel may distribute information from this system of records to bona fide representatives of

the media, congressional staffs, state and local governments, or other individuals with a legitimate need to understand the qualifications of the CSB's technical staff.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and/or in three-ring binders.

RETRIEVABILITY:

These records are retrieved by name.

SAFEGUARDS:

Records are located in locked file cabinets or in locked offices with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Investigations and Safety Programs, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager listed above.

INDIVIDUALS MUST FURNISH THE FOLLOWING INFORMATION FOR THEIR RECORDS TO BE LOCATED AND IDENTIFIED:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the CSB, as specified in the Notification Procedure, above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and access to records.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager listed above. For their records to be located and identified, individuals must furnish all of the information specified in the

Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and amendment of records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

- a. The individual on whom the record is maintained.

CSB-4

SYSTEM NAME:

Employee Travel Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located at the CSB offices, 2175 K Street, NW, Suite 400, Washington, DC 20037-1809. Some records may also be located at the Department of the Treasury, Bureau of the Public Debt, Administrative Resource Center, Parkersburg, West Virginia 26106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CSB employees who have traveled pursuant to authorized official CSB business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information, such as name(s), social security number, sex, date of birth, home address, mailing address, and home telephone number; records related to destination, itinerary, mode, purpose, and dates of travel; travel expense records, such as vouchers and receipts; and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5707; 31 U.S.C. 3512

PURPOSE(S):

The employee travel records provide the basic source of factual data about CSB employees' official travel activities. Records in this system have various uses, including the planning, authorization, and tracking of employees' official travel; processing travel vouchers and other travel-related payments; and related purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine use number 2 (listed in the Prefatory Statement to this Notice) does not apply to the CSB-4 system.

1. Verification by authorized CSB personnel of travel status and other basic information regarding employees for the general purposes set forth above.

2. Preparation by authorized CSB personnel of documentation required to process travel vouchers and authorizations.

3. Preparation and maintenance by authorized CSB personnel of financial reports and records.

4. Provision by authorized CSB personnel of summary information on travel expenses for budgetary purposes.

5. Disclosure of information by authorized CSB personnel to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, and such other functions as may be authorized by law.

6. Administrative Resource Center, Bureau of the Public Debt: May receive information from this system as necessary to provide travel and administrative support services to the CSB.

7. General Accounting Office: May receive information from this system as necessary to verify the accuracy and legality of disbursements.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on lists and forms.

RETRIEVABILITY:

These records are retrieved by name and/or social security number.

SAFEGUARDS:

Records are located in locked file cabinets with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Financial Operations, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager listed above.

INDIVIDUALS MUST FURNISH THE FOLLOWING INFORMATION FOR THEIR RECORDS TO BE LOCATED AND IDENTIFIED:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the CSB, as specified in the Notification Procedure, above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and access to records.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records related to their pay should contact the system manager listed above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and amendment of records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

- a. The individual on whom the record is maintained.
- b. Agency officials and other individuals or entities.

CSB-5**SYSTEM NAME:**

General Administrative Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located at the CSB offices, 2175 K Street, NW, Suite 400, Washington, DC 20037-1809.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former CSB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information, such as name(s), social security number, sex, date of birth, home address, mailing address, and home telephone number; employee locator records; records related to credit cards and telephone calling cards issued to individual employees, and the use of such cards; employee relocation records; records related to employee parking permits and subsidies, and employee public transit subsidies; records related to the issuance of CSB credentials; and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 3512

PURPOSE(S):

These records provide the basic source of factual data about general administrative matters. Records in this system have various uses, including tracking and justifying employees' expenditures on government-issued credit and telephone calling cards; issuing parking permits and transit subsidies; contacting employees in the case of personal or official emergencies; and related purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Use by authorized CSB personnel for verification of basic information regarding employees for and fulfillment of the general purposes set forth above.
2. Use by authorized CSB personnel for preparation and maintenance of financial reports and records.
3. Use by authorized CSB personnel for provision of summary information for budgetary purposes.
4. Disclosure by authorized CSB personnel of information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, and such other functions as may be authorized by law.
5. Administrative Resource Center, Bureau of the Public Debt: May receive information from this system as needed to provide administrative support services to the CSB.
6. General Accounting Office: May receive information from this system as needed to verify accuracy and legality of disbursements.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

These records are maintained in file folders and on lists and forms.

RETRIEVABILITY:

These records are retrieved by name and/or social security number.

SAFEGUARDS:

Records are located in locked file cabinets with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

For records related to credit cards and telephone calling cards:
Director of Financial Operations, U.S. Chemical Safety and Hazard

Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037.

For all other records in this system:
Director of Management Operations, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate system manager listed above.

INDIVIDUALS MUST FURNISH THE FOLLOWING INFORMATION FOR THEIR RECORDS TO BE LOCATED AND IDENTIFIED:

- e. Full name.
- f. Date of birth.
- g. Social security number.
- h. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the CSB, as specified in the Notification Procedure, above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act codified at 40 CFR part 1602, on verification of identity and access to records.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager listed above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and amendment of records.

RECORD SOURCE CATEGORIES:

- Information in this system of records is provided by:
- a. The individual on whom the record is maintained.
 - b. Agency officials.
 - c. Other individuals or entities.

CSB-6**SYSTEM NAME:**

Freedom of Information Act and Privacy Act Request and Appeal Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located at the CSB offices, 2175 K Street, NW, Suite 400, Washington, DC 20037-1809.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have made requests for information to the CSB under the Freedom of Information Act (FOIA) and/or Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information, such as name(s), social security number, sex, date of birth, home address, mailing address, and home telephone number; requests from individuals and related correspondence; and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552; 552a

PURPOSE(S):

These records are used to respond to FOIA and Privacy Act requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

General routine use number 2 (listed in the Prefatory Statement to this Notice) does not apply to the CSB-6 system.

1. Use by authorized CSB personnel to respond to and process FOIA and Privacy Act requests.

2. Use by authorized CSB personnel for preparation of required reports on FOIA and Privacy Act activity.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

These records are maintained in file folders and on lists and forms.

RETRIEVABILITY:

These records are retrieved by name.

SAFEGUARDS:

Records are located in locked file cabinets with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA/Privacy Act Coordinator, U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager listed above.

INDIVIDUALS MUST FURNISH THE FOLLOWING INFORMATION FOR THEIR RECORDS TO BE LOCATED AND IDENTIFIED:

- a. Full name.
- b. Date of birth.
- c. Social security number.
- d. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the CSB, as specified in the Notification Procedure, above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and access to records.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager listed above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and amendment of records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

- a. The individual on whom the record is maintained.

CSB-7**SYSTEM NAME:**

Mailing Lists.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located at the CSB offices, 2175 K Street, NW, Suite 400, Washington, DC 20037-1809.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have provided personal contact and identification information to CSB officials for the purpose of being kept apprised of CSB activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information, such as name(s), social security number, sex, date of birth, home address, mailing address, home telephone number, office address and telephone number; and related records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

PURPOSE(S):

These records provide current contact and related information for individuals who are interested in CSB activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The six general routine uses (listed in the Prefatory Statement to this Notice) do not apply to the CSB-7 system.

1. Use by authorized CSB personnel to send information and updates about CSB activities to interested individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

These records are maintained in file folders and on lists and forms.

RETRIEVABILITY:

These records are retrieved by name.

SAFEGUARDS:

Records are located in locked file cabinets with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records in this system are maintained in accordance with the applicable National Archives and Records Administration General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

The records in this system are managed by the individual office directors who need to maintain mailing lists in furtherance of their official duties. All office directors may be reached at the U.S. Chemical Safety and Hazard Investigation Board, 2175 K Street, NW, Suite 400, Washington, DC 20037.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate system manager listed above.

INDIVIDUALS MUST FURNISH THE FOLLOWING INFORMATION FOR THEIR RECORDS TO BE LOCATED AND IDENTIFIED:

- e. Full name.
- f. Date of birth.
- g. Social security number.
- h. Signature.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the CSB, as specified in the Notification Procedure, above. For their records to be located and identified, individuals must furnish all of the information specified

in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and access to records.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager listed above. For their records to be located and identified, individuals must furnish all of the information specified in the Notification Procedure, and also comply with the CSB Privacy Act regulations codified at 40 CFR part 1602, on verification of identity and amendment of records.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

[FR Doc. 01-7670 Filed 3-28-01; 8:45 am]

BILLING CODE 6350-01-U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[I.D. 032601A]

Submission for OMB Review; Comment Request

SUMMARY: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

SUPPLEMENTARY INFORMATION:

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting Requirements for the Ocean Salmon Fishery off the Coasts of Washington, Oregon, and California.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 10.

Number of Respondents: 40.

Average Hours Per Response: 15 minutes.

Needs and Uses: Based on the management regime specified each year, designated regulatory areas in the commercial ocean salmon fishery off the coasts of the salmon fisheries off of Washington, Oregon, and California may be managed by numerical quotas. To accurately assess catches relative to quota attainment during the fishing season, catch data by regulatory area must be collected in a timely manner.

Requirements to land salmon within specific time frames and in specific areas may be implemented in the preseason regulations to aid in timely and accurate catch accounting for a regulatory area. State landing systems normally gather the data at the time of landing. If unsafe weather conditions or mechanical problems prevent compliance with landing requirements, fishermen need an alternative to allow for a safe response. Fishermen would be exempt from landing requirements so long as the appropriate notifications are made providing the name of the vessel, the port where delivery will be made, the approximate amount of salmon (by species) on board, and the estimated time of arrival.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: March 23, 2001.

Madeleine Clayton,

*Departmental Paperwork Clearance Officer,
Office of the Chief Information Officer.*

[FR Doc. 01-7798 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson; Decision and Order on Renewal of Temporary Denial Order

On September 21, 2000, then Assistant Secretary for Export Enforcement F. Amanda DeBusk issued a Decision and Order on Renewal of Temporary Denial Order (hereinafter "Order" or "TDO"), renewing for 180 days, in a "non-standard" format, a May 5, 1997 Order naming, inter alia, Thane-Coat, Inc.; Jerry Vernon Ford, president,

Thane-Coat, Inc.; and Preston John Engebretson, vice-president, Thane-Coat, Inc. (hereinafter referred to collectively as the "Respondents"), as persons temporarily denied all U.S. export privileges. 65 FR 58507-58508 (September 29, 2000). Unless renewed, the Order will expire on March 21, 2001.

On February 23, 2001, pursuant to Section 766.24 of the Export Administration Regulations (currently codified at 15 CFR parts 730-774 (2000)) (hereinafter the "Regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app 2401-2420 (1991 & Supp. 2000)) (hereinafter the "Act"), the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), requested that I renew the Order against Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson for 180 days in a non-standard format, consistent with the terms agreed to by and between the parties in April 1998.

In its request, BXA stated that, as a result of an ongoing investigation, it had reason to believe that, during the period from approximately June 1994 through approximately July 1996, Thane-Coat, Inc., through Ford and Engebretson, and using its affiliated companies, TIC Ltd. and Export Materials, Inc., made approximately 100 shipments of U.S.-origin pipe coating materials, machines, and parts to the Dong Ah Consortium in Benghazi, Libya. These items were for use in coating the internal surface of prestressed concrete cylinder pipe for the Government of Libya's Great Man-Made River Project.¹ Moreover, BXA's investigation gave it reason to believe that the Respondents and the affiliated companies employed a scheme to export U.S.-origin products from the United States, through the United Kingdom, to Libya, a country subject to a comprehensive economic sanctions program, without the authorizations required under U.S. law, including the Regulations. The approximate value of the 100 shipments at issue was \$35 million. In addition, the Respondents and the affiliated companies undertook several significant and affirmative actions in connection with the solicitation of business on another

¹ BXA understands that the ultimate goal of this project is to bring fresh water from wells drilled in southeast and southwest Libya through prestressed concrete cylinder pipe to the coastal cities of Libya. This multibillion dollar, multiphase engineering endeavor is being performed by the Dong Ah Construction Company of Seoul, South Korea.

phase of the Great Man-Made River Project.

BXA has stated that it believes that the matters under investigation and the information obtained to date in that investigation support renewal of the TDO issued against the Respondents. In that regard, in April 1998, BXA and Respondents reached an agreement, whereby BXA sought a renewal of the TDO in a "non-standard" format, denying all of the Respondents' U.S. export privileges to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, Iran, and any other country or countries that may be made subject in the future to a general trade embargo by proper legal authority. In return, the Respondents agreed that, among other conditions, at least 14 days in advance of any export that any of the Respondents intends to make of any item from the United States to any destination world-wide, the Respondents will provide to BXA's Dallas Field Office (i) notice of the intended export, (ii) copies of all documents reasonably related to the subject transaction, including, but not limited to, the commercial invoice and bill of lading, and (iii) the opportunity, during the 14-day notice period, to inspect physically the item at issue to ensure that the intended shipment is in compliance with the Export Administration Act, the Export Administration Regulations, or any order issued thereunder. BXA has sought renewal of the TDO in a "non-standard" format; respondents have not opposed renewal of the TDO in the "non-standard" format.

Based on BXA's showing, I find that it is appropriate to renew the order temporarily denying the export privileges of Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson in a "non-standard" format, incorporating the terms agreed to by and between the parties in April 1998. I find that such renewal is necessary in the public interest to prevent an imminent violation of the Regulations and to give notice to companies in the United States and abroad to cease dealing with these persons in any commodity, software, or technology subject to the Regulations and exported or to be exported to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, Iran, and any other country or countries that may be made subject in the future to a general trade embargo by proper legal authority, or in any other activity subject to the Regulations with respect to these specific countries. Moreover, I find such renewal is in the public interest in order to reduce the substantial likelihood that Thane-Coat, Inc., Ford and Engebretson

will engage in activities which are in violation of the Regulations.

Accordingly, it is Therefore Ordered: First, that Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and all of its successors or assigns, officers, representatives, agents, and employees when acting on its behalf; Jerry Vernon Ford, President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and 7707 Augustine Drive, Houston, Texas 77036, and all of his successors, or assigns, representatives, agents and employees when acting on his behalf; and Preston John Engebretson, Vice-President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477 and 8903 Bonhomme Road, Houston, Texas 77074, and all of his successors, or assigns, representatives, agents, and employees when acting on his behalf (all of the foregoing parties hereinafter collectively referred to as the "denied persons"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") subject to the Export Administration Regulations (hereinafter the "Regulations") and exported or to be exported from the United States to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, or Iran, or to any other country or countries that may be made subject in the future to a general trade embargo pursuant to proper legal authority (hereinafter the "Covered Countries"), or in any other activity subject to the Regulations with respect to the Covered Countries, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to any of the Covered Countries, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to any of the Covered Countries that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any of the denied persons any item subject to the Regulations to any of the Covered Countries;

B. Take any action that facilitates the acquisition, or attempted acquisition by any of the denied persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries, including financing or other support activities related to a transaction whereby any of the denied persons acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any of the denied persons of any item subject to the Regulations that has been exported from the United States to any of the Covered Countries;

D. Obtain from any of the denied persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to any of the Covered Countries; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries, and which is owned, possessed or controlled by any of the denied persons, or service any item, of whatever origin, that is owned, possessed or controlled by any of the denied persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, at least 14 days in advance of any export that any of the denied persons intends to make of any item from the United States to any destination world-wide, the denied person will provide to BXA's Dallas Field Office (i) notice of the intended export, (ii) copies of all documents reasonably related to the subject transaction, including, but not limited to, the commercial invoice and bill of lading, and (iii) the opportunity, during the 14-day notice period, to inspect physically the item at issue to ensure that the intended shipment is in compliance with the Export Administration Act, the Export Administration Regulations, or any order issued thereunder.

Fourth, that, after notice and opportunity for comment, as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to any of the denied persons by affiliation, ownership, control, or position of

responsibility in the conduct of trade or related services, may also be made subject to the provisions of this Order.

Fifth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Sixth, that, in accordance with the provisions of § 766.24(e) of the Regulations, Thane-Coat, Ford, or Engebretson may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

Seventh, that this Order is effective immediately and shall remain in effect for 180 days.

Eighth, that, in accordance with the provisions of § 766.24(d) of the Regulations, BXA may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on each Respondent and shall be published in the **Federal Register**.

Entered this 20th day of March, 2001.

Lisa A. Prager,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 01-7762 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Requests for Modification of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce is soliciting requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2001 tariff rate quotas established by the Trade and Development Act of 2000.

ADDRESSES: Requests must be submitted to: Industry Assessment Division, Office of Textiles and Apparel, Room 3100,

United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

The Department of Commerce (Department) hereby solicits requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2001 tariff rate quotas established by the Trade and Development Act of 2000. To be considered, a request must be received or postmarked by 5:00 p.m. on April 13, 2001 and must comply with the requirement of 15 C.F.R. 340 (66 FR 6459, published January 22, 2001). If a request is received, the Department will solicit comments on the request in the Federal Register and provide a twenty day comment period. Thirty days after the end of the comment period, the Department will determine whether the limitations should be modified.

BACKGROUND: Title V of the Trade and Development Act of 2000 (the Act) creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (new Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 2,500,000 square meter equivalents per year. For worsted wool fabric with average fiber diameters of 18.5 microns or less (new HTS heading 9902.51.12), the reduction is limited to 1,500,000 square meter equivalents per year. Both these limitations may be modified by the President, not to exceed 1,000,000 square meter equivalents per year for each tariff rate quota.

The Act requires the annual consideration of requests by U.S. manufacturers of men's or boys' worsted wool suits, suit-type jackets and trousers for modification of the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations. In determining whether to modify the limitations, specified U.S. market conditions with respect to worsted wool fabric and worsted wool apparel must be considered. On January 22, the Department published regulations establishing procedures for considering requests for modification of the limitations. 66 FR 6459, 15 CFR 340.

To be considered, requests must be submitted by a manufacturer of men's or boys' worsted wool suits, suit-type

jackets, and trousers in the United States and must comply with the requirements of 15 CFR 340.

A request must include: (1) The name, address, telephone number, fax number, and Internal Revenue Service number of the requester; (2) The relevant worsted wool apparel product(s) manufactured by the person(s), that is, worsted wool suits, worsted wool suit-type jackets, or worsted wool trousers; (3) The modification requested, including the amount of the modification and the limitation that is the subject of the request (HTS heading 9902.51.11 and/or 9902.51.12); and (4) A statement of the basis for the request, including all relevant facts and circumstances.

A request should include the following information for each limitation that is the subject of the request, to the extent available: (1) A list of suppliers from which the requester purchased domestically produced worsted wool fabric during the 12 months preceding the request, the dates of such purchases, the quantity purchased, the quantity of imported worsted wool fabric purchased, the countries of origin of the imported worsted wool fabric purchased, the average price paid per square meter of the domestically produced worsted wool fabric purchased, and the average price paid per square meter of the imported worsted wool fabric purchased; (2) A list of domestic worsted wool fabric producers that declined, on request, to sell worsted wool fabric to the requester during the 12 months preceding the request, indicating the product requested, the date of the order, the price quoted, and the reason for the refusal; (3) The requester's domestic production and sales for the most recent six month period for which such data is available and the comparable six month period in the previous year, for each of the following products: Worsted wool suits, worsted wool suit-type jackets, and worsted wool trousers; (4) Evidence that the requester lost production or sales due to an inadequate supply of domestically-produced worsted wool fabric on a cost competitive basis, and (5) Other evidence of the inability of domestic producers of worsted wool fabric to supply domestically produced worsted wool fabric to the requester.

Requests must be accompanied by a statement by the person submitting the request (if a natural person), or an employee, officer or agent of the legal entity submitting the request, with personal knowledge of the matters set forth therein, certifying that the information is complete and accurate, signed and sworn before a Notary

Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law.

Any business confidential information provided that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law. To the extent business confidential information is provided, a non-confidential submission should also be provided, in which business confidential information is summarized or, if necessary, deleted.

Dated: March 6, 2001.

Donald L. Evans,

Secretary, United States Department of Commerce.

[FR Doc. 01-7515 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032001A]

Regulations Governing the Taking and Importing of Marine Mammals; Threatened and Endangered Wildlife; Gulf of Maine/Bay of Fundy Stock of Harbor Porpoise

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

ACTION: Notice of intent to conduct a status review and request for information.

SUMMARY: The National Marine Fisheries Service (NMFS) is initiating a status review of the Gulf of Maine/Bay of Fundy stock of harbor porpoise (*Phocoena phocoena*). NMFS solicits information to facilitate its review of this stock, which is currently classified as a candidate species under the Endangered Species Act (ESA).

DATES: Comments and information must be received by May 1, 2001.

ADDRESSES: Information, comments, or questions concerning the status review of the Gulf of Maine/Bay of Fundy stock of harbor porpoise should be submitted to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226.

FOR FURTHER INFORMATION CONTACT: Emily Hanson, Office of Protected Resources, (301) 713-2322, ext. 101, or Kim Thounhurst, Northeast Region, (978) 281-9138.

SUPPLEMENTARY INFORMATION: The ESA requires determinations of whether species of wildlife and plants are endangered or threatened based on the best available scientific and commercial data. With some exceptions that are not applicable here, NMFS is responsible under the ESA for species that reside all or the major portion of their lifetime in marine or estuarine waters. The ESA and regulations at 50 CFR 424.02 define "species" as any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. The Gulf of Maine/Bay of Fundy stock of Harbor Porpoise is on the ESA list of candidate species in order to continue to monitor the species' status (64 FR 480, January 5, 1999; 64 FR 33466, June 23, 1999). NMFS is conducting a review of the status of this stock to determine, among other things, if it warrants listing as endangered or threatened under the ESA.

In 1993, NMFS proposed listing the Gulf of Maine/Bay of Fundy stock of harbor porpoise as threatened under the ESA (58 FR 3108, January 7, 1993). That proposed rule reviewed existing information regarding the status of the stock and identified mortality and serious injury incidental to commercial fishing operations as the only significant factor that may be threatening the stock. On January 5, 1999, NMFS withdrew that proposed rule (64 FR 465). The notice of withdrawal discussed information that had become available since the proposed rule and concluded that a Take Reduction Plan, which was prepared in accordance with section 118 of the MMPA, contained an adequate regulatory mechanism to reduce mortality and serious injury of harbor porpoise incidental to commercial fishing operations. Because no other factors were identified that would have a significant adverse impact on the stock, NMFS determined that listing the Gulf of Maine/Bay of Fundy stock of harbor porpoise was not warranted at that time. NMFS maintained the stock as a candidate species under the ESA (64 FR 480, January 5, 1999; 64 FR 33466, June 23, 1999).

The status review will give consideration to the current status of the Gulf of Maine/Bay of Fundy stock of harbor porpoise, including life history, habitat, distribution, abundance, and trends. Additionally, the review will consider present or threatened destruction, modification, or curtailment of habitat or range; over-utilization for commercial, recreational, scientific, or educational purposes (e.g., incidental and intentional take, research permits, stranding); disease and

predation; other natural or anthropogenic factors affecting the stock; evaluation of the effectiveness of the Harbor Porpoise Take Reduction Plan; and, the need to list harbor porpoise under the ESA.

This document is not a proposal to list the Gulf of Maine/Bay of Fundy stock of harbor porpoise as threatened or endangered. This document is a request for information to facilitate a review of the status of the species to determine, among other things, whether the species should be listed as threatened or endangered. NMFS will make the status review and any proposal that results from the review available for public comment.

Biological Information Solicited

To ensure that the review is comprehensive and based on the best available data, NMFS is soliciting information and comments from any interested person concerning the status of the Gulf of Maine/Bay of Fundy stock of harbor porpoise. NMFS is primarily interested in new information that has become available since NMFS last determined that listing of this stock was not warranted (64 FR 465, January 5, 1999). It is requested that data, information, and comments be accompanied by (1) supporting documentation, such as maps, logbooks, bibliographic reference, personal notes, or reprints of pertinent publications and (2) the name of the person submitting the data, his/her address, and any association, institution, or business that the person represents.

Dated: March 23, 2001.

Wanda Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01-7799 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032201E]

Notice of Decision and Availability of Decision Documents on the Issuance of a Permit for Incidental Takes of Threatened and Endangered Species (1248)

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

ACTION: Notice of decision and availability of decision documents on

the issuance of a permit (1248) for incidental takes of endangered species.

SUMMARY: This notice advises the public that a decision on the application for an incidental take permit by the State of Washington Department of Fish and Wildlife (WDFW), pursuant to the Endangered Species Act of 1973 (ESA), has been made and that the decision documents are available upon request.

DATES: Permit 1248 was issued on January 8, 2001, subject to certain conditions set forth therein, and expires on December 31, 2004.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Hatcheries and Inland Fisheries Branch, Sustainable Fisheries Division, F/NWO3, NMFS, 525 NE Oregon Street, Suite 510, Portland, OR 97232-2737 (503-231-2178).

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION CONTACT: Lance Kruzic, Portland, OR, at phone number: (503) 231-2178, fax: (503) 872-2737, or e-mail: Lance.Kruzic@noaa.gov

SUPPLEMENTARY INFORMATION: The following species and evolutionary significant units (ESU's) are covered in the permit:

Chinook salmon (*Oncorhynchus tshawytscha*): endangered Upper Columbia River spring run.

Steelhead (*O. mykiss*): endangered Upper Columbia River.

Decision

Notice was published on April 19, 2000 (65 FR 20952) that WDFW applied for a section 10(a)(1)(B) permit for annual incidental takes of ESA-listed anadromous fish associated with otherwise lawful recreational fisheries on non-listed species in the Upper Columbia River Basin above Priest Rapids Dam in the State of Washington in the Pacific Northwest. WDFW submitted a Conservation Plan with its permit application that describes measures designed to monitor, minimize, and mitigate the incidental taking of ESA-listed anadromous salmonids associated with the sport-fisheries, some or all of which are expected to occur annually for the duration of the permit.

NMFS' decision is to adopt the preferred alternative in the Conservation Plan together with the preferred alternative in the Environmental Assessment that was completed for this permit action and issue a permit with conditions authorizing incidental takes of the ESA-listed anadromous fish species. This decision is based on a thorough review of the alternatives and

their environmental consequences. NMFS' conditions will ensure that the incidental takes of ESA-listed anadromous fish will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. By adopting the preferred alternative in the Conservation Plan, with the Conservation Plan's stated assurances that WDFW's mitigation program will be implemented, all practicable means to avoid or minimize harm have been adopted.

Rationale for Decision

The decision to issue the permit was made because the Conservation Plan proposed by WDFW meets the statutory criteria for issuance of an incidental take permit under section 10 of the ESA. In issuing the permit, NMFS determined that WDFW's Conservation Plan provides adequate mitigation measures to avoid, minimize, and/or compensate for the anticipated takes of ESA-listed anadromous fish.

The permit was granted only after NMFS determined that the permit was applied for in good faith, that all permit issuance criteria were met, including the requirement that granting the permit would not jeopardize the continued existence of the species, and that the permit is consistent with the purposes and policies set forth in the Endangered Species Act of 1973, as amended.

Dated: March 23, 2001.

Phil Williams,

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

[FR Doc. 01-7797 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Draft Guidance for Coastal Impact Assistance Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of availability of draft guidance for Coastal Impact Assistance Program

SUMMARY: Notice is hereby given of the availability of Draft Guidance for the Coastal Impact Assistance Program (CIAP). The fiscal year 2001 appropriations for the Departments of Commerce, Justice and State created the CIAP.

The CIAP will direct approximately \$145 million to the outer continental

shelf oil and gas producing states of Alaska, Alabama, California, Florida, Louisiana, Mississippi and Texas and the approximately 150 coastal political subdivisions within those states to help mitigate the impacts of OCS activities and protect coastal resources. The CIAP requires these states to submit Coastal Impact Assistance Plans detailing how the funds will be expended. This guidance provides the information necessary for eligible states and coastal political subdivisions to develop CIAP plans and submit them to the National Oceanic and Atmospheric Administration (NOAA) by July 1, 2001.

Copies of the Draft Guidance for the Coastal Impact Assistance Program can be found on the NOAA website at <http://www.ocrm.nos.noaa.gov/cpd/welcome/html> or may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. 301-713-3155, extension 201, e-mail joseph.flanagan@noaa.gov.

FOR FURTHER INFORMATION CONTACT: John King, Acting Chief, Coastal Program Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. 301-713-3155, extension 188, e-mail john.king@noaa.gov.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 22, 2001.

Margaret A. Davidson,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce.

[FR Doc. 01-7725 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032201A]

New England 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 New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Groundfish Oversight Committee and Advisory Panel and Habitat Committee

in April, 2001 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on Monday, April 16, 2001, and Tuesday, April 17, 2001, at 9:30 a.m. each day.

ADDRESSES: The meetings will be held at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777-2500.

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

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, April 16, 2001, 9:30 a.m.—
Joint Groundfish Oversight Committee and Advisory Panel Meeting

The Groundfish Oversight Committee & Advisory Panel will continue development of management alternatives for Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP), which will achieve biological goals of the Amendment. The panel and committee will also consider the recommendations of the Plan Development Team (PDT). PDT options include measures that, if adopted, may reduce days-at-sea and may control latent or unused days-at-sea. The Committee will also further develop measures in the alternatives, such as developing a flexible closure system, days-at-sea counting and allocation alternatives, closed areas and other issues. The Committee may discuss recreational fishing measures. The Committee intends to present these alternatives to the Council at the May 2-3, 2001 Council meeting.

Tuesday, April 17, 2001, 9:30 a.m.—
Habitat Oversight Committee Meeting

The agenda will include a discussion of habitat measures, alternatives and analyses to be included in the Groundfish FMP Amendment 13 Draft Supplemental Environmental Impact Statement. The committee will consider preliminary information on required essential fish habitat (EFH) components of proposed Skate and Red Crab FMPs. They will also review EFH consultation activities, including a proposed General Concurrence for U.S. Army Corps of Engineers Philadelphia District's Nationwide Permit Program. The Committee will review applications to the Advisory Panel in a closed session.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those

issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

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

Dated: March 23, 2001.

Richard W. Surdi,

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

[FR Doc. 01-7682 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032201C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Hawaii members of the Commercial, Recreational, Subsistence/Indigenous, and Ecosystem and Habitat Advisory Panels (Hawaii AP), in Honolulu, HI. The Council will also hold a meeting of its Bottomfish Plan Team (BPT), in Honolulu, HI.

DATES: The meeting of the Hawaii AP will be held on April 13, 2001, from 9 a.m. to 5 p.m.. The BPT will be held on April 17 and 18, 2001, from 8:30 a.m. to 5 p.m., each day.

ADDRESSES: The Hawaii AP and BPT will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: 808-522-8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: On April 13, 2001, the Hawaii Advisory Panel

members will meet to discuss fishery issues of concern in Hawaii, brief new advisors on Council issues and identify agenda items for a full Advisory Panel meeting to be held in June, 2001.

Friday, April 13, 2001

The agenda for the Hawaii Advisory Panel meeting will include the items listed below:

1. Introduction;
2. Orientation including overview of the Magnuson Stevens Act, Council decision making process and fishery management plans (FMPs);
3. Summary of current fishery issues including, but not limited to, the Council's FMPs, draft environmental impact statements, biological opinions, indigenous initiatives, coral reef fishery management, and other issues affecting the management of fisheries in the Western Pacific Region;
4. Discussion of Hawaii local fishery issues;
5. Recommended agenda items for full Advisory Panel meeting to be held in June 2001;
6. Outreach efforts including supporting fishermen's forums in each island area and Council participation in organized public events; and
7. Other issues.

Tuesday, April 17, 2001

The BPT will meet to discuss the following agenda items:

1. Introduction;
2. Annual Report review;
 - a. Review Status of 1999 Annual Report Recommendations
 - b. Identify problems and possible solutions for uncompleted recommendations
 - c. Review 2000 Annual Report modules and recommendations
3. Review Northwestern Hawaiian Islands Coral Reef Reserve conservation measures for bottomfish; and
 - a. Measures
 - b. Impacts from closures
 - c. Discussion and recommendations
4. Status of pending amendments/framework adjustments;
 - a. Addition of Commonwealth of the Northern Mariana Islands (CNMI) and Pacific Remote Island Areas to Bottomfish FMP
 - b. Mau Zone new entry criteria

Wednesday, April 18, 2001

1. Bottomfish Draft Environmental Impact Statement (DEIS);

- a. Review alternatives and findings
- b. Comments on DEIS
- c. Discussion and recommendations
- 2. Status of Biological Opinion;
- 3. Monk Seals;
 - a. Status of Litigation
 - b. Recommendations from the Hawaiian Monk Seal Recovery Team
 - c. Proposed methods to avoid interactions with Hawaiian Monk Seals
 - d. Discussion and recommendations
- 4. Observer Program
 - a. NMFS plan for observer coverage
 - b. Council recommendation regarding observers from 108th meeting
 - c. New technology options to monitor bottomfish vessels and policy needs
 - d. Discussion and recommendations
- 5. Research priorities for Western Pacific Region bottomfish fisheries; and
 - a. Bottomfish research needs
 - i. American Samoa
 - ii. Guam
 - iii. Hawaii
 - iv. CNMI
 - b. Prioritize research needs and recommendations
- 6. Other Business.

The order in which the agenda items are addressed may change. The Hawaii AP and BPT will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the Hawaii AP and BPT for discussion, those issues may not be the subject of formal action during these meetings. Advisory Panel and Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to the meeting date.

Dated: March 23, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-7681 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032201D]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its Coral Reef Ecosystem Plan Team (CREPT), in Honolulu, HI.

DATES: The meeting of the CREPT will be held on April 11-12, 2001, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: 808-522-8220.

FOR FURTHER INFORMATION CONTACT:

Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: On April 11-12, 2001, the CREPT will continue its discussion of comments received during the public comment period on the draft Coral Reef Ecosystem Fishery Management Plan (CREFMP) and Draft Environmental Impact Statement (DEIS) and make recommendations to the Council. Copies of the draft CREFMP/DEIS are available from the Western Pacific Fishery Management Council office.

The agenda for the CREPT meeting will include the items listed below (the order in which items are addressed may change):

Wednesday, April 11, 2001

- 1. Introduction
- 2. Discussion of public comments on draft CREFMP/DEIS
 - A. Marine Protected Areas
 - (1) Northwestern Hawaiian Islands (NWHI)
 - (2) Main Hawaiian Islands (MHI)
 - (3) Pacific Remote Island Areas (PRIA)
 - (4) Guam
 - (5) Commonwealth of the Mariana Islands (CNMI)
 - (6) American Samoa
 - B. Permits and Reporting
 - (1) General permit
 - (2) Special permit
 - (3) Prohibited Management Unit Species (MUS) (exemptions)
 - (4) Reporting

- C. Fishing Gear and Methods
 - (1) Allowable gear list
 - (2) Prohibited methods (e.g. scuba-spearfishing)
- D. Framework Actions
- E. Non-regulatory Actions
- F. Research, Monitoring and Assessment
- G. Enforcement
- H. Overfishing/Maximum Sustainable Yield (MSY)
- I. Essential Fish Habitat/Habitat Areas of Particular Concern (EFH/HAPC)(designation, identifying adverse effects, minimizing adverse fishing effects)
- J. Other

Thursday, April 12, 2001

- 1. Discussion and Recommendations (on above comments)
- 2. Other business

Although non-emergency issues not contained in this agenda may come before the Plan Team for discussion, those issues may not be the subject of formal Plan Team action during this meeting. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808-522-8220 (voice) or 808-522-8226 (fax), at least 5 days prior to the meeting date.

Dated: March 23, 2001.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 01-7683 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 010315068-1068-01]

RIN 0648-XA65

National Weather Service (NWS) Modernization and Associated Restructuring (MAR); Final Certification of No Degradation of Service for the Combined Consolidation and/or Automation and Closure of Six Weather Service Offices (WSO)

AGENCY: NWS, NOAA, Commerce.

ACTION: Notice.

SUMMARY: On March 26, 2001, the Acting Under Secretary of Commerce for Oceans and Atmosphere transmitted to Congress notice of approval of Consolidation and/or Automation and Closure certifications for WSOs Fairbanks, Alaska; Los Angeles, Redding, and Riverside, California; and Olympia and Wenatchee, Washington. Pub. L. 102-567 requires final certifications be published in the FR. This notice satisfies that requirement.

EFFECTIVE DATE: March 29, 2001.

ADDRESSES: Request for copies of the final certification packages should be sent to John Sokich, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910-3283.

FOR FURTHER INFORMATION CONTACT: John Sokich, 301-713-0258.

SUPPLEMENTARY INFORMATION: The Olympia and Wenatchee Fire Weather office certifications were proposed in the March 26, 1999, FR for public comment. The 60-day public comment period closed on May 26, 1999. One public comment was received from Mr. Hueth, Chairman, Pacific Northwest Wildfire Coordinating Group (PNWCG) pertaining to both offices. A summary of the letter signed by Terry Hueth, Chairman, Pacific Northwest Wildfire Coordinating Group (PNWCG), and the NWS response to the letter follow.

Comment on Olympia and Wenatchee: A letter to Tom Beaver of the NWS, dated May 21, 1999, from Mr. Hueth, Chairman of PNWCG, stated in part, "The PNWCG represents local, state, and federal wildland fire agencies in Oregon and Washington * * *. We have a critical need for weather support to our agencies' missions in fire management and safety * * *. We have serious doubts about the ability of the MAR approach to adequately support the fire program * * *. The current fire weather program in the Pacific

Northwest is being supplemented by personnel that the NWS will not have in end-state staffing. We do, however, fully support the NWS maintaining the transitional staff to meet fire weather needs * * *. Currently, dedicated expertise is compensating for missing technology * * *. The quality of service provided needs to be evaluated after technology is developed and there is no need to rely on transitional staffing * * *. It is difficult to endorse a closure and say there will be no degradation of service without seeing what the modernized service is * * *. As was the case with the Salem/Portland office, the office closure at Olympia, Washington is difficult to evaluate because of the lack of fire activity after the move to the Seattle WFO. The Seattle WFO did institute Internet fire weather briefings which were well done and well received by field offices. However, there was an impact on the State of Washington Department of Natural Resource (DNR) employees. With the lack of NWS personnel in Olympia, DNR workload was increased because DNR personnel had to conduct briefings and perform other fire weather-related work previously done by the NWS. The closure of the Wenatchee, Washington, fire weather office has had an effect on the fire program in northeast Washington. A survey was conducted of federal fire agency personnel in that area. Most respondents characterized the movement of personnel as resulting in no change in the quality of the products and services. However, some individuals indicated degradation in the quality of products and services since the move. One responder mentioned wind speed and relative humidity forecasts being of poorer quality. In conclusion, the PNWCG remains very concerned that the NWS modernization program will not meet our needs. We are supportive of the June 11, 1998 NWS *Report of the Fire Weather Team* that was submitted to NWS Director John Kelly * * *. We are very uncomfortable with the idea of certifying no degradation of services without knowing what the services will be and before the full site of MAR capabilities is in place."

NWS Response: At the September 29, 1999, Modernization Transition Committee (MTC) meeting, the NWS briefed the MTC and the PNWCG attendees on modernized operations and explained how this was the best use of personnel and technology. The NWS stated the "transition" forecasters (two each at Seattle, Spokane, Pendleton, and Portland) are now considered part of end-state staffing, and are not scheduled

to be eliminated. These staff were provided specifically to support the fire weather program. During the MTC consultation on September 29, 1999, Mr. Day, Northwest Coordination Center Director at the Portland Geographical Area Coordination Center (GACC), stated the GACC would accept the Olympia and Wenatchee transitions. The MTC endorsed the proposed closure of the Olympia and Wenatchee WSOs with the stipulation, "The MTC endorsement to close these weather offices does not relieve the NWS of their responsibility to retain transitional staffing for the Fire Weather program. As outlined in the 'Report of the Fire Weather Team,' June 11, 1998, the transitional staffing must be retained until NWS has the advanced operational technology in place and demonstrates its support to the satisfaction of the fire weather customers." The Los Angeles Aviation office and the Redding and Riverside Weather office certifications were proposed in the July 9, 1999, FR for public comment. The 60-day public comment period closed on September 7, 1999. No public comments were received pertaining to Los Angeles, four public comments were received pertaining to Redding, and three public comments were received pertaining to Riverside. One of these comments pertained to both Redding and Riverside. The comments and the NWS response are set forth here for reference.

Comment pertaining to both Redding and Riverside: A letter, dated August 18, 1999, signed by James E. Owen, Deputy Director for Fire Protection from the California Department of Forestry and Fire Protection (CDF), pertained to both Redding and Riverside. The letter stated in part, "For the record, the California Department of Forestry and fire protection (CDF) as a client of the National Weather Service (NWS), strongly objects to the proposed closure of the Redding and Riverside Fire Weather Offices. The proposed closures are not in the best interests of the public and do not conform to the legal requirements of section 706 of Public Law 102-567, requiring the Secretary of Commerce to certify that consolidation, automation, and/or closure of a NWS field office will not result in a degradation of service to the affected area of responsibility * * *." "CDF believes that the proposed office closures will degrade the level of service that we receive from the NWS. This will adversely affect our ability to meet our fire protection mission and provide for firefighter and public safety. Our specific objections to the office closures are:

1. The proposed office closures represents [sic] a unilateral termination of the California Interagency Fire Weather Agreement, signed by the NWS in 1997.

2. Fire weather forecasts generated by the Redding and Riverside offices will be divided among ten (10) California NWS offices. Some CDF administrative units will receive forecasts from three (3) different NWS offices * * *.

3. NWS reorganization will result in the loss of non-federal, non-wildlife services currently provided by the Redding and Riverside Offices * * *.

4. The NWS Modernization efforts propose to eliminate the dedicated Fire Weather Forecaster position. If fire weather forecasts issued by general forecasters, unfamiliar with local weather patterns, meso-scale topographic influences and fire behavior, are off by even a small degree, firefighter safety may be compromised * * *.

5. The proposed office closure will result in loss of access to smoke management products to wildland agency managers.

6. The reorganization will cause the loss of direct, daily interaction between NWS forecasters and operational fire personnel at the North and South Emergency Operations Command centers * * *.

6. The proposal may result in reduced availability and qualification of Incident Meteorologists due to assigning these individuals to coverage shifts for general forecasting assignments * * *.

Providing fire fighter safety is a vital responsibility of our department * * *. It is clear to us that the proposed NWS closures are based on unproven assumptions and will likely result in a decrease in the current level of service provided by the NWS to the California wildland agencies * * *." *Specific Comments on Redding:* A summary of the three letters follows. A letter to Secretary Daley, dated July 21, 1999, from Representative Wally Herger, stated in part, "I am writing in strong opposition to the proposed closing of the Redding California Interagency Fire Forecast and Warning Unit (IFFWU) under the National Weather Service's multi-year modernization and associated restructuring program. The loss of this fire weather expertise seriously degrades the ability of our local agencies to prevent and fight wildfires, and I respectfully urge your assistance in ensuring the continued existence of this essential service * * *. By transferring the functions of the Redding office to existing offices in Sacramento and Eureka, California, Medford, Oregon and Reno, Nevada, we

will lose the high level of local expertise and knowledge essential for effective fire management in the area * * *."

The second letter, dated July 27, 1999, from Daniel K. Chisholm, Forest Supervisor, U.S. Department of Agriculture, stated in part, "* * *" The Mendocino National Forest is concerned with the National Weather Service (NWS) proposal to eliminate several fire weather forecast offices, eliminate the fire weather forecaster positions and establish ten forecast offices over four states * * *. Weather is a critical issue in maintaining firefighter safety, especially for our forest * * *. We depend on the Redding Fire Weather forecasters to give us advance warning of any possible or existing condition(s) which will affect our suppression operations in a single forecast for various parts of our forest * * *. The Redding Fire Weather Office has provided excellent service to the Forest in the areas of fire weather forecasting, spot forecast and smoke dispersal forecast. The potential loss of this resource presents serious concerns that should be addressed before a final decision is made in the limitation of the Redding facility."

The third comment, a letter to Secretary Daley, dated August 30, 1999, was signed by Senator Dianne Feinstein, and stated in part, "I am writing with great concern over the proposed closure of the Interagency Fire Forecast and Warning Unit in Redding which is operated under the National Weather Service * * *. At this very moment, more than 10,000 fire fighters are battling over 100 blazes across Northern California * * *. The smoke is so dense, one can barely see our state's Capitol building. All this points clearly to the need to maintain effective fire weather forecasters that can assist fire fighters on the ground with exact climatic predictions and assistance * * *."

Specific Comments on Riverside: A summary of the two letters follows. A letter, dated August 19, 1999, was signed by Scott Goodwin, Battalion Chief, City of Santa Fe Springs Headquarters Fire Station. The comment was, "This letter is in response to the request for public comment regarding the closure of the Riverside California FWO. We are opposed to this action and believe that closure of this office will be detrimental to planning and fire ground operations during major wildland fires that threaten our area. We encourage you to reconsider this action in the interest of public safety. We appreciate the opportunity to comment on this matter."

The second comment, dated August 26, 1999, was signed by William R. Bamattre, Chief Engineer and General Manager, City of Los Angeles. He stated in part, "* * * the Los Angeles City Fire Department's position is to oppose any changes which would result in a loss of staffing or expertise in the present method of fire weather forecasting * * *. The Los Angeles Fire Department depends on the highly specialized skills of the fire weather forecasters * * *. I am concerned that the National Weather Service proposal would result in a fragmented degradation of the fire weather forecasting currently provided when specialization, coordination, and communication should be the preeminent factors * * *. Please be advised that the Los Angeles City Fire Department fully supports the position of the CWCG [California Wildlife Coordinating Group]."

NWS Response: The NWS explained the process for closing the Redding WSO and Riverside Fire Weather offices and reiterated that current NWS fire weather support to the Redding and Riverside Geographical Area Coordination Centers (GACCs) will not be impacted. On November 18, 1999, the NWS met with the California Wildlife Coordinating Group (CWCG) and began negotiations to outline a plan for transfer of fire weather services to other NWS forecast offices. The meeting included discussion on renegotiation of the interagency agreement, development of a dynamic transition plan, and creation of a NWS/CWCG User Assessment Team to validate the success of implementing the transition plan. The NWS and CWCG agreed the transition plan must demonstrate NWS services to CWCG satisfaction before transferring fire weather services from Redding and Riverside WSOs to other NWS forecast offices. The target date for transfer of fire weather services to NWS forecast offices is the end of 2002. The CWCG accepted this plan and agreed to the proposed closure of the Redding and Riverside WSOs. On December 8, 1999, the MTC endorsed the proposed closures of the Redding and Riverside WSOs with the stipulation, "In addition, the NWS must honor the Interagency Agreement with the California Wildfire Coordination Group and not transfer personnel or fire weather responsibilities from the Redding and Riverside GACCs until a mutually acceptable transfer plan has been developed and implemented."

The Fairbanks certifications were proposed in the September 29, 1999, FR for public comment. The 60-day public comment period closed on November

29, 1999. No public comments were received. The MTC endorsed closure certification at its December 8, 1999, meeting.

After consideration of the public comments received and the MTC endorsements, the Acting Under Secretary of Commerce for Oceans and Atmosphere approved these six consolidation and/or automation and closure certifications and transmitted notice of approval to Congress on March 26, 2001. Certification approval authority was delegated from the Secretary of Commerce to the Under Secretary in June 1996. The NWS is completing the certification requirements of Pub. L. 102-567 with respect to the six NWS offices identified herein by publishing this final consolidation and/or automation and closure certification notice in the FR.

Dated: March 26, 2001.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 01-7794 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-KE-M

DEPARTMENT OF COMMERCE

National Oceanic Atmospheric Administration

Amendments to the Area To Be Avoided Off the Olympic Coast National Marine Sanctuary

AGENCY: National Oceanic Atmospheric Administration, Commerce

ACTION: Notice.

SUMMARY: The National Oceanic Atmospheric Administration (NOAA) is notifying the public of its intention to submit a proposal to International Maritime Organization (IMO) to extend the scope of the existing Area to Be Avoided (ATBA) off the Washington Coast to include all vessels of 1,600 gross tons and above solely in transmit and to increase the size of the ATBA to reflect changes in the adjacent Strait of Juan de Fuca traffic separation scheme. NOAA is taking this action in response to information gathered during the development of the Port Access Routing Study for the Strait of San Juan de Fuca and Approaches (PARS) by the U.S. Coast Guard, Coast Guard docket USCG 1999-4974.

FOR FURTHER INFORMATION CONTACT: George Galasso, Assistant Manager, Olympic Coast National Marine Sanctuary, phone (360) 457-6622 ext. 26, email: george.galasso@noaa.gov.

SUPPLEMENTARY INFORMATION: An Area to Be Avoided (ATBA) is defined by IMO as an area that all ships or certain

classes of ships should avoid because navigation is particularly hazardous or it is exceptionally important to avoid casualties within the area. On December 7, 1994, the Maritime Safety Committee of the IMO adopted at ATBA proposed by the U.S. Government off the Olympic Coast National Marine Sanctuary. Since implementation in June 1995, the United States has been monitoring compliance through the use of Canadian Coast Guard radar data from the Tofino Marine Communications and Traffic System. Compliance with the ATBA is estimated to be between 90-95%, due to the excellent cooperation by the maritime community, vigorous education and outreach efforts by the Olympic Coast National Marine Sanctuary staff and the U.S. Coast Guard, and the sending of educational letters to those ships found to be in non-compliance.

The U.S. Coast Guard has recently completed a Port Access Route Study to critically review all aspects of vessel movements in the area. As presently configured, the inbound traffic lane originating from the southwest may bring traffic within close proximity to Duntze and Duncan Rocks and the rocky shoreline of Cape Flattery. The configuration also presents a potential for collisions between fishing and recreational vessels and transiting ships. It is customary practice for smaller, slower traffic to transit inbound and outbound south of the designated Traffic Separation Scheme (TSS) lanes when on coastwise voyages to and from the south. Thus, this traffic is navigating even closer to these hazards. The PARS Study recommends that the TSS at the entrance to the Strait of Juan de Fuca be extended approximately 10 miles further offshore, that the separation zone at the entrance to the Strait of Juan de Fuca be centered on the International Boundary, that a recommended route be established south of the TSS to accommodate existing traffic patterns, and to expand the ATBA boundaries to the north and west. The U.S. Coast Guard and NOAA have adopted these recommendations. The U.S. Coast Guard is developing proposals to the IMO to change the TSS and adopt recommended routes. NOAA has developed the proposal to amend the ATBA.

NOAA's proposal to amend the existing ATBA off the Olympic Coast National Marine Sanctuary has two elements. First, it proposes to increase the size of the ATBA to the north and west, to accommodate the Coast Guard's proposed amendment of the TSS. This increased size will enhance maritime safety because it provides for a greater

distance and margin of safety from the navigational hazards of Duntze and Duncan Rocks and Tatoosh Island. Second, NOAA proposes to expand the class of ships to which the ATBA applies to include commercial ships of 1,600 gross tons and above. These ships carry substantial amounts of bunker fuel, which, if spilled, would have a devastating impact on the unique, valuable, and sensitive resources of Olympic Coast National Marine Sanctuary.

The area contains economically important fishery resources, including a variety of baitfish, shellfish, and salmon. The resources in this area are also critical to the cultural activities and subsistence living of Native American Indian tribes. Important archaeological sites of these peoples are found on the shoreline and they are likely to be affected by an oil spill from a ship. In addition, the area has been designated as an UNESCO Biosphere Reserve and World Heritage Site and overlaps with three National Wildlife refuges and one National Park. With the extensive wilderness shoreline and natural beauty, recreation and tourism are critical and vital economic forces in the region.

The coastal rocks and islands provide important breeding, nesting, and roosting areas for marine birds. Marbled murrelets, which use offshore waters for feeding, are listed by the United States as a threatened species and are of special concern due to their high vulnerability to oil spills. Common murre nest on offshore islands and their populations have been seriously affected by past oil spills, including the 1991 Tenyo Maru oil spill. Bald eagles, listed as a threatened species, are also important to the marine ecosystem in the region. Twenty-nine species of whales, dolphins, and other marine mammals regularly inhabit the area, including recovering populations of sea otters, which are the most vulnerable to oil spills. The Olympic Coast also contains some of the most productive kelp beds and intertidal areas on the U.S. West Coast.

When viewed in conjunction with the U.S. Coast Guard proposal to amend the TSS and establish recommended tracks, the expansion of the ATBA is necessary for protection of natural resources from maritime casualty and for general maritime safety. Moving the northern border of the ATBA to a consistent distance south of the southernmost edge of the TSS will provide an improved safety buffer for those smaller, slower moving vessels that choose to transit south of the TSS. Continuing this buffer area parallel to the TSS to a point at

124° 55.1'W will allow sufficient room for this slower moving traffic to transit without conflicting with the inbound traffic steering for the southern approach to the TSS. It also provides a greater margin of safety around the hazards of Duntze and Duncan Rocks, and Tatoosh Island, which is known for its strong tides.

NOAA proposes to apply the ATBA to commercial ships of 1,600 gross tons and above because these ships carry a substantial amount of bunker fuel. Concerns regarding spills of bunker fuel were heightened on the U.S. West Coast after the 1999 incident involving the New Carissa, which spilled approximately 70,000 gallons of bunker fuel. Requiring commercial ships of 1,600 gross tons and above to transit outside the ATBA would move these ships farther offshore, thus increasing the time available to respond to a propulsion or steering casualty and decreasing the potential for a drift or powered grounding. If there was a discharge of bunker fuel, the increased distance offshore would diminish the impact on the shoreline and provide more time to mobilize a response. NOAA analyzed various ship sizes to which the ATBA should be made applicable. Commercial ships of 1,600 gross tons (versus those of only 300 gross tons) are considered large enough to be able to maneuver safely while avoiding the ATBA, even in most weather conditions. NOAA has determined there will be minimal adverse impacts on shipping by expanding the applicability of the ATBA to commercial ships of 1,600 gross tons and above. It will not affect those ships bound for the Strait of Juan de Fuca from the north or west. Most ships coming from destinations well to the south of the ATBA will, if the amendment to the TSS is approved, have to alter their course to enter the TSS and thus the expanded applicability of the ATBA will have limited, if any, effect.

Ships bound to or from Grays Harbor, a tidal port that is located at the immediate southern end of the ATBA, will be minimally affected by this expanded applicability. Using 1999 data, an analysis on the impacts to ships transiting between Grays Harbor and the Strait of Juan de Fuca found that of the 107 vessels in transit, 48 are of sufficient size to be affected by the proposed change in applicability. Of those vessels, 80% transited outside the existing ATBA. With the proposed amendment of the TSS, the expanded ATBA applicability will add an approximate 10 miles in transit distance or 42 minutes in additional transit time.

The Olympic Coast National Marine Sanctuary Advisory Council and North Puget Sound Risk Management Panel have discussed the extension of the provisions of the ATBA to vessels not currently included. Both of these federal advisory bodies supported the extension of the ATBA applicability. The Olympic Coast National Marine Sanctuary has analyzed the population of vessels transiting the ATBA for the risk they pose to Sanctuary resources. The Sanctuary's analysis and further information on NOAA's proposal, including charts and reports, can be viewed at <http://www.ocnms.nos.noaa.gov/use/atbea.html>.

Dated: March 21, 2001.

Margaret A. Davidson,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01-7622 Filed 3-28-01; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Security Service, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Security Service (DSS) announces the proposed initiation of a public information collection affecting cleared DoD contractors and seeks public comments on the provision thereof. Comments are invited on: (a) Whether the proposed collection shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information to be collected; and (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.

DATES: Consideration will be given to all comments received by May 29, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Security Service, Industrial Base Clearance Requirements Office, ATTN: Mr. Stephen F. Lewis, 1340 Braddock Place, Alexandria, VA 22314-1650.

FOR FURTHER INFORMATION CONTACT: To request more information on this

proposed data collection or obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Defense Security Service, Industrial Base Clearance Requirements Office (703) 325-6085.

Title, Associated Form, and OMB Number: "Personnel Security Investigation Projection for Industry Survey", DSS Form 232, OMB Number 0704-0417.

Needs and Uses: Executive Order (EO) 12829, "National Industrial Security Program (NISP)", stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. EO 12829 also authorizes the Executive Agent to issue, after consultation with affected agencies, standard forms that will promote the implementation of the NISP.

Under the NISP, the Defense Security Service (DSS) is responsible for conducting personnel security investigations of employees of those cleared contractor entities under its security cognizance. In the past, DSS has relied on historical data for agency budget projections regarding the numbers of personnel security investigations required by cleared contractor entities; however, historical data did not provide a particularly accurate or credible estimate of such workload. In this proposed collection of information, DSS requests the voluntary assistance of the Facility Security Officers of cleared contractor entities to provide projections of the numbers and types of personnel security investigations required. The data will be incorporated into DSS' budget submissions.

In an August 22, 2000 Memorandum, Subject: "Personnel Security Clearance Investigation", the Assistant Secretary of Defense' assigns DSS responsibility for the following types of investigations within industry:

- a. A Single Scope Background Investigation (SSBI).
- b. A National Agency Check with Local Agency Check and Credit Check (NACLC).
- c. SSBI Periodic Reinvestigation (SSBI-PR or TS-PR).

In accordance with DoD 5200.2-R, DSS is also responsible for conducting TS-PRs every 5 years, SECRET-PRs every 10 years and CONFIDENTIAL-PRs every 15 years. In addition, under

specified circumstances, DSS is required to conduct SSBIs, NACLCs and National Agency Checks (NACs) for sensitive positions that do not require personnel security clearances.

Representatives of various industry associations, the National Industrial Security Program Policy Advisory Committee (NISPPAC), the Military Services, various elements of the Department of Defense and other Federal Government Agencies were advised of the survey.

Affected Public: Businesses, Universities, Institutions or other profit and non-profit organizations.

Total Annual Burden Hours: 13,869.

Number of Respondents: 11,095.

Responses Per Respondent: 1.

Average Burden Per Respondent: 75 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The execution of the DSS Form 232 is an essential factor in projecting the needs of cleared contractor entities for PSIs. This collection of information requests the voluntary assistance of the Facility Security Officer to provide projections of the numbers and types of PSIs. The data will be incorporated into DSS' budget submissions. The form is authorized for local reproduction and will be available electronically on the World Wide Web. The form will display OMB approval number 0704-0417.

Dated: March 22, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-7759 Filed 3-28-01; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarify 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.

DATES: Consideration will be given to all comments received by May 29, 2001.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to: Defense Technical Information Center, DoD Scientific and Technical Information Policy Office, ATTN: DTIC-S, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060-6218; E-mail comments submitted via the Internet should be addressed to: dappler@dtic.mil.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection, or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call Mr. David Appler at (703) 767-9160.

Title, Associated Form, and OMB Number: Militarily Critical Technical Data Agreement, DD Form 2345, OMB Control Number 0704-0207.

Needs and Uses: The information collection requirement is necessary as a basis for certifying individuals or businesses to have access to DoD export-controlled militarily critical technical data subject to the provisions of 32 CFR 250. Individuals and enterprises that need access to unclassified DoD-controlled militarily critical technical data must certify on DD Form 2345, Militarily Critical Technical Data Agreement, that data will be used only in ways that will inhibit unauthorized access and maintain the protection afforded by U.S. export control laws. The information collected is disclosed only to the extent consistent with prudent business practices, current regulations, and statutory requirements and is so indicated on the Privacy Act Statement of DD Form 2345.

Affected Public: Businesses or other for-profit; Non-profit institutions.

Annual Burden Houses: 2,000.

Number of Annual Respondents: 6,000.

Annual Responses to Respondent: 1.

Average Burden Per Response: 20 Minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Use of DD Form 2345 permits U.S. and Canada defense contractors to certify their eligibility to obtain certain unclassified technical data with military and space applications. Nonavailability of this information prevents defense contractors from accessing certain restricted databases and obstructs conference attendance where restricted data will be discussed.

Dated: March 22, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-7760 Filed 3-28-01; 8:45 am]

BILLING CODE 5001-10-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System (NCCS). The purpose of the meeting is to begin conduct of a comprehensive and independent review of the NCCS positive measures to assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: April 25, 2001.

ADDRESSES: Pentagon, Room 3C912.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681-8681.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01-7672 Filed 3-28-01; 8:45 am]

BILLING CODE 5001-05-P

DEPARTMENT OF DEFENSE**Department of the Army****Army Science Board; Notice of Open Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (PL 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 27-28 March 2001.

Time of Meeting: 0730-1700, 27 March 2001; 0730-1600, 28 March 2001.

Place: 2000 15th Street North Arlington, VA 22201.

Agenda: The Army Science Board's (ASB) panel will conduct a study on "Knowledge Based Management and Information Reliability" to exam innovative ways of addressing technology issues that have the potential to "weigh down" our future Warfighters with massive amounts of data. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Mr. Randy Woodson, Office of the DA DCSINT, 703 604 2462, randy.woodson@hqda.army.mil.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 01-7763 Filed 3-28-01; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE**Department of the Army****Army Science Board; Notice of Open Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 2-3 April 2001.

Time of Meeting: 0830-1500.

Place of Meeting: Fort Belvoir, Virginia.

Agenda: The Army Science Board's (ASB) Special Summer Study on "Manpower and Personnel for the Soldier Systems in the Objective Force" will have their 2nd meeting at Fort Belvoir. Will have backbriefs concerning the March 13 Plenary Meeting, Manpower Requirements, and Joint Warfighter, to name a few: These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please

contact, MAJ Joseph Jones on (703) 614-6020.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 01-7765 Filed 3-28-01; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE**Department of the Army****Army Science Board; Notice of Open Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB) Analysis Panel.

Date of Meeting: 26-29 Mar 2001.

Time of Meeting: 0900-1700.

Places:

26 Mar RAND

27 Mar ICT

28 Mar Sandia Labs

29 Mar WSMR

Agenda: The Analysis Panel of the Army Science Board's (ASB) Summer Study will visit RAND, ICT, Sandia Labs and WSMR. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Karen Williams at (407) 384-3937.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 01-7764 Filed 3-28-01; 8:45 am]

BILLING CODE 3710-0F-M

DEPARTMENT OF EDUCATION**Notice of Proposed Information Collection Requests**

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 May 29, 2001.

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 Leader, Regulatory 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.

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: March 23, 2001.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: National Study of Title I Schools.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden

Responses: 3,280 Burden Hours: 11,920.

Abstract: This National Study of Title I Schools will be the main source of nationally-representative school-level information on the implementation of Title I provisions and standards-based reform generally, over a three-year period from the 2001-02 through 2003-04 school years. The study will examine and describe how Title I schools are using standards-based reforms to assist in improving learning, with a particular focus on implementation of provisions in the Title I program that are designed

to support such improvements. The study will also examine more specifically the quality of instruction and instructional support in Title I schools, with a focus on implementation of Title I provisions designed to support more effective instruction and instructional support.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202-4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708-5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-7722 Filed 3-28-01; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On March 23, 2001, a 60-day notice inviting comment from the public was published for the Free Application for Federal Student Aid (FAFSA) in the **Federal Register** (Volume 66, Number 57) dated March 23, 2001. However, the end date for public comment and the requested OMB approval should have stated April 22, 2001. The public has until April 22, 2001 to provide comments concerning this information collection request. The Leader, Regulatory Information Management, Office of the Chief Information Officer, hereby issues a correction notice on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 22, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting

Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address LAUREN.WITTENBERG@OMB.EOP.GOV.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, 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 OCIO_IMB_Issues@ed.gov, or should be faxed to 202-708-9346.

FOR FURTHER INFORMATION CONTACT:

Joseph Schubart at his internet address Joe_Schubart@ed.gov.

Dated: March 23, 2001.

John Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 01-7723 Filed 3-28-01; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 May 29, 2001.

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 Leader, Regulatory 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.

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: March 26, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: The Longitudinal Evaluation of the Effectiveness of School Interventions.

Frequency: Semi-Annually; Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 160.

Burden Hours: 380.

Abstract: The purpose of the Longitudinal Evaluation of the Effectiveness of School Interventions (LEESI) is to determine how the provisions of Title I and Comprehensive School Demonstration (CSRSD) programs foster school strategies that improve classroom practice and student outcomes. This project addresses both the implementation and the effectiveness of instructional interventions in 100 Title I elementary schools, including schools receiving CSRSD funds. The LEESI will provide data that links classroom practices to student outcomes, and links school strategies to both classroom practices and student achievement, among a set of schools that operate Title I schoolwide programs.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland

Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202-4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708-5359 or via her internet address

Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-7756 Filed 3-28-01; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory 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 May 29, 2001.

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 Leader, Regulatory 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.

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: March 26, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: The Reading Excellence Act School Implementation and Impact Study, Sampling Clearance Package.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden: Responses: 600.

Burden Hours: 488.

Abstract: The Reading Excellence Act School and Classroom Implementation and Impact Study (REA-SCII) is a five-year study to learn about the implementation and impact of the REA legislation on instructional practice in reading and on student reading achievement. The study has two components: (1) A large-scale study in which survey data are collected from teachers, principals, and district staff from a nationally-representative random sample of 400 REA schools; and (2) an in-depth study of a subset of 75 schools, purposively selected to represent full implementation of REA, in which we will collect data from classroom observation, teacher interviews and focus groups, as well as measures of student reading.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202-4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Jacqueline Montague at (202) 708-5359 or via her internet address

Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-7758 Filed 3-28-01; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 30, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory 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.

Dated: March 23, 2001.

John Tressler,

*Leader Regulatory Information Management,
Office of the Chief Information Officer.*

Office of the Undersecretary

Type of Review: New.

Title: Study of the SDFSCA Middle School Coordinator Initiative.

Frequency: Semi-Annually; Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden

Responses: 14,326 Burden Hours: 13,753.

Abstract: The national evaluation of the Middle School Coordinator Initiative (MSCI) will be conducted over the course of four years and will collect data from district prevention coordinators. Middle School Coordinators, district officials, school principals, prevention teachers, school support personnel, students, parents, and representatives of community organizations. Initiative implementation will be assessed in all funded districts. School-level program data and student outcome data will be collected from a sample of 30 MSCI districts as well as 30 comparison districts over four years. Case study data will be collected from 10 of those MSCI districts.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202-4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708-5359 or via her internet address

Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-7721 Filed 3-28-01; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 30, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory 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.

Dated: March 26, 2001.

John Tressler,

*Leader, Regulatory Information Management,
Office of the Chief Information Officer.*

Office of Educational Research and Improvement

Type of Review: Revision.

Title: Survey on Remedial Education in Higher Education Institutions: Fall 2000, Postsecondary Education Quick Information System (PEQIS).

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 1,350. Burden Hours: 675.

Abstract: This survey is submitted under the system clearance for Quick Response Information System (QRIS) which covers the Fast Response Survey System, also known as FRSS. It meets the conditions of that clearance: short, policy-relevant, one-time surveys that go to a small sample. The National Center for Education Statistics (NCES), U.S. Department of Education proposed to use the Postsecondary Education Quick Information System (PEQIS/FRSS) to conduct a survey on remedial education in higher education institutions. The purpose of the survey is to provide nationally representative data about the extent of remediation and the characteristics of remedial programs in higher education institutions. The survey will also provide a picture of change in remedial programs since 1995, when NCES conducted a PEQIS survey on remedial education in higher education institutions. Information from this survey will be of substantial interest to federal and state policymakers, including State Board of Education and legislatures, as they consider the appropriate role for remedial education in higher education institutions.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202-4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-7755 Filed 3-28-01; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION**Submission for OMB Review;
Comment Request**

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 30, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

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 Leader, Regulatory 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.

Dated: March 26, 2001.

John Tressler,

*Leader, Regulatory Information Management,
Office of the Chief Information Officer.*

Office of the Undersecretary

Type of Review: Reinstatement.

Title: GEPA 424 Data Collection on the Distribution of Federal Education Funds.

Frequency: Biennially.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour

Burden: Responses: 125.

Burden Hours: 6,488.

Abstract: This data collection fulfills a Congressional mandate to obtain information on the distribution of Federal education funds to school districts. Specifically, this data collection obtains information on subgrants and contracts made under state-administered programs as well as programs that provide funds directly to school districts.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202-4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708-5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-7757 Filed 3-28-01; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION**Office of Elementary and Secondary Education**

[CFDA No. 84.338]

Reading Excellence Program

ACTION: Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001.

PURPOSE OF PROGRAM: The Reading Excellence Program provides competitive grants to eligible State educational agencies to award competitive subgrants to local educational agencies to fund local reading improvement programs and tutorial assistance programs.

ELIGIBLE APPLICANTS: State educational agencies (SEAs) that were not funded in FY 1999 or FY 2000; Puerto Rico; the

Virgin Islands; Guam; American Samoa; and the Commonwealth of the Northern Mariana Islands.

APPLICATIONS AVAILABLE: March 28, 2001.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: May 7, 2001.

Note: An application for an award may be submitted by electronic mail (email), regular mail, or hand delivery.

Special instructions for applications submitted by email: Applications submitted by email should include an electronic return receipt and should be emailed to: grantspolicy@ed.gov.

Applications submitted by email may be submitted in one of the following formats: (1) Microsoft Word (Version Word 95 or Word 97) or (2) portable document format (PDF). The preferred version is Word 97; however, all versions must have text search capability. The electronic version will be the official file copy. The returned receipt and copy will be considered proof of receipt. All forms requiring original signatures (ED-424, Application for Federal Education Assistance; SF 424B, Assurances: Non-Construction Programs; ED 80-0013, Certifications Regarding Lobbying, Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements; ED 80-0014, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions; and Form LLL, Disclosure of Lobbying Activities) must be mailed to the Department by the deadline date, as set out above under the **DEADLINE FOR TRANSMITTAL** section. Please send a hard copy of your application in addition to the electronic copy to ensure that your application is formatted properly when printed.

Note: Some of the procedures in these instructions for transmitting applications differ from those in 34 CFR 75.102 (EDGAR). Under 5 U.S.C. 553, the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these exceptions to EDGAR make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: May 22, 2001.

Estimated Available Funds: \$316,495,390.

Estimated Range of Awards: \$500,000–\$60,000,000.

Estimated Average Size of Awards: \$21,125,693.

Estimated Number of Awards: 15.

Project Period: Up to 36 months.

Minimum Grant Award for SEAs: \$500,000 for SEAs, \$100,000 minimum for territories

Note: The Department is not bound by any estimates in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Single space (no more than six lines per vertical inch) all text in the application narrative.
- Use a font that is either 11-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letters of support or the two permissible appendices. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that:

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) 34 CFR and Part 299 and (c) The final priorities, application requirements and selection criteria published by the Department in the **Federal Register** on April 18, 2000. (65 FR 20881-20884). Upon publication of that document, the Department announced that the contents applied to the fiscal year 2000 competition and may be used for future competitions. The Department has chosen to apply those fiscal year 2000 final priorities, application requirements and selection criteria to the fiscal year 2001 competition.

FOR APPLICATIONS AND FURTHER

INFORMATION: Send an email message requesting an application to: reading_excellence@ed.gov.

You may also receive an application by downloading it from the reading excellence website: <http://www.ed.gov/offices/OESE/REA/index.html> or by contacting Nancy Rhett, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5C141, Washington, DC 20202-6200; Telephone: (202) 260-

8228. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting Katie Mincey, Director, Alternate Format Center, 330 C St. SW, Room 1000, Washington, DC 20202-4560; by calling (202) 260-9895 or 205-8113; or by emailing: katie_mincey@ed.gov.

Individuals with disabilities also may obtain a copy of the application package in an alternate format by contacting Ms. Mincey. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

<http://ocfo.ed.gov/fedreg.htm>
<http://www.ed.gov/news.html>

To use the PDF file you must have the Adobe Acrobat Reader Program, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

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

Program Authority: 20 U.S.C. 6661 et seq.

Dated: March 23, 2001.

Thomas M. Corwin,

Acting Deputy Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 01-7695 Filed 3-28-01; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Improved Recovery From Low-Permeability Formations

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE-PS26-01NT41121 entitled "Improved Recovery from Low-Permeability Formations". The objective of this solicitation is to demonstrate existing technologies and methodologies, or improve and demonstrate technologies with strong near-term commercialization potential, for increasing production from low-permeability "tight" gas formations. Demonstration of existing technologies should be relatively new to a basin or play.

An Information Package is available on the NETL's Homepage at <http://www.netl.doe.gov/business> for viewing and downloading. The Information Package contains general information regarding the proposed solicitation.

DATES: The solicitation will be available on the DOE/NETL's Internet address at <http://www.netl.doe.gov/business> on or about April 6, 2001. Prospective applicants are invited to E-mail any comments and/or questions associated with the information presented to Dona Sheehan via the Internet at sheehan@netl.doe.gov by COB on March 30, 2001 as a draft version of the solicitation will not be issued.

FOR FURTHER INFORMATION CONTACT:

Dona G. Sheehan, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921-107, Pittsburgh, PA 15236-0940, E-mail Address: sheehan@netl.doe.gov, Telephone Number: 412/386-5918.

SUPPLEMENTARY INFORMATION: As new discoveries from conventional supplies decline, future supplies of natural gas will have to come increasingly from low-permeability (tight) reservoirs. The National Petroleum Council's (NPC) 1992 natural gas study concluded that 232 Tcf of gas could be technically recoverable from low-permeability formations, and assuming that technology improvements continued, the NPC estimated that 349 Tcf of gas could be produced. In their most recent study (1999), the NPC states that deeper resources, resources in deeper water, and nonconventional resources will be the key to future supply. However, under current limitations in exploration and production technology, only a small portion of this vast resource is economic to develop.

A significant portion of natural gas resources in low-permeability formations are found in deep reservoirs and in large gross intervals (over thousands of feet) with many potential pay zones. In addition, most low-permeability wells are marginally productive because an extensive, well-

connected natural fracture network is the exception, rather than the rule. These factors indicate that improved recovery technology and reduced costs associated with completion will increase recovery from this vital resource.

Although the high ultimate recovery from wells associated with large natural fractures systems are the exception, these wells can produce 5–10 Bcf. However, these wells often have problems associated with high water production because the natural fracture system connects to overlying or underlying water zones or because they are associated with a fault(s) that provides a pathway for large water influx.

Applications will be accepted for research and development (R&D) in two major areas: (1) Improved completion technology; and (2) identification/remediation of high water production problems from basin-centered gas plays. Priority basins and plays in which the R&D shall be conducted will be identified from previous United States Geological Survey, NPC and NETL studies, but will more than likely include: Greater Green River, Wind River, Anadarko, Permian, San Juan, Piceance, Uinta, Arkla-E.Texas.

Increasing reserves per well with better completion technology or reducing the cost to complete a well will vastly improve the recovery from marginally economic wells. Applications for improved completions can include (but will not be limited to): Cementing, downhole separation/reinjection, stimulation techniques, e.g., comparable fluids, composite fracturing plugs/baffles, and zonal isolation, improved identification of most productive intervals, tubulars (CO₂/H₂S), multi-lateral horizontal wells, and multiple stimulations from a horizontal well. By identifying the sources and mechanisms of high water production, industry can avoid these areas or complete the reservoir in a way that reduces or eliminates excessive water production. Applications for identification of high water production problems from basin-centered gas plays can include: Regional hydrologic study, water sampling and analysis, new/improved geophysical well log processing, and improved downhole fluid identification.

DOE anticipates issuing financial assistance (Cooperative Agreement) awards. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards will be made. Multiple awards are anticipated.

Approximately \$2 million of DOE funding is planned over a 3 year period for this solicitation. National Laboratories may participate as team members; however, they may not act as the prime awardee and total funding to the Laboratory must not exceed 10% of the total project cost. If a project which includes National Laboratory participation is approved for funding, DOE intends to make an award to the applicant for its portion of the effort and to provide direct funding for the National Laboratories portion of the effort as a Field Work Proposal (FWP). DOE has determined that a minimum cost share of 20 percent of the total project cost is required for this solicitation. Details of the cost sharing requirement and the specific funding levels will be contained in the solicitation. The anticipated period of performance of the projects will range in duration from 24 months to 36 months.

Prospective applicants who would like to be notified as soon as the solicitation is available should register at <http://www.netl.doe.gov/business>. Provide your E-mail address and click on the "Oil & 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. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on March 7, 2001.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 01-7748 Filed 3-28-01; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Office of Science

Office of Science Financial Assistance Program Notice 01-24: Theoretical Research in Plasma and Fusion Science

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting new and renewal grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE)

announces its interest in receiving grant applications for theoretical research in magnetic fusion energy sciences. All individuals or groups planning to submit applications for new or renewal funding in FY 2002, should submit in response to this Notice.

The specific areas of interest are:

1. Magnetohydrodynamics and Stability,
2. Confinement and Transport,
3. Edge and Divertor Physics,
4. Plasma Heating and Non-inductive Current Drive,
5. Innovative Confinement Concepts,
6. Atomic and Molecular Processes in Plasmas.

More specific information on each area of interest is outlined in the general and program specific supplementary information section below. OFES may also solicit proposals from time to time under separate announcements of Initiatives to support coordinated, goal-directed community efforts. The Initiatives will be funded to achieve specific programmatic and scientific aims and will be subject to requirements that are different from those of this notice. Such grants, if funded, will be subject to periodic reviews of progress.

Due to the limited availability of funds, Principal Investigators with continuing grants may not submit a new application in the same area(s) of interest as their current grant(s). A Principal Investigator may submit only one application under each area of interest as listed above.

DATES: To permit timely consideration for awards in Fiscal Year 2002, applications submitted in response to this notice must be received no later than 4:30 p.m., June 14, 2001. Electronic submissions of formal applications will not be accepted.

Applicants are requested to submit a letter-of-intent by May 17, 2001, which includes the title of the application, the name of the Principal Investigator(s), the requested funding and a one-page abstract. These letters-of-intent will be used to organize and expedite review processes. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application submitted in a timely fashion. Electronic submissions of letters-of-intent are acceptable.

ADDRESSES: Formal applications referencing Program Notice 01-24, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC-64, 19901 Germantown Road, Germantown, Maryland 20874-1290, ATTN: Program Notice 01-24. The above address must also be used when submitting

applications by U.S. Postal Service Express or any other commercial overnight delivery service, or when hand-carried by the applicant.

Letters-of-intent referencing Program Notice 01-24, should be forwarded to: U.S. Department of Energy, Office of Science, Office of Fusion Energy Sciences, SC-50, 19901 Germantown Road, Germantown, Maryland 20874-1290, ATTN: John Sauter. Letters-of-intent can also be submitted via E-mail at the following E-mail address: john.sauter@science.doe.gov

FOR FURTHER INFORMATION CONTACT:

Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874-1290. Specific contacts for each area of interest, along with telephone numbers and Internet addresses, are listed below:

Magnetohydrodynamics and Stability: Rostom Dagazian, Research Division, SC-55, Telephone: (301) 903-4926, or by Internet address,

rostom.dagazian@science.doe.gov.

Confinement and Transport: Curt Bolton, Research Division, SC-55, Telephone: (301) 903-4914, or by Internet address,

curt.bolton@science.doe.gov.

Edge and Divertor Physics: Walter Sadowski, Research Division, SC-55, Telephone: (301) 903-4678, or by Internet address,

walt.sadowski@science.doe.gov.

Plasma Heating and Non-inductive Current Drive: Walter Sadowski, Research Division, SC-55, Telephone: (301) 903-4678, or by Internet address,

walt.sadowski@science.doe.gov.

Innovative Confinement Concepts: Steve Eckstrand, Research Division, SC-55, Telephone: (301) 903-5546, or by Internet address,

steve.eckstrand@science.doe.gov.

Atomic and Molecular Processes in Plasmas: Mike Crisp, Research Division, SC-55, Telephone: (301) 903-4883, or by Internet address,

michael.crisp@science.doe.gov.

SUPPLEMENTARY INFORMATION: General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science (SC) Financial Assistance Program and 10 CFR Part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: <http://www.science.doe.gov/production/grants/grants.html>. DOE is under no

obligation to pay for any costs associated with the preparation or submission of an application if an award is not made.

Program Funding

It is anticipated that about \$4,000,000 of Fiscal Year 2002, funding will be available to fund new work or renewals of existing work from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Since future year funding is not anticipated to increase, applications should propose constant effort in future years (allowing for inflation). Future year funding will depend upon suitable progress and the availability of funds. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. Applications requiring annual funding as low as \$50,000 are welcomed and encouraged.

Collaborative research projects involving more than one institution, as well as basic work in support of the Scientific Discovery through Advanced Computing initiative, are encouraged. Applications submitted from different institutions, which are directed at a common research activity, should clearly indicate they are part of a proposed collaboration and contain a brief description of the overall research project. However, each application must have a distinct scope of work and a qualified principal investigator, who is responsible for the research effort being performed at his or her institution. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are also encouraged, though no funds will be provided to these organizations under this Notice. Further information on preparation of collaborative applications may be accessed via the Internet at <http://www.science.doe.gov/production/grants/Colab.html>.

Since we expect that reviewers will be asked to review several applications, those applications from individual PIs or small groups (1-4 people) should be limited to a maximum of twenty (20) pages (including text and figures), while applications from theory groups should be limited to thirty (30) pages. A few selected publications may be included in an Appendix as background information. In addition, please limit biographical and publication information for the principal investigator and senior personnel to no

more than one page each. A minimum of a signed original and seven copies of each application must be submitted as stated in the Application Guide.

However, due to anticipated number of reviewers, each applicant is requested to submit twelve (12) copies of his/her application. In addition, each principal investigator should provide an e-mail address.

In addition to the information required by 10 CFR part 605 each application should contain the following items: (1) A succinct statement of the goal of the research, (2) a detailed research plan, (3) the specific results expected at the end of the project period, (4) an analysis of the adequacy of the budget, and (5) a discussion of the impact of the proposed research on other fields of science.

Merit Review

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605 (www.science.doe.gov/production/grants/605index.html):

1. Scientific and/or technical merit of the project,
2. Appropriateness of the proposed method or approach,
3. Competency of the applicant's personnel and adequacy of the proposed resources,
4. Reasonableness and appropriateness of the proposed budget.

Proposals from theory groups will also be rated on the synergy of the group and the management of the group. With respect to synergy, the criteria are: (1) clear evidence of collaborative work and (2) the extent to which the group addresses difficult problems requiring a team effort. With respect to management the criteria are: (1) clear evidence of scientific leadership and (2) the extent to which the management evaluates the relevance and scientific impact of the group's work.

The Office of Fusion Energy Sciences shall also consider, as part of the evaluation, other available advice or information as well as program policy factors such as ensuring an appropriate balance among the program areas and within the program areas, ensuring support for computational teams, ensuring support for experiments, and quality of previous performance. Selection of applications/proposals for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed research to the Office of Fusion Energy Sciences' mission, and funding availability.

Program Specific Supplementary Information*Magnetohydrodynamics and Stability*

Grant applications are solicited for new research or continuation of past efforts in MHD theory in support of work on magnetically confined fusion plasmas. Current work includes advanced tokamak (AT), innovative confinement concepts (ICC), burning plasma physics and steady state high beta plasma issues. Additional work is particularly needed in the areas of nonlinear MHD, neoclassical tearing modes, extended MHD (including flows and various non-ideal MHD effects), and resistive wall modes. Both analytical and computational approaches will be considered. Finally, basic work in support of the Scientific Discovery through Advanced Computing initiative that involves the development of large-scale codes to explore non-linear MHD will also be considered.

Confinement and Transport:

Applications will be considered in the area of confinement and transport in plasmas. This area covers plasma turbulence, energy, particle, momentum and radiation transport in the core of the plasma. The work of interest includes work in support of tokamak as well as non-tokamak innovative concepts. Topics of interest include among others, electromagnetic effects on turbulence, shear flow generation and its impacts on transport, and understanding of the role of collisions in turbulent plasmas. Both analytical and computational work is of interest. Basic work in support of the Scientific Discovery through Advanced Computing initiative that involves the development of large-scale codes to explore turbulence will also be considered.

Edge and Divertor Physics

Applications will be considered in the area of edge physics theory. This area covers plasma turbulence, energy, particle and radiation transport in the edge of the plasma and in the neighborhood of the separatrix. The work of interest includes neutrals transport in divertors and plasma edge region, atomic physics processes affecting temperature, radiation and flame front propagation in divertors. Both analytical and numerical models are of interest. Techniques and algorithms for modeling fast particles in the edge region as well as adaptive grid methods and their application to modeling of plasma turbulence and transport in the edge region will be considered.

Plasma Heating and Non-Inductive Current Drive

Applications will be considered in the area of RF physics in plasmas. This includes RF propagation, heating and current drive. Of interest are both analytical and numerical treatments of interaction of plasmas with radio frequency waves. These include electron cyclotron, ion cyclotron, lower hybrid and Bernstein waves. Topics of interest include, among others, physical processes involved in conversion layers, power deposition for temperature profile control and interaction of waves of different frequencies to produce specific effects on the plasma. Applications for modeling radio frequency launchers and their coupling to the edge plasma will also be considered.

Innovative Confinement Concepts

Grant applications are desired for theoretical and computational research on innovative confinement concepts that have the possibility of leading to improved magnetic fusion systems. In 1996, the U.S. fusion program began supporting a broadening array of innovative confinement concepts (ICC). Increased theoretical and computational research is needed to make optimal use of these experiments as they come into operation and to support further development of these concepts. Additional work is needed particularly on macroscopic stability and turbulence/transport in innovative confinement concepts.

Atomic and Molecular Processes in Plasmas

Grant applications will be considered for theoretical research relevant to the description of atomic processes in plasmas. In addition to overall scientific merit, emphasis will be given to work that promises to aid the understanding of the basic atomic processes that are important for modeling of magnetically confined plasmas and high-density plasmas found in inertial confinement fusion experiments. The program has found understanding electron-atom and electron-ion collisions and the radiation emitted by atoms and ions to be of importance for the modeling of plasma behavior in experiments. Some current areas where atomic processes are considered to be important include the effects of transport, the effects of impurities and the understanding of diagnostics.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on March 22, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01-7749 Filed 3-28-01; 8:45 am]

BILLING CODE 6450-01-U

DEPARTMENT OF ENERGY**Environmental Management Site-Specific Advisory Board, Savannah River**

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, April 23, 2001; 1 p.m.–9 p.m.; Tuesday, April 24, 2001; 8:30 a.m.–4 p.m.

ADDRESSES: North Augusta Community Center, 101 Brookside Avenue, North Augusta, South Carolina 29841.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Science Technology & Management Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 725-5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, April 23, 2001

1:00 p.m.–5:00 p.m. Training Session—Basics of Radiation, Risk, Waste Definitions, and Environmental Laws and Regulations
5:00 p.m.–6:30 p.m. Dinner Break
6:30 p.m.–7:00 p.m. Public comment session
7:00 p.m.–9:00 p.m. Committee meetings
9:00 p.m. Adjourn

Tuesday, April 24, 2001

8:30 a.m.–9:15 a.m. Approval of minutes; Agency updates; Public Comment Session; Facilitator Update
9:15 a.m.–11:15 a.m. Waste Management Committee Report
12:00 a.m.–1:00 p.m. Lunch Break
11:15 a.m.–12:00 p.m. Strategic and Long-Term Issues, Public Comments
1:00 p.m.–2:00 p.m. Strategic and Long-Term Issues Committee

2:00 p.m.–3:00 p.m. Nuclear Materials Committee Report
 3:00 p.m.–4:00 p.m. Environmental Remediation Committee
 4:00 p.m.–4:30 p.m. EM SSAB Budget Letter and Chair Trip Report, Administrative Committee Report, Public Comments
 4:30 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, April 23, 2001.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Gerri Fleming, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC, 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on March 26, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–7746 Filed 3–28–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee; Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that

public notice of the meetings be announced in the **Federal Register**.

DATES: Monday April 30, 2001, 10:00 am to 5:30 pm and Tuesday, May 1, 2001, 9:00 am to 12:30 pm.

ADDRESSES: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, S.W., Washington DC 20585, Telephone Number 202–586–0136, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy Research Program.

Tentative Agenda

Monday, April 30, 2001

Welcome remarks
 Status of Nuclear Energy's FY 2002 Budget
 Report of NERAC Subcommittees and Panels
 Discussion of Goals for DOE's Nuclear Energy programs

Tuesday, May 1, 2001

Report of Subcommittee on Generation IV Technology Planning
 Report of Operating Plant Subcommittee
 Public comment period.

Public Participation

The day and a-half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading

Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on March 26, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–7747 Filed 3–28–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–56–000]

Niagara Mohawk Holdings, Inc. and National Grid USA; Notice of Filing

March 23, 2001.

Take notice that on February 1, 2001, as part of their merger application in Docket No. EC01–63–000, Niagara Mohawk Holdings, Inc. and National Grid USA (Applicants) also seek Commission authorization for various accounting matters related to the merger. These accounting authorizations are the subject of the request for declaratory order that is assigned Docket No. EL01–56–000. Specifically, Applicants seek Commission authorization to pay as dividends from paid-in capital accounts, preexisting retained earnings that will have been restated as paid-in capital as a result of accounting conventions associated with the merger. Also, Applicants seek authorization to calculate earnings available for dividends by adding back the related amortization of the acquisition premium and transaction costs as well as non-cash charges to income resulting from accounting changes or charges to income resulting from significant unanticipated events. Finally, Applicants request authorization for Niagara Mohawk Power Corporation to transfer revenues from major transactions (such as asset sales, divestiture, or securitization) to its parent.

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 April 2, 2001. 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).

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

David P. Boergers,

Secretary.

[FR Doc. 01-7715 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01-108-000]

Northern Natural Gas Company; Notice of Application

March 23, 2001.

Take notice that on March 15, 2001, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in docket No. CP01-108-000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's Regulations for permission and approval to abandon and remove approximately six hundred fifty (650) feet of pipeline, located in Seward County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at <http://www.ferc.fed.us/online/rims.htm>. (Call 202-208-2222 for assistance.)

Specifically, Northern requests expedited approval for the proposed abandonment by removal of approximately 500 feet of its 20-inch J-line and 150 feet of a 16-inch tie-over line to eliminate an unnecessary road crossing located in Seward County, Kansas. Northern states that this portion of the J-line crosses under a gravel county road (RS 1983) where it has been discovered that the pipeline cover has been reduced over the years by erosion and road grading. Northern asserts that the abandonment of these facilities will not result in the abandonment of service to any of Northern's existing shippers,

nor will the proposed abandonment adversely effect capacity.

Any questions regarding this application should be directed to Keith L. Petersen, Director, Certificates and Reporting, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398-7421 or Bret Fritch, Senior Regulatory Analyst, at (402) 398-7140.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before April 2, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding.

Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed

documents on all other parties.

However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Also, comments protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01-7713 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01-58-000]

Powerex Corp., Complainant, v. United States Department of Energy, Western Area Power Administration, Rocky Mountain Region/Western Area Colorado Missouri, Respondent; Notice of Complaint

March 23, 2001.

Take notice that on March 22, 2001, Powerex Corp. (Powerex) tendered for filing a Complaint against U.S. Department of Energy—Western Area Power Administration—Rocky Mountain Region/Western Area Colorado Missouri (WACM).

In its Complaint, Powerex alleges that WACM has violated Section 37.6(e)(1) of the Commission's OASIS regulations and the mandatory business practice standards of Order No. 638 by displacing Powerex's unconditional six-month reservation of short-term firm transmission service over the Sidney Tie, which had been confirmed by WACM for service to commence April 1, 2001. Powerex alleges that WACM's actions also contravene the provisions of its Open Access Transmission Tariff and the Standards of Conduct approved by the Commission for WACM. Powerex requests the Commission to act on a

fast-track basis and direct WACM to reinstate Powerex's reservation.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 11, 2001. 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 in the Public Reference Room. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222) for assistance. Answers to the complaint shall also be due on or before April 11, 2001. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01-7718 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01-57-000]

Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc., Complainants, v. California Independent System Operator Corporation, Respondent; Notice of Complaint

March 23, 2001.

Take notice that on March 21, 2001, Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (Reliant Energy) submitted a complaint against the California Independent System Operator Corporation (CAISO) alleging that the CAISO is abusing the emergency provisions of its Tariff, wrongfully preventing maintenance by Reliant Energy on its generating units, and that the CAISO's threatened exercise of export curtailment authority is unjust and unreasonable.

Reliant Energy alleges that the CAISO's actions violate the CAISO's

Tariff, the Federal Power Act, the Commerce Clause, and the Commission's own policies and orders. Reliant energy further alleges that the CAISO's actions are causing injury to Reliant Energy, to other market participants in the West, and to energy consumers in the West, and are threatening the stability and reliability of the entire Western grid. Accordingly, Reliant Energy requests that the Commission issue an Order clarifying that the CAISO cannot use emergency powers under its Tariff to shift the economic burdens of California's economic policies to neighboring electricity systems, and to declaring unjust and unreasonable curtailment by the CAISO of firm exports to other control areas.

Copies of this filing were served upon the CAISO and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 10, 2001. 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 in the Public Reference Room. This filing may also be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Answers to the complaint shall also be due on or before April 10, 2001. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01-7719 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01-107-000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

March 23, 2001.

Take notice that on March 9, 2001, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas, 77251, filed in docket No. CP01-107-000 an application pursuant to Sections 7(b) of the National Gas Act, as amended, and Subpart F of the Regulations of the Federal Energy Regulatory Commission's (Commission) thereunder, for permission and approval to abandon the natural gas storage service provided to Delmarva Power & Light Company (Delmarva) under Transco's Rate Schedule S-2, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Transco states that it does not propose to abandon any facility pursuant to the authority Transco seeks herein. Transco asserts that no service to any of its customers will be affected by the abandonment authorization requested herein. Further, Transco asserts that by letter dated February 22, 2000, Delmarva agreed to terminate the storage service agreement effective April 15, 2001.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 13, 2001, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any questions regarding this application for Transco should be directed to Mr. Randall R. Conklin, Vice President and General Counsel, P.O. Box 1396, Houston, Texas 77251-1396 at (713) 215-2000.

Comments, protests, and interventions may be filed electronically

via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

David P. Boergers,
Secretary.

[FR Doc. 01-7714 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File an Application for a New License

March 23, 2001.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2692.

c. *Date Filed:* August 7, 2000.

d. *Submitted By:* Nantahala Power and Light—current licensee.

e. *Name of Project:* Nantahala Hydroelectric Project.

f. *Location:* On the Nantahala River, Dicks Creek, and White Oak Creek in Clay and Macon Counties, North Carolina. The project does not utilize federal lands.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* John C. Wishon, Nantahala Power and Light, 301 NP&L Loop, Franklin, NC 28734 (828) 369-4604.

j. *FERC Contact:* Steve Kartalia, steve.kartalia@ferc.fed.us, (202) 219-2942.

j. *Effective date of current license:* May 1, 1965.

k. *Expiration date of current license:* February 28, 2006.

l. *Description of the Project:* The project consists of the following three developments and diversions:

The Nantahala Development consists of the following existing facilities: (1) a 1,042-foot-long, 250-foot-high earth and rockfill dam; (2) a spillway having four Taintor gates and two fuse plugs; (3) a 1,605-acre reservoir at a normal water surface elevation of 3,012.16 feet USC & GS datum; (4) a 5.6-mile-long conduit including tunnels, steel pipes and penstocks and surge tank; (5) a powerhouse containing a single generating unit with an installed capacity of 43,200 kW, and (6) other appurtenances.

The Dicks and Creek Diversion consists of the following existing facilities: (1) a 109-foot-long, 16-foot-high concrete gravity dam with a spillway topped with 3-foot-high flashboards; (2) the Diamond Valley concrete gravity dam diverting water into Dicks Creek through a 320-foot-long pipeline; and (3) a 3,870-foot-long, 24-inch-diameter pipeline extending from the Dicks Creek Diversion Dam to a junction with the Nantahala Development conduit.

The White Oak Diversion consists of the following existing facilities: (1) a 115-foot-long, 16-foot-long concrete gravity dam with a spillway topped with 7-foot-high flashboards; and (2) a 2.2-mile-long pipeline extending from the White Oak Diversion Dam to a junction with the Nantahala Development conduit.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2004.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01-7716 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Environmental Assessment Accepted for Filing, Soliciting Motions To Intervene and Protests, and Soliciting Comments, Final Terms and Conditions, Recommendations, and Prescriptions

March 23, 2001.

Take notice that the following hydroelectric application and applicant prepared environmental assessment (APEA) has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P-271-062.

c. *Date Filed:* December 18, 2000.

d. *Applicant:* Entergy Arkansas, Inc.

e. *Name of Project:* Carpenter-Rommel Hydroelectric Project.

f. *Location:* On the Ouachita River in Garland and Hot Springs Counties, Arkansas, immediately downstream from the U.S. Army Corps of Engineers Blakely Mountain Dam. The Carpenter-Rommel Hydroelectric Project includes the Carpenter development at river mile 461 and the Rommel development at river mile 450. There are 34.3 acres of federally owned lands within the project boundary around Lake Hamilton which are under the supervision of the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. W. Henry Jones, Relicensing Project Manager, Entergy Fossil Operations, P.O. Box 218, Jones Mills, AR 72105, (501) 844-2148 or email: wjones7@Entergy.com; Mr. Hugh T. McDonald, President, Entergy Arkansas, Inc., 425 West Capitol Avenue, Little Rock, AR 72201, (501) 377-4372.

i. *FERC Contact:* Ed Lee, (202) 219-2809 or E-Mail ed.lee@ferc.fed.us.

j. *Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person that is on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The license application and the APEA have been accepted for filing and are now ready for environmental analysis. No additional information or studies are needed to prepare the Commission's environmental assessment. Comments, as indicated above, are now being requested from interested parties. The applicant will have 45 days following the end of this comment period to respond to any comments filed within the comment period.

l. *Description of Project:* The Carpenter and Rammel developments are comprised of the following physical facilities.

(A) The Carpenter development, located furthest upstream, consists of the following principal features: (i) a concrete gravity structure approximately 108 feet high (measured from the top of the Taintor gates to the original riverbed) and approximately 1,165 feet long, including a 453-foot-long spillway section, 354 feet of which is gated by 10 Taintor gates, 28 feet high by 34 feet wide and two abutment sections; (ii) a reservoir, Lake Hamilton, approximately 18.25 miles long with approximately 198 miles of shoreline, approximately 6,897 acres of surface area, at elevation (El.) 399.9 mean sea level (msl), and approximately 6,800 acre-feet of usable storage capacity; (iii) an integral intake and powerhouse structure approximately 278 feet long by 135 feet high, with two generating units whose nameplate ratings total approximately 56,000 kW; (iv) two vertical Francis type turbines, each with a rated output of 39,500 Hp at a discharge capacity of 4,800 cubic feet per second (cfs) at 89 feet of head; (v) 13.8-kilovolt (kV) generator leads; (vi) two 115-kV transmission lines from the Carpenter powerhouse transformer bank to the 115-kV switchyard; and (vii) appurtenant facilities to connect to the 115-kV switchyard.

(B) The Rammel development, located approximately 11.78 miles downstream of the Carpenter development, consists of the following principal features: (i) a modified Ambursen-type slab and buttress dam approximately 60 feet high (measured from the top of the Taintor

gates to the original riverbed) and approximately 900 feet long, including a 360-foot-long spillway section, 330 feet of which is gated by 12 Taintor gates, 15 feet high by 27.5 feet wide, and two abutment sections; (ii) a reservoir, Lake Catherine, approximately 11.78 miles long with approximately 56 miles of shoreline, approximately 1,642 acres of surface area, at El. 304 msl, and approximately 2,400 acre-feet of usable storage capacity; (iii) an integral intake and powerhouse structure approximately 105 feet long by 48.4 feet high, with three generating units whose nameplate ratings total approximately 9,300 kW; (iv) three vertical Francis type turbines each with nameplate ratings of 4,500 Hp at a discharge capacity of 1,100 cfs at a head of 42 feet; (v) 4.16-kV generator leads; (vi) two banks of 4/34.5-kV transformers that raise the generator voltage for transmission over a distance of approximately 565 feet to a substation and then to the electrical grid; and (vii) a single span of 115-kV transmission line extends northeasterly from the substation for approximately 72 feet to a dead-end structure where it connects into a portion of the 115-kV transmission system.

The project has a total nameplate installed capacity of 65.3 MW and a average annual generation of approximately 188 GWh.

m. 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 2-A, Washington, D.C. 20426, or by calling (202) 208-1371. The application may be viewed on <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.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those persons may become parties to the proceeding who file motions to intervene in accordance with the Commission's Rules. Comments, protests, and motions to intervene must be received at the Commission on or before the close of the comment date.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning

the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

These deadlines may be extended by the Commission, but only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST" "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant, "Entergy Arkansas, Inc." and the project number of the application, "Project No. 271," to which the filing pertains; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01-7717 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. EL01-47-000]****Removing Obstacles To Increased Electric Generation and Natural Gas Supply in the Western United States; Notice of Intent To Convene a Conference To Consult With State Commissioners and Other State Representatives From Western States¹**

March 23, 2001.

Take notice that the Federal Energy Regulatory Commission (Commission) will meet with state commissioners and other state representatives from Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming for the purpose of discussing price volatility in the West, as well as other FERC-related issues recently identified by the Governors of these states.² The Commission invites two participants from each state listed above, and asks that at least one of the participants from each state be from the state's utility regulatory commission.

The conference is scheduled for Tuesday, April 10, 2001 in Boise, Idaho, beginning at 8:00 a.m. All interested parties are permitted to attend, although seating will be limited. An additional notice will issue at a later time providing information about participants, content, and logistics. For additional information, please contact Saida Shaalan at (202) 208-0278.

David P. Boergers,*Secretary.*

[FR Doc. 01-7750 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-M**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RM98-1-000]****Regulations Governing Off-the-Record Communications; Public Notice**

March 23, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt

¹ This notice changes the date of the conference to April 10, 2001 and replaces the previous notice issued on March 16, 2001.

² See Western Governors' Association, "Suggested Action Plan to Meet the Western Electricity Crisis and Help Build the Foundation for a National Energy Policy" (March 2001). A copy of this document was filed in this docket. See also Western Governors' Association website at <http://www.westgov.org/wieb/power/index.htm>.

of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

Exempt

1. CP00-6-000, 3-21-01, Jeff Shenot
2. Project No. 11243, 3-9-01, Jon Miyashiro
3. Project No. 11243, 3-9-01, David Ryland
4. Project No. 2401-007, 3-2-01, Susan Pengilly Neitzel
5. Project No. 10865 and 11495, 3-13-01, Carol Gleichman
6. Project No. 1962, 3-13-01, Nicholas Jayjack

7. Project Nos. 10865 and 11495, 3-15-01, Carol Gleichman
8. CP00-6-000, 3-20-01, Ken Huntington
9. Project No. 2661-000, 3-20-01, Daniel Abeyta

David P. Boergers,*Secretary.*

[FR Doc. 01-7712 Filed 3-28-01; 8:45 am]

BILLING CODE 6717-01-M**DEPARTMENT OF ENERGY****Western Area Power Administration****Notice of Floodplain/Wetlands Involvement for the Charlie Creek-Williston Transmission Line Fiber Optic Overhead Ground Wire Installation Project**

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: The Western Area Power Administration (Western) intends to add new fiber optic communication capabilities to the existing Charlie Creek-Williston 115-kilovolt (kV) Transmission Line in west central North Dakota. This will require rebuilding many of the existing wood pole H-frame structures to carry the additional weight. The line crosses two major drainages in the area—the Little Missouri River on lands managed by the National Park Service, and the Missouri River south of Williston, North Dakota.

Following the U.S. Department of Energy (DOE) Floodplain/Wetland Review Requirements (10 CFR part 1022), Western will prepare a floodplain assessment and will perform the proposed actions in ways that avoid or minimize potential harm to or within the affected floodplain. The floodplain assessment will be included in an Environmental Assessment being prepared by Western, under the provisions of the DOE National Environmental Policy Act Implementing Procedures (10 CFR part 1021).

DATES: Comments on the proposed floodplain action are due to the address below by May 1, 2001.

ADDRESSES: Comments should be addressed to Mr. Theodore Anderson, Environmental Specialist, Upper Great Plains Region, Western Area Power Administration, P.O. Box 35800, Billings, Montana 59107-5800, e-mail tanderson@wapa.gov.

FOR FURTHER INFORMATION CONTACT: For further information on DOE Floodplain/Wetlands Environmental Review

Requirements, contact: Ms. Carol M. Borgstrom, Director, NEPA Policy and Compliance, EH-42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: The Charlie Creek-Williston 115-kilovolt (kV) Transmission Line is approximately 72 miles long, approximately 50 years old, and has an existing 100-foot right-of-way. Fiber optic communications will be added by installing a new overhead ground wire with a fiber optic cable as a replacement for one of the existing overhead ground wires. The other existing overhead ground wire will be replaced with a new, conventional ground wire at the same time. To carry the added weight of the new cable, a number of transmission structure upgrades are required. A total of 514 wood poles on the existing H-frame structures will be replaced with poles that are 5 feet taller. This will prevent the heavier cable from sagging into the conductor wire. As part of the transmission line rebuild, all insulators on the line will be replaced.

Most of the line is on private land (grazing and cultivated lands), but it also crosses lands managed by the U.S. Forest Service (Little Missouri National Grasslands) and the National Park Service (Theodore Roosevelt National Park North Unit). The line crosses McKenzie and Williams counties, and will pass near Watford City, North Dakota.

The action will entail removing existing poles and reinstalling new, taller poles. Once the poles are replaced, the existing overhead ground wire will be removed and the new fiber and conventional cables installed. Along the route, splice points will also be established where the lengths of the fiber optic cable will be fused together. The splice points will be used for pulling the cable through the structures. Most ground disturbances will occur where the structures are replaced, and at the splicing and pulling sites. Access roads for the line exist and may need to be improved. There may be a need for additional access trails or roads to some structure locations. Western employees will perform this work over 3 years.

Dated: March 20, 2001

Michael S. HacsKaylo,

Administrator.

[FR Doc. 01-7745 Filed 3-28-01; 8:45 am]

BILLING CODE 6450-01-P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Preliminary Views on Eliminating the Category "Required Supplementary Stewardship Information"; Notice of Public Hearing and Request for Written Comments

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of public hearing on April 27, 2001.

Public Hearing: April 27, 2001 (extension to an additional date or dates may be announced at the hearing), beginning at 9 a.m., Room 6N30, U.S. General Accounting Office, 441 G Street, NW., Washington, DC 20548.

The Deadline for Written Notice of Intent to Speak on April 27 is April 13, 2001.

Basis for Hearing: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Friday, April 27, 2001 beginning at 9 a.m. in room 6N30 of the General Accounting Office, 441 G St., NW., Washington, DC. The purpose of the meeting is to obtain information from interested individuals, organizations, and groups about the issues discussed in Preliminary Views on Eliminating the Category "Required Supplementary Stewardship Information." Copies of this document were mailed in December to those on FASAB's mailing list. Additional copies are available on request from FASAB or on the World Wide Web at <http://www.financenet.gov/financenet/fed/fasab/exposure.htm>. Members of the Board and its staff will conduct the hearing. Interested parties are encouraged to participate.

Public Hearing Oral Presentation Requirements

Individuals, organizations, or groups that want to make an oral presentation at the public hearing should provide, by April 13, 2001, a written notification of intent and written comments addressing the issues in Preliminary Views. The notification and written submission should be addressed to Wendy Comes, Executive Director, at comesw@gao.gov or at: Federal Accounting Standards Advisory board, 441 G Street NW., Mailstop 6K17V, Washington, DC 20548.

The hearing may be canceled if insufficient interest is expressed by the deadline. The Board intends to schedule all who want to make oral presentations

and will notify them of the time of the presentation. The time allotted each individual, organization, or group will be limited to about 30 minutes—10 minutes to summarize or elaborate on the written submissions, or to comment on the written submissions or presentations of others; and 20 minutes to respond to questions from those conducting the hearings. Please contact FASAB by e-mail as shown above or by calling 202-512-7350 at least 24 hours before the meeting for information on building security and requirements for admission.

FOR FURTHER INFORMATION CONTACT:

Wendy M. Comes, Executive Director, 441 G Street, NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512-7357. Fax: (202) 512-7366.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. Section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: March 23, 2001.

Wendy M. Comes,

Executive Director.

[FR Doc. 01-7761 Filed 3-28-01; 8:45 am]

BILLING CODE 1610-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:10 p.m. on Monday, March 26, 2001, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director John M. Reich, seconded by Ms. Carolyn Buck, acting in the place and stead of Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Chairman Donna Tanoue, and Director John D. Hawke, Jr. (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than March 15, 2001, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2); (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b)(c)(2),

(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: March 26, 2001.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 01–7866 Filed 3–27–01; 9:33 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011647–002.

Title: AMPAC/Lauritzen Space Charter Agreement.

Parties: Mexican Line Limited
LauritzenCool AB
Maruba S.C.A.

Hamburg-Südamerikanische

Dampfschiffahrts-Gesellschaft KG

Synopsis: The agreement amendment adjusts allocations for the movement of empty containers by Lauritzen, deletes superfluous dates, and clarifies vessel strings under the agreement.

Agreement No.: 011755.

Title: APL/CSAV Slot Transfer Agreement.

Parties: American President Lines, Ltd.
APL Co. PTE Ltd.

Compania Sud Americana de Vapores S.A.

Synopsis: The proposed agreement authorizes APL to sell slots to CSAV in the trades between U.S. Gulf Coast ports and ports in the Dominican Republic, Mexico, Costa Rica, Panama, and the Caribbean coast of Colombia and Venezuela. The parties request expedited review.

Agreement No.: 011756.

Title: New World Alliance/Evergreen Slot Agreement.

Parties: American President Lines, Ltd.
APL Co. PTE Ltd.
Evergreen Marine Corp. (Taiwan)
LTD.

Hyundai Merchant Marine Co. Ltd.

Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed agreement authorizes the exchange or sale of space among the parties in the trades between U.S. East and West Coast ports and ports in the Far East and Central America. The parties request expedited review.

Agreement No.: 201117.

Title: Philadelphia/Astro/Holt/Holt Hauling/Pasha Settlement Agreement.
Parties: Philadelphia Regional Port Authority

Astro Holdings, Inc.

Holt Cargo Systems, Inc.

Holt Hauling and Warehousing Systems, Inc.

Pasha Auto Warehousing, Inc.

Synopsis: The agreement, among other things, provides for scheduling and coordinating vessel operations for berthing vessels at Pier 96 South and the Packer Avenue Marine Terminal. The agreement is part of a proposed settlement among the parties in connection with a complaint proceeding before the Commission, Holt Cargo Systems, Inc., et al. v. Delaware River Port Authority, et al., FMC Docket No. 96–13.

Dated: March 23, 2001.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–7689 Filed 3–28–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

American Classic Voyages Company
1380 Port of New Orleans Place
New Orleans, LA 70130–1890

Vessels: CAPE COD LIGHT and CAPE MAY LIGHT

Carnival Corporation (d/b/a Carnival and Carnival Cruise Lines)

3655 N.W. 87th Avenue

Miami, FL 33178–2193

Vessels: CARNIVAL CONQUEST, CARNIVAL DESTINY, CARNIVAL LEGEND, CARNIVAL PRIDE,

CARNIVAL SPIRIT, CARNIVAL TRIUMPH, CARNIVAL VICTORY, CELEBRATION, ECSTASY, ELATION, FANTASY, FASCINATION, HOLIDAY, IMAGINATION, INSPIRATION, JUBILEE, PARADISE, SENSATION and TROPICALE

Celebrity Cruises, Inc. (d/b/a Celebrity Cruises)

1050 Caribbean Way

Miami, FL 33132

Vessels: INFINITY and SUMMIT

Clipper Cruise Line, Inc.

7711 Bonhomme Avenue

St. Louis, MO 63105–1961

Vessel: CLIPPER ODYSSEY

Costa Cruise Lines N.V. and Costa

Crociere S.p.A.

World Trade Center

80 S.W. 8th Street

Miami, FL 33130–3097

Vessels: COSTA ALLEGRA, COSTA CLASSICA, COSTA MARINA, COSTA RIVIERA, COSTA ROMANTICA and COSTA VICTORIA

Hapag-Lloyd Kreuzfahrten GmbH

Ballindamm 25

D–20079 Hamburg Germany

Vessel: BREMEN

Holland America Line-Westours Inc. (d/b/a Holland America Line), Holland America Line N.V. and HAL Antillen N.V.

300 Elliott Avenue West

Seattle, WA 98119

Vessel: AMSTERDAM

Norwegian Cruise Line Limited (d/b/a

Norwegian Cruise Line)

7665 Corporate Center Drive

Miami, FL 33126

Vessels: NORWEGIAN LEO, NORWEGIAN STAR and NORWEGIAN SUN

P & O Princess Cruises International Limited and Princess Cruise Lines, Ltd.

Richmond House, Terminus Terrace
Southampton S014 3PN

United Kingdom

Vessel: ARCADIA, AURORA, ORIANA and VICTORIA

Princess Cruise Lines, Ltd., Princess Cruises Ltd. and P & O Princess Cruises plc

24305 Town Center Drive

Santa Clarita, CA 91355

Vessels: CROWN PRINCESS, DAWN PRINCESS, GOLDEN PRINCESS, GRAND PRINCESS, OCEAN PRINCESS, REGAL PRINCESS, SEA PRINCESS, STAR PRINCESS and SUN PRINCESS

Princess Cruise Lines, Ltd., Princess Cruises Ltd., P & O Lines (Shipowners) Ltd. and P & O Princess Cruises plc

24305 Town Center Drive
Santa Clarita, CA 91355
Vessels: PACIFIC PRINCESS and
ROYAL PRINCESS
Royal Caribbean Cruises Ltd. (d/b/a
Royal Caribbean International)
1050 Caribbean Way
Miami, FL 33132-2096
Vessel: RADIANCE OF THE SEAS
Royal Olympic Cruises Ltd.
805 3rd Avenue, 18th Floor
New York, NY 10022
Vessel: OLYMPIC VOYAGER
Silversea Cruises, Ltd. and Silversea
New Build One Ltd.
110 East Broward Blvd.
Fort Lauderdale, FL 33301
Vessel: SILVER SHADOW
Dated: March 23, 2001.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 01-7685 Filed 3-28-01; 8:45 am]
BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

American Classic Voyages Company,
Project America, Inc. (d/b/a United
States Lines) and Oceanic Ship Co.
1380 Port of New Orleans Place
New Orleans, LA 70130-1890
Vessel: PATRIOT

Carnival Corporation
3655 N.W. 87th Avenue
Miami, FL 33178-2193
Vessels: CARNIVAL SPIRIT,
CARNIVAL TRIUMPH and
CARNIVAL VICTORY

Celebrity Cruises, Inc. and Infinity Inc.
1050 Caribbean Way
Miami, FL 33132
Vessel: INFINITY

Clipper Cruise Line, Inc., New World
Ship Management Company, LLC
and Clipper Odyssey, Ltd.
7711 Bonhomme Avenue
St. Louis, MO 63105-1961
Vessel: CLIPPER ODYSSEY
Costa Cruise Lines N.V. and Costa
Crociere S.p.A.

World Trade Center
80 S.W. 8th Street
Miami, FL 33130-3097
Vessels: COSTA ALLEGRA, COSTA
ATLANTICA, COSTA CLASSICA,
COSTA MARINA, COSTA
RIVIERA, COSTA ROMANTICA
and COSTA VICTORIA
Delphin Seereisen GmbH, Marine Trade
Consulting GmbH and Delphin
Maritime Ltd.
Postfach 100407
Offenbach am Main 63004
Germany
Vessel: DELPHIN
Discovery Sun Cruises, Inc., Discovery
Sun Partnership, Discovery Sun
Tours, Ltd. and International
Shipping Partners, Inc.
1775 N.W. 70th Avenue
Miami, FL 33126-1341
Vessel: DISCOVERY SUN

Hapag-Lloyd Kreuzfahrten GmbH,
Hapag-Lloyd (Bahamas) Ltd.,
Hapag-Lloyd Container Linie GmbH
and Columbia Shipmanagement
Ltd.

Ballindamm 25 D-20079 Hamburg
Germany
Vessel: BREMEN

Holland America Line-Westours, Inc.,
Holland America Line N.V. and
HAL Antillen N.V.
300 Elliott Avenue West
Seattle, WA 98119
Vessel: AMSTERDAM

P & O Princess Cruises International
Limited, Princess Cruise Lines, Ltd.
and P & O Princess Cruises plc
Richmond House, Terminus Terrace
Southampton S014 3PN
United Kingdom
Vessel: ARCADIA

P & O Princess Cruises International
Limited and Princess Cruise Lines,
Ltd.

Richmond House, Terminus Terrace
Southampton S014 3PN
United Kingdom
Vessels: AURORA and ORIANA

P & O Princess Cruises International
Limited, Princess Cruise Lines, Ltd.
and 3i plc

Richmond House, Terminus Terrace
Southampton S014 3PN
United Kingdom
Vessel: VICTORIA

Princess Cruise Lines, Ltd., Princess
Cruises Ltd. and P & O Princess
Cruises plc

24305 Town Center Drive
Santa Clarita, CA 91355
Vessels: CROWN PRINCESS and
REGAL PRINCESS

Princess Cruise Lines, Ltd., Princess
Cruises Ltd., Fairline Shipping
Corporation, Ltd. and P & O
Princess Cruises plc

24305 Town Center Drive
Santa Clarita, CA 91355
Vessel: DAWN PRINCESS
Princess Cruise Lines, Ltd., Princess
Cruises Ltd., Fairline Shipping
International Corporation, Ltd. and
P & O Princess Cruises plc
24305 Town Center Drive
Santa Clarita, CA 91355
Vessel: GRAND PRINCESS
Princess Cruise Lines, Ltd., Princess
Cruises Ltd., OP Shipping
Corporation, Ltd. and P & O
Princess Cruises plc
24305 Town Center Drive
Santa Clarita, CA 91355
Vessel: OCEAN PRINCESS
Princess Cruise Lines, Ltd., Princess
Cruises Ltd., P & O Lines
(Shipowners) Ltd., Abbey National
March Leasing (1) Limited and P &
O Princess Cruises plc
24305 Town Center Drive
Santa Clarita, CA 91355
Vessel: PACIFIC PRINCESS
Princess Cruise Lines, Ltd., Princess
Cruises Ltd., P & O Lines
(Shipowners) Ltd., Princess Tours
Limited and P & O Princess Cruises
plc
24305 Town Center Drive
Santa Clarita, CA 91355
Vessel: ROYAL PRINCESS
Princess Cruise Lines, Ltd., Princess
Cruises Ltd., CP Shipping
Corporation, Ltd. and P & O
Princess Cruises plc
24305 Town Center Drive
Santa Clarita, CA 91355
Vessel: SEA PRINCESS
Princess Cruise Lines, Ltd., Princess
Cruises Ltd., COROT Shipping
Corp. (Sociedade Unipessoal) Lda.
and P & O Princess Cruises plc
24305 Town Center Drive
Santa Clarita, CA 91355
Vessel: SUN PRINCESS
Radisson Seven Seas Cruises, Inc.,
Radisson Seven Seas (France) SNC
and Copropriete du Navire Seven
Seas Mariner
600 Corporate Drive, Suite 410
Fort Lauderdale, FL 33334
Vessel: SEVEN SEAS MARINER
Radisson Seven Seas Cruises, Inc.,
Celtic Pacific (UK) Two Limited,
Capital Bank Leasing 12 Limited
and Sovereign Financial Services
(Manchester) Limited
600 Corporate Drive, Suite 410
Fort Lauderdale, FL 33334
Vessel: SEVEN SEAS NAVIGATOR
Royal Caribbean Cruises Ltd. and
Explorer of the Seas Inc.
1050 Caribbean Way
Miami, FL 33132-2096
Vessel: EXPLORER OF THE SEAS

Royal Caribbean Cruises Ltd. and
Radiance of the Seas Inc.
1050 Caribbean Way
Miami, FL 33132-2096
Vessel: RADIANCE OF THE SEAS

Royal Caribbean Cruises Ltd. and
Sunshine Cruises Limited
1050 Caribbean Way
Miami, FL 33132-2096
Vessel: VIKING SERENADE

Royal Olympic Cruises Ltd., RO Cruises
Inc. and Olympic World Cruises
Inc.
805 3rd Avenue, 18th Floor
New York, NY 10022

Vessel: OLYMPIC VOYAGER
Silversea Cruises, Ltd. and Silversea
New Build One Ltd.
110 East Broward Blvd.
Fort Lauderdale, FL 33301
Vessel: SILVER SHADOW

World Explorer Cruises, Inc., Azure
Investments, Inc., Institute for
Shipboard Education, Inc., and
Seawise Foundation, Inc.
555 Montgomery Street, #1412
San Francisco, CA 94111-2544
Vessel: UNIVERSE EXPLORER

Dated: March 23, 2001.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 01-7686 Filed 3-28-01; 8:45 am]
BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

License Number: 3777.
Name: J.G. International Freight Forwarding, Inc.
Address: 9949 N.W. 89th Avenue, Bay 17 and 18, Medley, FL 33178.
Date Revoked: May 6, 1999.
Reason: Failed to maintain a valid bond.

License Number: 11591NF.
Name: United Van Lines, Inc.
Address: One United Drive, Fenton, MO 63026.
Date Revoked: January 23, 2001.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 01-7687 Filed 3-28-01; 8:45 am]
BILLING CODE 6730-01-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date Reissued
4444N	Lloyd International, Inc., 931 Main Street, Norwell, MA 02061	January 10, 2001.
16562F	U.S. Brokers (BOS) Inc., 331-333 Northern Avenue, Boston, MA 02210	January 18, 2001.
15917N	Golden Jet-L.A., Inc., dba Golden Jet Freight Forwarders, 12333 S. Van Ness Avenue, Suite 201, Hawthorne, CA 90250.	January 14, 2001.
2023F	Pike Shipping Co., Inc., 2 Canal Street, 22nd Floor, New Orleans, LA 70130	January 30, 2001.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 01-7688 Filed 3-28-01; 8:45 am]
BILLING CODE 6730-01-P

FEDERAL TRADE COMMISSION

Public Workshop: Emerging Issues for Competition Policy in the World of E-Commerce

AGENCY: Federal Trade Commission.
ACTION: Notice announcing workshop.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") will hold a public workshop on May 7 and 8, 2001, to examine selected competition policy issues that arise in connection with business-to-business ("B2B") and business-to-consumer ("B2C") electronic commerce. Interested parties are invited to attend or to submit written presentations.

DATES: The workshop will be held on May 7 and 8, 2001. It will be open to

the public, without fee, and advance registration is not required. Seats in the workshop room will be available on a first-come, first-served basis; some overflow seating will be available. Written presentations may be submitted through May 21, 2001.

ADDRESSES: The workshop will be held in Room 432 of the Federal Trade Commission Headquarters Building, 600 Pennsylvania Avenue, NW., Washington, DC. Any interested person may submit a written presentation that will be considered part of the public record of the workshop. Written presentations should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned "Comments regarding E-Commerce Antitrust Issues." Electronic submissions may be sent by electronic mail to ecommerce@ftc.gov.

Alternatively, electronic submission may be filed on a 3½ inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: To obtain information about the workshop, please contact Gail Levine, Assistant Director for Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone (202) 326-3193, e-mail glevine@ftc.gov. A detailed agenda and additional information relating to the workshop will be posted on the Commission's web site, www.ftc.gov/opp/ecommerce, in advance of the workshop.

SUPPLEMENTARY INFORMATION:

Overview

In June 2000, the FTC held a public workshop on B2Bs entitled "Competition Policy in the World of B2B Electronic Marketplaces." In October 2000, FTC staff issued a report,

available at www.ftc.gov/bc/b2b/index.htm, that summarized the workshop and laid the foundation for understanding how to answer traditional antitrust questions in the context of new B2B technology.

The May 2001 workshop will build upon and extend that foundation. It will be divided into two sessions. The May 7 session will invite antitrust practitioners, economists, and business representatives to examine B2B mergers, interoperability, and operating rules against the background of specific hypotheticals. The goal is to elicit more detail about varying approaches to competition issues that may be raised by B2Bs and to analyze certain issues not addressed at the June 2000 workshop. Among other things, the hypotheticals will invite discussion of competitive effects of mergers and acquisitions among B2Bs and exchange-to-exchange interoperability. The hypotheticals will be available at www.ftc.gov/opp/ecommerce before the workshop.

The May 8 session redirects the focus to selected competition issues that are beginning to emerge in B2C contexts. Rather than debating familiar, long-standing issues, the session will focus on new fact patterns and selected competition policy issues that may arise in distribution and marketing over the Internet, in conjunction with or in comparison to offline commerce. It will explore such issues as price and promotional coordination between online and offline distribution channels, sole online distributorships, exclusive dealing over the Internet, and the role of information-collection technologies in online distribution. The goals will be to gain a better understanding of online distribution and marketing competition and to begin to develop a framework for assessing antitrust issues arising in those contexts.

A transcript of the discussions at the workshop will be publicly available after the workshop at www.ftc.gov/opp/ecommerce.

Specific Questions To Be Addressed

May 7 Session: B2B Mergers, Interoperability, and Operating Rules

The hypotheticals will raise competition issues involving B2Bs, including the following:

Mergers

What is the relevant market for purposes of analyzing the effects of a merger of B2Bs on competition in offering marketplace services? The market for online marketplaces? The market for marketplaces, whether online

or offline? Another market? What facts are needed to address these questions?

Who are participants in the relevant market? Is entry likely? What facts are needed to address these questions?

What are likely adverse competitive effects of a merger of B2Bs in the market for marketplaces? In the market(s) for goods traded on B2Bs (or for the goods derived from them)? What facts are needed to address these questions?

What efficiencies are likely to be accomplished with a merger of B2Bs? Are the supply-side or demand-side scale economies to be gained through such a merger? Are these merger-specific efficiencies, or are there practical alternatives, in the business situation faced by the merging B2Bs, that could mitigate competitive concerns? What facts are needed to address these questions?

How, if at all, do the financial pressures faced by B2Bs today effect the analysis? What additional facts are needed to address this issue?

Interoperability

How does interoperability among B2Bs work, as a practical matter? Do interoperable B2Bs share fees or other resources?

What factors are relevant to ascertaining the likely effect of an interoperability agreement on the ability and incentive of B2Bs to compete? How does an interoperability agreement affect incentives to lower price, increase quality and service, and innovate?

What are the procompetitive benefits of interoperability agreements? What factors are relevant to this analysis?

Operating Practices

What B2B information-sharing practices may facilitate collusion? What safeguards could—or should—be erected to avoid such collusion. Which safeguards are most effective? Are there practical problems with implementation of certain safeguards? Do some types of safeguards interfere with the achievement of efficiencies? If so, why and in what circumstances? What are reasonable audit mechanisms for ensuring that safeguards are actually working?

How can efficient joint purchasing be distinguished from the improper exercise of monopsony power in a B2B? What factors are relevant to this analysis?

What B2B practices have the potential to harm competition by excluding competitors? What are the countervailing efficiencies of such parties?

May 8 Session: Online Distribution and Marketing

What are the benefits of online distribution and marketing (“online distribution”) to manufacturers and traditional offline retailers? What are the costs of setting up an online distribution system? What problems do moderately-sized manufacturers or retailers face in developing online distribution systems?

How have relationships been structured between manufacturers or offline retailers, on the one hand, and online distributors, on the other? What factors determine whether the online distributor is fully or partially owned by a manufacturer or offline retailer? What factors determine whether an online distributor is set up as competitor collaboration? What factors affect whether the online distributor is established as a principal or agent?

How have online distributors and the manufacturers they serve coordinated their marketing efforts? How have offline distributors and their associated, online counterparts coordinated their marketing activities? Under what circumstances have they coordinated pricing, advertising, or advertised pricing? Under what circumstances have they allocated business opportunities? What are the justifications for coordination? What are the relevant competition issues? How should dual distribution in these contexts be assessed?

Under what circumstances have manufacturers prohibited online distribution of their products or confined it to specific web-sites? What are the business justifications? How have the limitations been enforced? What are the relevant competition issues?

Under what circumstances have manufacturers contracted with Internet service providers or search engines for exclusive or preferential treatment of a manufacturer's products? Under what circumstances have manufacturers contracted with online retailers for exclusive or preferential treatment of a manufacturer's products? What are the efficiencies associated with such practices? What factors are relevant to determining whether such exclusive or preferential arrangements are likely to cause anticompetitive harm? How do efficiencies and other factors differ between online and offline distribution?

What steps have offline distributors taken in opposing online distribution? Have joint activities been involved? What is the role of state law? What are the relevant competition issues?

To what extent are shopbots or other information-collection technologies

used to gather data from online distribution systems? What are the likely benefits of such technologies? Have on-line distributors limited access such technologies to their data? How? What are the business justifications for such limitations? What are the relevant competition issues?

The Commission welcomes suggestions for other questions that also should be addressed. Proposed questions, identified as such, may be sent by electronic mail to ecommerce@ftc.gov.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 01-7784 Filed 3-28-01; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 001 0067]

DTE Energy Company, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 23, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, FTC/S-2105, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326-2712.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the

full text of the consent agreement package can be obtained from the FTC Home Page (for March 22, 2001), on the World Wide Web, at "<http://www.ftc.gov/os/2001/03/index.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Proposed Consent Order and Draft Complaint To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from DTE Energy Company ("DTE") and MCN Energy Group Inc. ("MCN") (collectively the "proposed Respondents") an Agreement Containing Consent Order (the "proposed consent order"). The proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy the anticompetitive effects that are described in the Commission's draft complaint and that are likely to arise from the merger of DTE and MCN.

II. Description of the Parties and the Proposed Acquisition

DTE, headquartered in Detroit, Michigan, is a holding company with subsidiaries engaged in various energy-related businesses. DTE's principal operating subsidiary, The Detroit Edison Company ("Edison"), is a public utility engaged in the generation, transmission, distribution, and sale of electricity in southeastern Michigan, including the Detroit metropolitan area.

MCN, also headquartered in Detroit, Michigan, is a diversified energy holding company, with its primary operations involved in the production, gathering, processing, transmission, storage, and distribution of natural gas. MCN is the parent of Michigan Consolidated Gas Company ("MichCon"), a natural gas utility

serving areas throughout the State of Michigan, including southeastern Michigan. MichCon distributes natural gas, and Edison distributes electricity, in a portion of southeastern Michigan consisting of the city of Detroit and all or parts of Macomb, Monroe, Oakland, Washtenaw, and Wayne Counties (the "Overlap Area").

Pursuant to an Agreement and Plan of Merger dated October 4, 1999, and amended November 12, 1999, MCN plans to merge with a subsidiary of DTE. Each share of MCN common stock will be converted into the right to receive either \$28.50 in cash or 0.775 shares of DTE common stock, subject to proration. The transaction is valued at approximately \$2.6 billion in cash and stock, plus the assumption of debt of approximately \$2 billion in debt.

The Commission has carefully examined all areas in which the proposed merger of DTE and MCN might be anticompetitive. The Commission found that the transaction raises competitive concerns in the Overlap Area, as described in the draft complaint, and the Commission proposes to take action to remedy these potential anticompetitive effects.

III. The Draft Complaint

The draft complaint alleges that the merger of DTE and MCN would lessen competition in the local distribution of electricity and the local distribution of natural gas in the Overlap Area. According to the complaint, MichCon is the only distributor of natural gas within the Overlap Area. Similarly, except for the cities of Detroit and Wyandotte, which operate their own municipal electric utilities, Edison is the only distributor of electricity within the Overlap Area. Following the merger, Edison would effectively control the distribution of both electricity and natural gas within the Overlap Area.

According to the complaint, entry into the distribution of electricity and the distribution of natural gas within the Overlap Area is effectively blocked by regulatory constraints, and would not be timely, likely or sufficient to prevent anticompetitive effects that may result from the merger.

The draft complaint describes three ways in which the proposed merger would lessen competition. Each of these three ways is described below.

A. Self-Generation of Electricity

According to the complaint, natural gas is the fuel of choice for new electricity generation in the Overlap Area. Other fuels are not likely to be used for new electricity generation because of various disadvantages

relative to natural gas. Coal and fuel oil, for example, have environmental problems that do not exist with natural gas. As a result, virtually all new electricity generation in the Overlap Area is likely to rely on natural gas as its source of fuel.

The complaint alleges that customers in the Overlap Area who need electricity have limited options. They can have electricity delivered by Edison, or they can self-generate electricity using natural gas delivered by MichCon. Self-generation can take several forms, including cogeneration, generation by municipalities (such as the city of Wyandotte), and emerging forms of distributed generation, such as microturbines and fuel cells, that are fueled by natural gas. According to the complaint, MichCon has aggressively sought to encourage customers to install gas-powered self-generation equipment that would allow customers to minimize or eliminate the purchase of electricity from Edison.

The complaint charges that DTE and MCN are competitors in the Overlap Area because Edison distributes electricity and MichCon distributes natural gas used for the self-generation of electricity. The complaint further charges that the proposed merger may substantially lessen competition or tend to create a monopoly in the distribution of electricity and natural gas in the Overlap Area in certain ways, including: (1) By eliminating competition between DTE and MCN in the distribution of electricity and the distribution of natural gas used for the self-generation of electricity in the Overlap Area, and (2) by increasing the likelihood that market power will be exercised in the Overlap Area in connection with the distribution of electricity and the distribution of natural gas used for the self-generation of electricity, each of which increases the likelihood of anticompetitive prices and reduced competition in the distribution of electricity and the distribution of natural gas in the relevant market.

B. The City of Detroit

The city of Detroit operates a municipal utility (the Public Lighting Department, or "PLD") that distributes electricity to industrial, business and public sector customers in Detroit. The PLD competes directly with Edison for new non-residential customers in Detroit.

According to the complaint, the PLD has two sources of electricity. It purchases some power at wholesale, which is delivered over Edison's power lines, and it generates the rest of its requirements using natural gas

delivered by MichCon. The PLD has no viable option for natural gas delivery other than MichCon, and after the merger will have to rely on its only direct electricity competitor for delivery of natural gas.

The complaint charges that the proposed merger, if consummated, may substantially lessen competition or tend to create a monopoly in the distribution of electricity in the city of Detroit in certain ways, including: (1) By decreasing or eliminating competition in the city of Detroit in the distribution of electricity and the distribution of natural gas used to produce electricity, and (2) by facilitating DTE's ability to raise the costs of the Detroit PLD, each of which increases the likelihood of anticompetitive prices and reduced competition in the distribution of electricity and the distribution of natural gas used to generate electricity in the city of Detroit.

C. Competing Applications

Electricity and natural gas compete directly for certain commercial and industrial applications. According to the complaint, some customers can choose either natural gas or electricity for specific energy needs, such as powering air compressors, commercial cooking, and various process applications. Customers who choose natural gas for these applications must use natural gas delivered by MichCon, and customers who choose electricity must use power delivered by the local electric utility, usually Edison. MichCon has aggressively sought to convert customers using electricity for such applications to natural gas, typically by attempting to convince customers of the relative economic benefits of natural gas compared to electricity.

The complaint charges that the proposed merger, if consummated, would substantially lessen competition or tend to create a monopoly in the distribution of electricity and natural gas in certain ways, including: (1) By eliminating competition between DTE and MCN in the distribution of electricity and the distribution of natural gas in the Overlap Area, and (2) by increasing the likelihood that market power will be exercised in the Overlap Area in connection with the distribution of electricity and the distribution of natural gas, each of which increases the likelihood of anticompetitive prices and reduced competition for the distribution of electricity and the distribution of natural gas in the relevant market.

IV. Terms of the Proposed Consent Order

The proposed consent order is designed to remedy the Commission's competitive concerns about the proposed merger. Under Paragraph II of the proposed consent order, the proposed Respondents must divest certain assets (the "Divested Assets") to Exelon Energy Company ("Exelon") pursuant to and in accordance with the terms of a Divestiture Agreement between MichCon and Exelon, no later than five (5) days after the proposed merger is consummated.¹ The Divestiture Agreement consists of two separate agreements: (1) An "Easement Agreement" entered into between MichCon and Exelon, and (2) an "Auditor Agreement" entered into between MichCon, Exelon, and a third party that serves an oversight function with respect to the Easement Agreement between MichCon and Exelon.

The Easement Agreement has been approved by the Michigan Public Service Commission as a special contract between MichCon and Exelon. See Order Approving Special Contract, In the Matter of the Joint Application of Michigan Consolidated Gas Company and Exelon Energy Company for Ex Parte Approval of a Special Contract for Certain Transportation and Storage Rights, Case No. U-12825, February 14, 2001.

The Easement Agreement conveys to Exelon an easement over MichCon's local natural gas distribution system that will allow Exelon to engage in the distribution and storage of natural gas in the Overlap Area. Pursuant to the Easement Agreement, Exelon is entitled to the use of five billion cubic feet ("Bcf") of annual transportation capacity ("Initial Capacity") to serve any end use customers within the Overlap Area. Exelon is then entitled to an additional 15 Bcf of annual transportation capacity ("Supplemental Capacity"), in increments of 1 Bcf, that must serve at least 50% Electric Displacement Load, (Electric Displacement Load, or "EDL," includes on-site electric power generation such as cogeneration, municipal generation, emerging forms of distributed generation (such as fuel cells and microturbines), and other gas-fired

¹ However, if the Commission determines to make the Order final, but notifies the proposed Respondents either that Exelon is not an acceptable acquirer, or that the Divestiture Agreement is not an acceptable manner of divestiture, then proposed Respondents are to divest the Divested Assets, at no minimum price, within 90 days of the date the Order becomes final, to an acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.

electric displacement equipment.) If Exelon uses all of the Initial Capacity and Supplemental Capacity (a total of 20 Bcf, of which 7.5 Bcf must be used for EDL), then Exelon is entitled to additional transportation capacity ("Growth Capacity") for use in serving on-site generation customers within the Overlap Area. Exelon also is entitled to storage capacity equal to 10% of its Initial Capacity and Supplemental Capacity. Charges for the Initial Capacity, Supplemental Capacity, and Growth Capacity are set at levels designed to allow Exelon to compete with MichCon in the Overlap Area, and to provide Exelon with incentives to distribute natural gas for EDL applications.

The Easement Agreement contains a number of provisions designed to ensure Exelon's ability to be a viable competitor. In particular, the agreement requires the parties to appoint an independent third-party auditor with knowledge of the natural gas industry to oversee the Easement Agreement and to perform such services as are necessary to effectuate the agreement, including arbitration of disputes and other duties and responsibilities designed to ensure that MichCon cannot unreasonably discriminate against Exelon. (Easement Agreement ¶ D-17.) In addition, the Easement Agreement requires MichCon to repair and replace all components of the distribution system necessary for the proper operation thereof, and allows the Auditor to make repairs or replacements, at MichCon's cost, if MichCon fails to do so. (Easement Agreement ¶ 7.) Further, the agreement allows Exelon to expand the system if necessary, either at MichCon's expense or with the assistance of an expansion allowance paid for by MichCon. (Easement Agreement ¶ D-5.) Moreover, the Agreement requires that MichCon give Exelon and the Auditor advance notice of important operational events that may impact the distribution system, such as scheduled maintenance, outages, changes in operating standards, planned new receipt points, proposed modifications to nomination or measurement practices or quality specifications, and any other events that may affect Exelon or Exelon's ability to service its customers, and empowers the Auditor to revise or modify any such events if necessary to prevent an adverse impact on Exelon. (Easement Agreement ¶ D-6.)

The proposed consent order also contains other provisions designed to ensure the continuation of a viable and competitive alternative supplier of natural gas distribution services to Electric Displacement Load customers

in the Overlap Area. For example, Paragraph II.B.1 of the proposed consent order requires that proposed Respondents maintain, repair, and replace all components and other aspects of the MCN Distribution System (1) necessary for the proper or safe operation of that system; and (2) in full compliance with all rules and regulations of any federal or state agency, or any other governmental entity, having jurisdiction over any aspect of the MCN Distribution System. Paragraph II.B.2 of the proposed consent order requires that proposed Respondents operate the MCN Distribution System in a reasonable and non-discriminatory manner, and in full compliance with all rules and regulations of any federal or state agency, or any other governmental entity, having jurisdiction over any aspect of the MCN Distribution System.

Paragraph II.B.3 deals with the Auditor, and provides that the Auditor shall have the power to take all actions as in the Auditor's judgment are necessary and appropriate to effectuate the purposes of the Divestiture Agreement, including the right to propose changes to the Divestiture Agreement necessary to ensure the competitive viability of the Acquirer, and shall have free access to all of proposed Respondents' books, records, information, systems, and facilities as deemed reasonably necessary by the auditor to monitor proposed Respondents' performance under the Divestiture Agreement. In obtaining and utilizing proprietary information, the Auditor is required to observe confidentiality restrictions designed to prevent the unauthorized disclosure of such information.

Pursuant to Paragraph II.B.4, Respondents are required to provide Exelon with a list of all customers to which MCN transports natural gas in the Overlap Area, including the name, address, and rate classification for each such customer, and a statement indicating whether each such customer utilizes natural gas for Electric Displacement Load. In addition, under Paragraph II.B.5, Respondents must provide to the Auditor the results of a study conducted by MCN of Electric Displacement Load opportunities in the Overlap Area. Respondents must send a letter to each customer in the study advising the customer that gas distribution services may be purchased from Exelon and asking if the customer wishes the Auditor to provide the customer's study information to Exelon.

Paragraph II.B.6 provides that, for two years after the date the Order becomes final, Respondents shall promptly

comply with any request of any customer in the Overlap Area to terminate its transportation or distribution contracts with MCN, without cost or penalty to such customer, to enable such customer to purchase gas distribution or transportation services provided by Exelon.

The proposed consent order also contains provisions dealing with the appointment of an alternative acquirer if Exelon terminates the Divestiture Agreement, as well as trustee provisions dealing with the responsibilities of any trustee appointed to accomplish any divestiture required by the order.

The proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within sixty days following the date on which the order becomes final, every sixty days thereafter until the divestitures are completed, and annually for a period of twenty years.

The Auditor Agreement, executed by MichCon, Exelon and the Auditor, defines the duties, powers and obligations of the Independent Auditor required by Paragraph II.B.3 and Paragraph D-17 of the Easement Agreement. The Auditor has the ability to take all actions necessary and appropriate to effectuate the purposes of the Easement Agreement, including the right to assess consequential damages against MichCon if MichCon operates the distribution system in a manner that is prejudicial to Exelon. (Auditor Agreement ¶ 2.) The Auditor also is responsible for arbitrating disputes between the parties, as well as for performing other necessary duties and responsibilities under the Easement Agreement, such as verification of Exelon's Electric Displacement Load volume, system repair and maintenance if MichCon fails to do so, designation of applications that qualify as Electric Displacement Loads, resolution of complaints by Exelon, modification of operational changes that may adversely impact Exelon, and related duties and responsibilities. (Auditor Agreement Sch. A; Easement Agreement ¶¶ 3, 7, D-1(j), D-2, D-4, D-6.)

The proposed buyer of the Divested Assets, Exelon Energy, is one of the largest unregulated suppliers of electricity and natural gas in the nation. It is a unit of Exelon Corporation, which was formed from the merger of Unicom Corporation and PECO Energy Company. The parent company has operations engaged in the generation, transmission, distribution and sale of electricity, the supply of natural gas and natural gas transportation services, the

sale of distributed generation products, and related businesses. The company is extremely knowledgeable about the utility business and the distribution of electricity and natural gas. It currently markets natural gas to buyers in Michigan (as well as in other states), and has an affiliate that is engaged in the distribution of microturbines and distributed generation equipment.

The Commission's goals in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer must not itself present competitive problems. Exelon is a major energy company with substantial experience in natural gas, electricity, and the operation of utilities. The Commission believes that Exelon is well qualified to operate the divested assets and that divestiture to Exelon will not be anticompetitive.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received

during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of assets to Exelon, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order, nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 01-7785 Filed 3-28-01; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Case Plan Requirement, Section 422, 471(a) (16) and 475(5) (A) of the Social Security Act.

OMB No.: 0980-0140.

Description: Under section 471(a) (16) of title IV-E of the Social Security Act (the Act), to be eligible for payments States must have an approved State plan that provides for the development of a case plan [as defined in section 475(1)] for each child receiving foster care maintenance payments, and that provides a case review system that meets the requirements in section 475(5) and 475(6). Through these requirements, States also comply, in part, with title IV-B, section 422(b) (10) of the Act, which assures certain protections for children in foster care.

Respondents: State title IV-B and title IV-E Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Case Plan	714,056	1	2.62	1,872,392
Estimated Total Annual Burden Hours				1,872,392

Additional Information:

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork

Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: March 23, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01-7684 Filed 3-28-01; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: IV-E Foster Care and Adoption Financial Report.

OMB No.: 0970-0205.

Description: This form is used by States and Puerto Rico to facilitate the reporting of expenditures for the Foster Care and Adoption Assistance programs. State agencies (including Puerto Rico) use this form to report data on a quarterly basis. The form provides specific data regarding financial disbursements, obligations and estimates. It provides States with a mechanism to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise the Administration for Children and Families' ability to issue grant awards and monitor expenditures. This form is also used to prepare ACF budget submission to Congress.

Respondents: States and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	No. of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
IV-E-1	52	4/YR	25	5200
Estimated Total Annual Burden Hours				5200

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: March 23, 2001.

Bob Sargis,
Reports Clearance Officer.

[FR Doc. 01-7751 Filed 3-28-01; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. 01N-0135]

Agency Emergency Processing Under OMB Review; Focus Group Study of Radiation Disclosure Statement Options for Foods Treated With Ionizing Radiation

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 is a focus group study of radiation disclosure statement options for foods treated with ionizing radiation.

DATES: Submit written comments on the collection of information by April 9, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th Street 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: Peggy Schlosburg, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

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. The information is essential to FDA's commitment to Congress to finalize, by March 2002, any regulatory changes regarding radiation disclosure statement for foods treated with ionizing radiation. The use of normal PRA clearance procedures would not allow FDA to conduct this study within the next few months so that the results will be available to support in a timely way the ongoing policy development process.

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.

Focus Group Study of Radiation Disclosure Statement Options for Foods Treated With Ionizing Radiation

Under section 403(a)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343), FDA is mandated to ensure that labeling statements be truthful and nonmisleading. In 1986, under section 409 of the act (21 U.S.C. 348), FDA issued regulations to require that the label and labeling of retail packages or displays of foods treated with ionizing radiation include both the radura logo (the international symbol that indicates radiation treatment) and a disclosure statement (either "Treated with radiation" or "Treated by irradiation") in addition to information required by other regulations (21 CFR 179.26(c)(1) and (c)(2)). To gather information to determine if the existing requirements should be changed and how they should be changed, FDA proposes to conduct a series of six focus groups in three separate geographic locations, one of which will be in the Washington, DC area to facilitate the attendance of interested observers from FDA and industry and consumer stakeholders. The focus groups, eight to nine individuals per group, are to be held in April and May 2001. The objectives of the study are to collect information to: (1) Evaluate whether and under what conditions the current labeling requirement is an obstacle to consumer acceptance of irradiated foods, and (2) determine how other proposed versions of the disclosure statement might have different effects on consumer acceptance. The information will be used by FDA to determine if the existing requirements should be changed and how they should be changed and to fulfill FDA's commitment to Congress to finalize any regulatory changes by March 2002.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

No. of Respondents	Annual Frequency per Respondents	Total Annual Respondents	Hours per Respondent	Total Hours
54	1	54	1.5	81

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 23, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01-7679 Filed 3-28-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N-1494]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Classification/Reclassification; Restricted Devices: Analyte Specific Reagents

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Devices; Classification/Reclassification; Restricted Devices: Analyte Specific Reagents" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 2001 (66 FR 1140), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0361. The approval expires on March 31, 2004. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: March 23, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01-7678 Filed 3-28-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D-1718]

Guidance for Industry on Monoclonal Antibodies Used as Reagents in Drug Manufacturing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Monoclonal Antibodies Used as Reagents in Drug Manufacturing." This guidance is intended to provide recommendations for sponsors and applicants of new drug applications (NDA's), abbreviated new drug applications (ANDA's), biologics license applications (BLA's), their supplements, or investigational new drug applications (IND's) on information that should be included in applications when monoclonal antibodies (mAb's) are used as reagents in the manufacture of drug substances regulated by the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER).

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Drug Information Branch (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for

electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Eugenia M. Nashed, Center for Drug Evaluation and Research (HFD-570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1050, or Kurt A. Brorson, Center for Biologics Evaluation and Research (HFM-561), 8800 Rockville Pike, Bethesda, MD 20892-0029, 301-827-0661.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Monoclonal Antibodies Used as Reagents in Drug Manufacturing." This guidance focuses on the chemistry, manufacturing, and control (CMC) issues that should be addressed in NDA's, ANDA's, BLA's, their supplements, or IND's. This document is not intended to cover mAb's used as diagnostics, radiolabeled imaging agents, or therapeutic products. In the **Federal Register** of June 24, 1999 (64 FR 33868), FDA announced the availability of a draft version of this guidance. The June 1999 document gave interested persons an opportunity to submit comments through September 22, 1999. All comments received during the comment period have been carefully reviewed and incorporated in this revised guidance where appropriate. As a result of public input during the comment period, the final guidance is clearer and more concise than the draft version.

This Level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). The guidance represents the agency's current thinking on monoclonal antibodies used as reagents in drug manufacturing. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management

Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/cder/guidance/index.htm>.

Dated: March 22, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01-7680 Filed 3-28-01; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: May 1, 2001.

Time: 8 a.m. to 4:30 p.m.

Agenda: Among the topics proposed for discussion are: (1) Research involving children; (2) diabetes; (3) nursing research; and (4) human research protections.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jennifer E. Gorman, NIH Public Liaison/COPR Coordinator, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435-4448, gormanj@od.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment

Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency)

Dated: March 22, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7817 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given on a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: April 16-18, 2001.

Time: 8:30 PM to 5 PM.

Agenda: Report of Director NCI and discussion; "How Advocacy Groups Work" session; Working Group Update; Discussion of priorities of the DCLG.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Elaine Lee, Acting Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594-3194.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/dclg/delg.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support;

93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7813 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings. The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB-6(m3).

Date: April 24, 2001.

Time: 7 p.m. to 11 p.m.

Agenda: To review and evaluate grant applications

Place: Ritz-Carlton Pentagon City, 1250 S. Hayes Street, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 651, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892-6600, (301) 594-7798.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB-6(M1).

Date: April 25, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 651, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892-6600, (301) 594-7798.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition

Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7810 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB-3(M1)S

Date: April 24, 2001.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 657, 6707 Democracy Boulevard, Bethesda, MD 20892, 301/594-8898.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7811 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: April 5, 2001.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: John M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435-6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research and Mothers for Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7814 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: March 28, 2001.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Rm 409, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: L. Tony Beck, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., MSC 7003, Bethesda, MD 20892-7003, 301-443-0931, lbeck@mail.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 22, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7815 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: April 12, 2001.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Dulles International Airport, Meeting Room, Herndon, VA 20171.

Contact Person: Hagit S David, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2117, 6700-B Rockledge Drive, MSC 7610, Bethesda, MD 20892-7610, 301-496-2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 22, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7818 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, Special Emphasis Panel—Telephone Conference—D M3.

Date: April 13, 2001.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 23, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7812 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Special Emphasis Panel—Publication Grants Review N M3.

Date: April 6, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Merlyn M. Rodrigues, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 22, 2001.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7819 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL LIBRARY OF MEDICINE, including consideration of personnel qualifications and performance and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, Lister Hill Center.

Date: May 17-18, 2001.

Open: May 17, 2001, 9 a.m. to 1 p.m.

Agenda: Review of research and development programs and preparation of

reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, Board Room, Bldg 38, 2E-09, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: May 17, 2001, 1 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Board Room, Bldg 38, 2E-09, 8600 Rockville Pike, Bethesda, MD 20894.

Open: May 17, 2001, 2 p.m. to 5 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, Board Room, Bldg 38, 2E-09, 8600 Rockville Pike, Bethesda, MD 20894.

Open: May 18, 2001, 9 a.m. to 12 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, Board Room, Bldg 38, 2E-09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center, for Biomedical Communications, National Library of Medicine, Bldg 38A, Rm 7N-705, Bethesda, MD, 301-496-4441.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 22, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7820 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Special Emphasis Panel—Telephone Conference S M3.

Date: March 29, 2001.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mindy Nicolas, Review Program Specialist, Office of Extramural Programs, National Library of Medicine, Bethesda, MD 20902.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 22, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7821 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provision set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 2, 2001.

Time: 9:15 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, (301) 435-1050, freundr@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 5, 2001.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435-1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 5, 2001.

Time: 6:30 p.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435-1776, davidsoh@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 10, 2001.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Ave., NW., Washington, DC 20036.

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435-1224, husains@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 10, 2001.

Time: 11:15 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435-1776, davidsoh@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 13, 2001.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435-1718.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 VISB (10).

Date: April 16, 2001.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Leonard Jakubczak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435-1247.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 17, 2001.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435-1018.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 17, 2001.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435-1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 17, 2001.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435-1716.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 2001.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120

Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435-1169, dowellr@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 22, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7816 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 22, 2001.

Time: 6 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435-1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 23, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435-1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2001.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, (301) 435-1038, remondid@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 11, 2001.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435-1169, dowellr@drg.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 13, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Samuel Rawlings, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, (301) 435-1243.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 21, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01-7822 Filed 3-28-01; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443-7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Survey of Organized Consumer Self-Help Entities—(OMB No. 0930-0214, extension)—The mutual support and self-help movement in the United States has mushroomed, and significant numbers of mental health consumer-operated businesses and services are emerging. Increasingly, these groups, organizations, and business are providing support and services to mental health consumers and family members as a complement to, or substitution for, traditional mental health services. The purposes of this

project of SAMHSA's Center for Mental Health Services are to estimate the number of these mental health groups, organizations, and businesses nationwide and to describe their characteristics—structure, types of activities engaged in, approaches to well-being and recovery, resources, and linkages to other community groups, organizations, and businesses and services, such as the mental health service delivery system. The survey will gather information from a sample of approximately 3,900 mutual support groups and self-help organizations run by and for recipients of mental health services and/or their family members and consumer-operated businesses and services. Computer Assisted Telephone Interviewing (CATI) will be used to conduct interviews with in-scope groups, organizations and businesses. This extension will allow for completion of the survey. The total response burden estimate is shown below.

Instrument	Number of respondents	Responses/ respondent	Average burden/ response (Hrs)	Total burden (Hrs)
Universe Development Contacts	2736	1	.17	465
Screeners	3,933	1	.17	668
Questionnaire	3,933	1	.42	1,652
Total .....	.....	.....	.....	2,785

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 22, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01-7730 Filed 3-28-01; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Extension of Comment Period for the Draft Comprehensive Conservation Plan and Environmental Assessment for Buenos Aires National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is extending the comment period through close of business

Thursday, April 19, 2001, for the Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment for the Buenos Aires National Wildlife Refuge, Sasabe, Arizona. A notice was published in the **Federal Register** notifying release of the document on December 1, 2000. The Service is furnishing this notice to ensure that interested parties have every opportunity to offer input, comments, and suggestions with respect to the Service's proposed management objectives and strategies detailed in the draft CCP document and EA document.

DATES: The Service will be open to written advice and comment on the draft CCP Objectives and Strategies through April 19, 2001.

ADDRESSES: Comments may be sent to: Ms. Yvette Truitt, Biologist/Natural Resource Planner, U.S. Fish and Wildlife Service, Southwest Region, Division of Refuges and Wildlife, P.O. Box 1306, Albuquerque, NM 87103.

SUPPLEMENTARY INFORMATION: It is the U.S. Fish and Wildlife Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The

CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered and will continue to consider many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Continued public input into this planning process is essential. The CCP document when finalized will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500-1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

The Service anticipates that a Final CCP will be available by September 30, 2001.

Dated: March 6, 2001.

Geoffrey Haskett,
Regional Director.

[FR Doc. 01-7754 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: Between February 22, 2000, and February 16, 2001, Region 1 of the Fish and Wildlife Service (Service) approved 19 Habitat Conservation Plans (Plans) and issued 38 permits, transferred 2 permits, and amended 1 permit for the incidental take of threatened and endangered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service also issued one Safe Harbor Agreement permit and one Candidate Conservation Agreement permit pursuant to section 10(a)(1)(A) of

the Act. The Service also returned two permit applications and denied two permit applications.

Copies of the permits and associated decision documents are available upon request. Charges for copying (10 cents per page), plus shipping and handling may apply.

ADDRESSES: If you would like copies of any of the above documents, please contact the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814; telephone (800) 582-3421.

FOR FURTHER INFORMATION CONTACT: Heather Hollis, Fish and Wildlife Biologist, Fish and Wildlife Service, Portland, Oregon; telephone (503) 231-6241.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulation prohibit the take of wildlife species listed as endangered or threatened, respectively. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

Between February 22, 2000, and February 16, 2001, Region 1 of the Service issued the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) and section 10(a)(1)(A) of the Act. We issued each permit after making the following determinations: the application had been submitted in good faith; all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of listed species; and the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives pursuant to the National Environmental Policy Act of 1969.

Copies of these permits, their accompanying Plans, and associated documents are available upon request. Decision documents for each permit include Findings and Recommendations; a Biological Opinion; and either a Finding of No Significant Impact, a Record of Decision, or an Environmental Action Statement. Associated documents may also include an Implementing Agreement, Assumption Agreement, Environmental Assessment, or Environmental Impact Statement, as applicable.

Approved plan/permit	Permit No.	Issuance date
<i>Habitat Conservation Plans:</i>		
Tulare Irrigation District	TE022815-0	02/22/00
Weyerhaeuser Venture—Tributary Point	TE023095-0	03/31/00
Union Pacific Railroad	TE023739-0	04/04/00
City of Seattle, Cedar River Watershed	TE020907-0	04/21/00
MFS Globenet, Inc	TE021702-0	04/26/00
Pacific Bay Properties	TE024042-0	05/08/00
Van Daele	TE025437-0	05/24/00
Cornerstone Homes, Railroad Canyon	TE026003-0	06/08/00
Regency Realty, Prairie City Crossing	TE026908-0	06/15/00
California Department of Fish and Game	TE028154-0	06/23/00
Simpson Timber, NW Operations	TE032463-0	10/13/00
Plum Creek Native Fish	TE034609-0	10/24/00
High Desert Power Project	TE021703-0	10/26/00
Clark County and others	TE034927-0	11/01/00
City of Anaheim	TE036082-0	11/20/00
Westwood Tributary Point	TE034909-0	11/27/00
County of San Diego partial transfer	TE037338-0	12/22/00
<i>Assessment District 161 (12 permits):</i>		
Metropolitan Water District	TE030490-0	12/04/00
OBED Properties, Inc.	TE030495-0	12/04/00
Parcel Five, Inc.	TE030497-0	12/04/00
Winchester 700, LLC	TE030499-0	12/04/00
Crown Meadows	TE030500-0	12/04/00
Hill County, S.A. Ltd.	TE030501-0	12/04/00
Murrieta Valley Unified School District	TE030502-0	12/04/00
Rancho California Water District	TE030503-0	12/04/00
SDI Communities, LLC	TE030504-0	12/04/00
Butterfield Development Company, Inc	TE030505-0	12/04/00
Pulte Home Corp.	TE030506-0	12/04/00
Buie Communities, LLC	TE030507-0	12/04/00
Granite Homes/Lake Elsinore	TE036074-0	12/29/00
Evergreen Nursery	TE023022-0	02/09/01

Approved plan/permit	Permit No.	Issuance date
Ocean Trails:		
Amendment and transfer	TE032423-1	01/06/01
City of Rancho Palos Verdes	TE037483-0	01/06/01
Reichel et al. (4 permits):		
John J. Reichel	TE036465-0	02/16/01
Serenata, LLC	TE036467-0	02/16/01
Richard and Brigitta Steidl	TE036469-0	02/16/01
West San Bernardino County Water District	TE036470-0	02/16/01
Safe Harbor Agreements:		
Bob and Peggy Mack	TE030508-0	09/18/00
Candidate Conservation Agreements:		
Oregon Department of Fish and Wildlife	TE034590-0	10/11/00

In addition to issuing the above permits, the Service took action on four other applications that had been noticed in the **Federal Register** for public comment. The Service returned an application submitted by Weyerhaeuser Company for the Willamette Valley Plan because both the Service and Weyerhaeuser Company agreed to discontinue negotiations. The Service returned an application submitted by Boise Cascade Corporation for the Walker Creek Plan when the northern spotted owl that was the subject of the application died. The Service denied two permit applications submitted during this time frame: an application submitted by Mr. and Mrs. Seiber for the Wiley Creek Plan and an application submitted by Coast Range Conifers for the Beaver Tract Plan. In both cases, the applicant failed to meet all of the statutory permit issuance criteria under section 10(a)(2)(B)(ii) of the Act.

Dated: March 20, 2001.

Rowan W. Gould,

Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 01-7731 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

[ES-930-08-1320-00-241A: WVES 50816]

Notice of Exploration License Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pen Coal Corporation has filed application WVES 50816 for an Exploration License for lands in Wayne County, West Virginia.

This is a notice of invitation, pursuant to 43 Code of Federal Regulations 3410.2-1(c), to participate in the exploration the following lands on a prorata cost-sharing basis, in which the coal deposits have been reserved by the United States of America:

A portion of the East Lynn Lake Reservoir Project, Real Estate Segments 7, 8, 11, 12, 13, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27 and 29, located on the East Fork of Twelvepole Creek, near East Lynn, Wayne County, West Virginia, containing 7,639.63 acres more or less.

Anyone wishing to participate in this exploration license, should contact Monte Hieb, Manager of Engineering, Pen Coal Corporation, P.O. Box 191, Dunlow, West Virginia 25511, Telephone: (304) 385-4664 or contact the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153, Telephone: (703) 440-1527.

FOR FURTHER INFORMATION CONTACT: Ida V. Doup, Chief, Branch of Use Authorization, Division of Resources Planning, Use and Protection, BLM Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153, (703) 440-1541, or Vince Vogt, Rolla Assistant Field Manager (700) 751-0203.

Dated: March 19, 2001.

Walter Rewinski,

Deputy State Director, Division of Resources Planning, Use and Protection.

[FR Doc. 01-7804 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-65-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(OR-931-6320 DB; GP1-0115)

Oregon Seed Orchard; Environmental Impact Statements, Notice of Intent

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Revised Notice; intent to prepare for three environmental impact statements.

SUMMARY: On March 26, 1999, the Department of Interior, Bureau of Land Management, (BLM) published a Notice of Intent to prepare a consolidated draft and final environmental impact

statement (EIS) for proposed pest management programs at each of our four Oregon Seed Orchards (See **Federal Register**/Vol. 64, No. 58/Friday, March 26, 1999/ Notices, page 14747-14748). To improve efficiency and provide for more site specific management prescriptions, including pest management and fertilization programs, the Salem, Eugene and Medford BLM Districts will prepare separate draft and final EISs. The Seed Orchards are: the Horning Seed Orchard (Salem District) near Colton, in Clackamas County Oregon; the Tyrrell Seed Orchard (Eugene District) near Lorane, in Lane County, Oregon; the Sprague Seed Orchard (Medford District) near Merlin, in Josephine County, Oregon and the Provolt Seed Orchard (Medford District) near Grants Pass, in Jackson and Josephine Counties, Oregon.

The BLM Salem, Eugene and Medford Districts invite written comments on the scope of the analysis. In addition, the Salem, Eugene and Medford Districts will give notice of the environmental analysis and decision making process that will occur on the proposed action to ensure that the interested and affected public has information concerning how they may participate and contribute to the final decision. These notices will be published in local newspapers and mailed to known persons or groups of interest in the local areas.

Each of the four seed orchards is also subject to land use allocations and management direction as defined in the 1995 Resource Management Plan (RMP) for the applicable District. Since the seed orchard management plans may include one or more alternatives which would amend portions of the applicable RMP, the planning process will also be completed in conformance with 43 CFR 1610.2 and 1610.5-5. Any proposed RMP amendments would be expected to clarify long-term management direction for the seed orchard lands, support new or renewed protective lands withdrawals and describe any

conditions for discretionary land uses which may be compatible with seed orchard management objectives.

DATES: Previous written comments received by May 10, 1999, have been forwarded to appropriate seed orchards. Additional comments concerning the scope of the analysis should be received in writing by April 19, 2001, to ensure timely consideration.

ADDRESSES: Send written comments to: Jim Hallberg, Orchard Manager, Horning Seed Orchard, 27004 S. Sheckly Road, Colton, OR 97017; Glenn Miller, Orchard Manager, Tyrrell Seed Orchard, P. O. Box 121 (26350 Siuslaw River Road), Lorane, OR 97451; Harvey Koester, Orchard Manager, Sprague Seed Orchard, 1980 Russell Road, Merlin, OR 97532 and Provolt Seed Orchard, 14171 Williams Highway, Grants Pass, OR 97527.

FOR FURTHER INFORMATION CONTACT: Jim Hallberg, Orchard Manager, Horning Seed Orchard, (503) 630-8406; Glenn Miller, Orchard Manager, Tyrrell Seed Orchard, (541) 683-6445; and Harvey Koester, Orchard Manager, Sprague and Provolt Seed Orchards (541) 618-2401.

SUPPLEMENTARY INFORMATION: The BLM Seed Orchards are managed primarily for the production of native tree and grass seed. The seed is used to produce seedlings for reforestation and restoration on BLM lands in Oregon and for use in cooperative orchard efforts. The primary objective of the orchards is to produce seed of high quality and sufficient quantity to meet the needs of the BLM and of their cooperative partnerships. Use of integrated pest management and fertilization technology and products is necessary to achieve this goal.

There are grass beds, greenhouses, and tree orchards (Douglas fir, sugar pine, western hemlock, noble fir, western red cedar and western white pine) at the Horning Seed Orchard; grass beds and tree orchards (Douglas fir, Port Orford cedar and multi-species orchards) at the Tyrrell Seed Orchard; grass beds, greenhouses, and tree orchards (sugar pine and ponderosa pine) at the Sprague Seed Orchard; and grass and hardwood beds and tree orchards (Douglas fir and sugar pine) at the Provolt Seed Orchard.

The BLM Districts will conduct an environmental analysis to determine the type of pest management and fertilization programs to be used at the Horning, Tyrrell, Sprague, and Provolt Seed Orchards in western Oregon, to produce seed and seedlings for the BLM and its cooperators in Oregon. The pest management practices which will be analyzed include, but are not limited to,

control of unwanted vegetation by mechanical and chemical methods; control of diseases using sanitation, cultural techniques, biological control organisms, and fungicides; control of insect pests with biological and chemical insecticides, cultural and mechanical methods, and use of sanitation; and control of animal pests through mechanical and preventative measures. Fertilization practices include mechanical broadcast and hand application methods.

In preparing the EISs, the BLM Districts will identify and consider a range of alternative pest management and fertilization programs. One alternative in each EIS will contain a "no action" alternative. Another alternative will be a pest management program without the use of chemical pesticides and fertilizers. Other alternatives will include pest management programs comprised of various combinations of control methods.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7), which includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper make-up of the interdisciplinary team.
4. Exploring possible alternatives.
5. Identifying potential environmental effects.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

The BLM Districts will be seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations interested in or affected by the proposed action.

Public participation will be solicited by person to person contact, and/or by mail to known interested and affected publics and key contacts regarding scope of the analysis. In addition, news releases will be used to give the public general notice. Input from interested people and organizations will be used in preparation of the draft EIS. Comments, including names and street addresses of respondents, will be available for public review at the seed orchards during regular hours (7:30 a.m. to 4:00 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS or other related documents. Individual respondents may request

confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

The draft EISs are expected to be filed with the Environmental Protection Agency (EPA) and available for public review in the fall 2001 (for the Horning Seed Orchard), and later for Tyrrell, Sprague and Provolt Seed Orchards. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The Bureau will also publish a notice of availability of the EIS in the **Federal Register** and local media. The document will be mailed to persons and groups requesting copies and will be available on the applicable District websites. Districts' website addresses are: www.or.blm.gov/salem for Salem District, www.edo.blm.gov/nepa for Eugene District, and www.or.blm.gov/medford for Medford District.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability as it appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act 40 CFR 1503.3).

In addition, federal court decisions have established that reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS (*City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the BLM at a time

when it can seriously consider and respond to them in the final.

Following the comment period on the draft EIS, substantive comments will be analyzed, considered, and responded to by the BLM Districts in preparing the final EIS. The final EIS is scheduled to be completed in spring 2002 for the Horning Seed Orchard, and later for Tyrrell, Sprague and Provolt Seed Orchards.

The responsible officials will consider the comments and responses; environmental consequences discussed in the EIS; and applicable laws, regulations, and policies in making a decision regarding this proposal. The decision and rationale for the decision will be documented in the Record of Decision. Each District will prepare a Record of Decision for its seed orchard.

The responsible officials for each of these seed orchards are as follows:

Denis Williamson, Salem District Manager (Horning Seed Orchard), Julia Dougan, Eugene District Manager (Tyrrell Seed Orchard), and Ronald Wenker, Medford District Manager (Sprague and Provolt Seed Orchards).

Dated: March 20, 2001.

Charles E. Wassinger,

Associate State Director.

[FR Doc. 01-7803 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-120-01-7122PB-9021:01-0129]

Proposed Natural Gas Pipeline; Douglas County, OR

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of scoping on a proposed natural gas pipeline right-of-way application.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Coos Bay District, will be directing the preparation of an EIS by a third party contractor on the impacts of a proposed natural gas pipeline from near Roseburg in Douglas County, Oregon, to the Coos Bay city limits in Coos County, Oregon. BLM received a right-of-way application under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1737) on May 17, 2000. The proposed pipeline will cross approximately 55 miles on public and

private lands in Coos and Douglas Counties, Oregon.

DATES: This notice constitutes the beginning of the 30-day public scoping process. Interested individuals, organizations, and other agencies are encouraged to review the proposal and provide written comments by April 30, 2001, to the address below. A public scoping meeting will be held beginning at 7:30 on April 4, 2001 at the Coos Bay City Hall Council Chambers, 500 Central, Coos Bay.

ADDRESSES: Sue E. Richardson, District Manager, Coos Bay District, BLM, 1300 Airport Lane, North Bend, OR 97459.

FOR FURTHER INFORMATION CONTACT: Bob Gunther, Project Coordinator, at address above or telephone (541-751-4295), fax: 541-751-4303, or e-mail comments to the attention of Bob_Gunther@or.blm.gov.

SUPPLEMENTARY INFORMATION: The Coos County Board of Commissioners has applied for a right-of-way proposing to construct construction of a 12 inch natural gas trunk line to be buried within the existing rights-of-ways of the Pacific Corp. (PP&L) and Bonneville Power Administration (BPA) electric transmission lines, and within the existing roadbed of the Coos Bay Wagon Road. The total length of the pipeline is approximately 55 miles, with approximately 4.5 miles located on lands administered by the BLM. The proposed pipeline would connect to the Williams Gas Pipeline at a meter facility southwest of Roseburg, in or near Section 33 Township 27 South, Range 6 West in Douglas County. The exact location of the endpoint is not finalized (at the Coos Bay city limits in or near Section 27 Township 25 South, Range 13 West).

The natural gas transmission pipeline will deliver gas to distribution facilities built by Northwest Natural Gas in the Coos Bay and North Bend communities. Smaller 6" or 4" laterals will be built off the mainline to serve the towns of Coquille, Myrtle Point, and perhaps Bandon. The location of the laterals has not been finalized, but is anticipated to follow the location of existing powerline, State highway, or railroad right-of-ways. Locations of the distribution lines within city limits are not known at this time, but are anticipated to be located within existing road right-of-ways.

The proposed pipeline will fall under the jurisdiction of US Department of Transportation (DOT), as a gas transmission pipeline. It will be built and operated to all current specifications in 49 CFR Part 192 (Natural Gas Pipelines) and other

relevant sections. The Oregon Public Utility Commission will administer US DOT Pipeline Safety regulations for this pipeline.

The proposed pipeline will be designed with the appropriate design safety factors. The mainline is proposed as welded steel pipeline with a Maximum Allowable Operating Pressure (MAOP) of 100 psig. The finished pipeline will be pressure tested to at least 15% of MAOP, to detect leakage or failure.

All construction is done during daylight hours. Mainline construction will take about 6 months. Applicant plans to construct in the relatively dry summer months of April through October.

Pipeline construction will require a working space up to 60 feet wide. DOT requires a minimum of 30" of cover in normal soils, 18" in consolidated rock, 36" under roads. The pipe will be installed to a target depth of 48" to top of pipe. Some grading will be required to install the pipe, but shall be substantially restored to original grade before revegetation. All earth disturbance operations shall be subject to an erosion control plan to comply with US Environmental Protection Agency (EPA) guidelines.

In sections along electrical transmission lines, the contractor shall be required to have and follow a plan to continuously ground the pipe, to protect workers from shock from induced currents.

Coos County plans to contract pipeline operations with an experience pipeline operator. The County and its operator are required under DOT to formulate and use an Operations and Maintenance Plan specifically for this pipeline. The Operations and Maintenance Plan includes an Emergency Plan for specific procedures and notifications in case of an emergency.

Coos County plans to provide cathodic protection against corrosion, as required by DOT. Magnesium anodes will be placed at regular intervals along the pipeline, to sacrificially corrode and protect the coated steel pipe. This method normally mitigates most induced AC current. In sections near electrical transmission lines, supplemental anodes and other measures will be taken as necessary to minimize induced AC on the pipeline.

Long-term pipeline operation will require 40 feet of space to be kept clear of larger brush and trees. Access roads to the BPA corridor will be restored as needed for pipeline construction and access for Operations and Maintenance.

After the initial pipeline construction period, there is no need to ever excavate any particular segment of pipe. Annual maintenance consists of checking depth of pipe in roadways, repairing any soil erosion, controlling brush, replacing line markers, painting and operating block valves, leak surveys, and checking the effectiveness of the corrosion control system.

The BLM will consider issues and concerns identified during the scoping process in the preparation of the draft EIS. Comments which have been previously received as input for the preparation of the environmental assessment will be considered as comments for the EIS. The preliminary issues identified include: socio-economics impacts associated with the proposed project; soil erosion; water quality; wildlife and fish; potential impacts to traditional Native American uses of the area, archaeological sites, noxious weeds. Those individuals, organizations, and agencies with a known interest in the proposal have been sent a scoping letter requesting comments on the proposal. Persons wishing to be added to the mailing list for this EIS may do so by contacting the Coos Co. Pipeline Project Office, 1309 W. Central Blvd., Coquille, OR 97423.

The comment period on the draft EIS will last 60 days from the date the U.S. EPA Notice of Availability appears in the **Federal Register**. The draft EIS is expected to be available for review in June 2001. Because of recent court rulings, it is very important that those interested in the proposed action participate during the scoping and draft EIS review processes, so that any substantive comments are provided at a time when the BLM can meaningfully consider them. Comments, including names and addresses of respondents, will be available for public review at the Coos Bay District office during regular business hours (7:45 a.m. to 4:30 p.m., Monday to Friday, except holidays) and may be published as part of the EIS or other related documents. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this promptly at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: March 13, 2001.

Terry Richards,

Acting District Manager.

[FR Doc. 01-7808 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR120-01-7122-9028; GP1-08805]

Notice of Intent To Prepare an Environmental Impact Statement and Scoping On a Road Right-of-Way Application, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Coos Bay District, will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of a temporary road right-of-way on public land on the North Spit of Coos Bay, Oregon. BLM received a right-of-way application under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1737) on January 24, 2001. The proposed project involves improvement of an existing road and construction of a temporary spur road and trestle across public land to access the remains of the wreck of the New Carissa ship, mired in the surf of the beach. Following the deconstruction and removal of the wreck, the spur road and trestle would be removed and the areas rehabilitated.

DATES: This notice constitutes the beginning of the 30-day public scoping process. Interested individuals, organizations, and other agencies are encouraged to review the proposal and provide written comments by April 30, 2001. A public scoping meeting is scheduled at the following time and place: 7 p.m., April 12, 2001, North Bend Library, 1800 Sherman Ave., North Bend, OR

ADDRESSES: Please address questions, comments or concerns to the BLM, Coos Bay District Office, attn: Sue Richardson, 1300 Airport Lane, Coos Bay, OR 97459, fax: 541-751-4303.

FOR FURTHER INFORMATION CONTACT: Linda Petterson at the above address, or phone: 541-751-4207, or e-mail Linda_Petterson@or.blm.gov.

SUPPLEMENTARY INFORMATION: On February 4, 1999, the New Carissa ran aground on the North Spit of Coos Bay, Oregon. Numerous attempts to remove

the ship from the beach failed, leaving the stern section mired in sand in the surf. Oregon Governor John Kitzhaber has ordered the removal of the ship from the state owned beach.

On January 24, 2001, BLM received an application from Donjon/Devine to improve an existing road and construct a new spur for the deconstruction and removal of the remainder of the wreck. Approximately two miles of road would be improved and approximately one-quarter mile of road and trestle would be constructed on public land located in:

Williamette Meridian

T.25S., R.13 W.,

Sec. 7 Lot 14, 15, 16, 17, 18;

T. 25S., R. 14 W.,

Sec. 12 Lot 1;

Sec. 13 Lot 1, 2, 3, 4

Road improvements would consist of grading, realignment and turnouts.

The EIS will consider the impacts of the Proposed Action, Alternative Actions and No Action Alternative. The no action alternative is required to be evaluated as part of the EIS and will be fully addressed in the EIS as one of the alternatives. Other alternatives may include marine-based removal.

If you have specific concerns about these issues, or have other concerns or issues that BLM should consider in processing this proposed right-of-way, please address them in writing to the above individual or state them verbally at the public scoping meetings scheduled at the time and location shown above. BLM will accept written comments at the address shown above until April 30, 2001.

The issues and concerns identified during the scoping process will be considered in the preparation of the draft EIS. The preliminary issues identified include: water resources and wetlands; vegetation; endangered and threatened species; wildlife; soils and geology; recreation, cultural resources; noxious weeds; land use. Those individuals, organizations, and agencies with a known interest in the proposal have been sent a scoping letter requesting comments on the proposal. Persons wishing to be added to the mailing list for this EIS may do so by contacting BLM at the above address.

The comment period on the draft EIS will last 60 days from the date the U.S. EPA Notice of Availability appears in the **Federal Register**. The draft EIS is expected to be available for review in Fall 2001. Because of recent court rulings, it is very important that those interested in the proposed action participate during the scoping and draft EIS review processes, so that any

substantive comments are provided at a time when the BLM can meaningfully consider them. Comments, including names and addresses of respondents, will be available for public review at the Coos Bay District office during regular business hours (7:45 a.m. to 4:30 p.m., Monday to Friday, except holidays) and may be published as part of the EIS or other related documents. Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this promptly at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: March 13, 2001.

Terry A. Richards,

Acting District Manager.

[FR Doc. 01-7807 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

[ES-930-08-1310-00-241A: MSES 46739 and MSES 46740]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 43 CFR 3108.2-3, the lessee timely filed a petition for reinstatement of oil and gas leases MSES 46739 and MSES 46740, Greene County, Mississippi. The lessee paid the required rentals accruing from the dates of termination.

The Bureau of Land Management has not issued any leases affecting the lands. The lessee paid the \$500 administration fee for the reinstatement of each lease. The lessee has met the requirements for reinstatement of the leases per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the leases, effective the date of termination, subject to:

- The original terms and conditions of the leases;
- The increased rental of \$10 per acre;
- The increased royalty of 16 $\frac{2}{3}$ percent or 4 percentages above the existing competitive royalty rate; and
- The \$148 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Ida V. Doup, Chief, Branch of Use Authorization, Division of Resources Planning, Use and Protection, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, (703) 440-1541.

Dated: March 19, 2001.

Nate Felton,

Acting Chief, Branch of Use Authorization, Division of Resources Planning, Use and Protection.

[FR Doc. 01-7805 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-GJ-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-930-1430-ET; NMNM 103446]

Withdrawal of National Forest System Land for Guadalupe Cave Resource Protection Area; New Mexico; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects an error in the land description published as FR Doc. 01-1817 published in the **Federal Register** issue of January 22, 2001, for Public Land Order No. 7479. Sections 24 and 25 of T. 25 S., R. 22 E., should not have been included in the legal description.

1. On page 6663, column 2, lines 23 from the top which reads "Sec. 20, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$; secs. 21 to" is hereby corrected to read "Sec. 20, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

2. On page 6663, column 2, lines 24 from the top which reads "29, inclusive;" is hereby corrected to read "Secs. 21, 22, 23, 26, 27, 28, and 29;"

Dated: March 22, 2001.

Carsten F. Goff,

Deputy State Director.

[FR Doc. 01-7802 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[COC-64303; CO-200-1430-EU]

Notice of Intent To Prepare the Wellsville Land Sale and Amend the Royal Gorge Resource Management Plan; and Notice of Realty Action, Colorado

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of intent to prepare an amendment to the Royal Gorge Resource

Management Plan and prepare an Environmental Assessment (EA); and Notice of Realty Action, Direct Sale of Public Land in Fremont County, Colorado.

SUMMARY: The Bureau of Land Management (BLM), Royal Gorge Field Office (RGFO) announces the initiation of a Resource Management Plan (RMP) amendment for the Wellsville land sale, pursuant to the BLM planning regulations in 43 CFR part 1600. The amendment would allow disposal of public land in RGFO's retention zone. This would make public land available to resolve an occupancy pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713), as amended.

The following land would be sold at no less than the appraised fair market value:

New Mexico Principal Meridian, Colorado

T. 49 N., R. 10 E.,

Section 18: Lot 19, 20, Tram Mining Claim (MS6370)

Section 19: Lot 12, 13, 14, and a parcel in SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Lot 11; containing approximately 45 acres. Final acreage and description will be determined following survey.

The parcel will be offered by direct sale, without mineral rights, to William A. Tezak. The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until the land is sold or 2 years from publication of this notice, whichever occurs first. Detailed information concerning this sale, including dates, price, patent reservations, sale procedures, etc. will be available upon request.

DATES: Interested parties may submit written comments to the Field Office Manager at the address listed below. Comments will be accepted until May 11, 2001.

ADDRESSES: If you wish to comment, request additional information or request to be put on the mailing list, you may do so by any of several methods. You may mail or hand deliver your comments or requests to: Field Officer Manager, Bureau of Land Management, Royal Gorge Field Office, 3170 East Main Street, Canon City, Co 81212; 719-269-8500. You may also comment via email to: RGFOWEB@blm.gov. Please submit email comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and address in your email message.

Comments, including names and addresses of respondents, will be available for public review at the Bureau

of Land Management Royal Gorge Field Office, 3170 East Main Street, Canon City, CO during regular business hours. Individual respondents may request confidentially. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, are available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Levi D. Deike, Field Office Manager, Lindell Greer, Realty Specialist, or Pete Zwaneveld, Land Use Planner at the address and phone number listed above.

SUPPLEMENTARY INFORMATION: The RMP provides for three land ownership adjustment zones—disposal, retention, and exchange. Of these three zones, sale of public land is limited to those lands identified in the disposal zone. The proposed amendment would make public land located within the retention zone available for direct sale to resolve an occupancy occurring under the mining laws.

A legal notice describing the proposed planning action will be placed in the local newspaper. This notice will also be sent to the Governor of Colorado, Fremont County Commissioners, adjacent landowners, and potentially affected members of the public.

The analysis of this action will be done by an interdisciplinary team. The analysis and plan amendment are scheduled for completion in September 2001. The Proposed BLM Plan Amendment will be published during the EA process and will include a 30 day protest period.

Levi D. Deike,

Field Office Manager.

[FR Doc. 01-7806 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-JB-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-926-01-9820-HEMT02]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication. T. 5 S., R. 9 E., BHM, SD

The plat, in 4 sheets, represents the dependent resurvey of a portion of the west boundary of the Pine Ridge Indian Reservation, a portion of the east boundary and subdivisional lines, and the adjusted original meanders of the left and right banks of the South Fork of the Cheyenne River through sections 13, 14, 22, 23, and 24, and the subdivision of sections 13, 14, 22, 23, and 24, and the survey of the last thread of the abandoned channel of the South Fork of the Cheyenne River in section 22, the division of accretion lines in sections 13 and 22, and the new meanders of a portion of the left and right banks of the South Fork of the Cheyenne River through sections 13, 14, 22, 23, 24, and 27, Township 5 South, Range 9 East, Black Hills Meridian, South Dakota, was officially accepted March 1, 2001.

The survey was requested by the U.S. Forest Service, Nebraska National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107-6800.

Dated: March 14, 2001.

Steven G. Schey,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 01-7809 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-957-00-1420-BJ: GP01-0133]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on March 12, 2001.

Willamette Meridian

Oregon

T. 33 S., R. 32 E., accepted February 6, 2001

T. 35 S., R. 32 E., accepted February 6, 2001

T. 37 S., R. 32½ E., accepted February 6, 2001

T. 37 S., R. 32¾ E., accepted February 6, 2001

Copies of the plat(s) may be obtained from the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: March 13, 2001.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 01-7801 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

RIN 1010-AB57

Major Portion Prices and Due Dates for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of major portion prices.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published on August 10, 1999, require MMS to determine major portion values and notify industry by publishing the values in the *Federal Register*. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion value. This notice provides the major portion values and due dates for September and October 2000 production months.

EFFECTIVE DATES: January 1, 2000.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: John Barder, Indian Oil and Gas Compliance Asset Management, MMS; telephone, (303) 275-7234; FAX, (303) 275-7470; E-mail, John.Barder@mms.gov; mailing address, Minerals Management Service, Minerals Revenue Management, Indian Oil and Gas Compliance Asset Management, P.O. Box 25165, MS 396G3, Denver, Colorado 80225-0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule

titled "Amendments to Gas Valuation Regulations for Indian Leases," (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation).

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000 along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii)(2000). If additional royalties are due based on a published

major portion price, the lessee must submit an amended Form MMS-2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest under 30 CFR 218.54 (2000) will accrue from the due date until payment is made and an amended Form MMS-2014 is received. The table below lists the major portion prices for all designated areas not associated with an Index Zone and the due date for payment of additional royalties.

GAS MAJOR PORTION PRICES AND DUE DATES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

MMS—Designated areas	September 2000 (MMBtu)	October 2000 (MMBtu)	Due date
Alabama-Coushatta	\$4.81	\$5.48	04/30/2001
Blackfeet Reservation	3.14	4.05	04/30/2001
Fort Belknap	4.33	4.68	04/30/2001
Fort Berthold	2.13	2.60	04/30/2001
Fort Peck Reservation	2.78	3.34	04/30/2001
Navajo Allotted Leases in the Navajo Reservation	3.53	4.53	04/30/2001
Rocky Boys Reservation	3.52	4.01	04/30/2001
Turtle Mountain Reservation	1.18	1.18	04/30/2001
Ute Allotted Leases in the Uintah and Ouray Reservation	3.72	4.64	04/30/2001
Ute Tribal Leases in the Uintah and Ouray Reservation	3.72	4.64	04/30/2001

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999.

Dated: March 23, 2001.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 01-7786 Filed 3-28-01; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Sections 104 and 107 of CERCLA

Notice is hereby given that on March 1, 2001, the United States lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas, in *United States of America v. Advanced Resin Systems, Inc.*, No. H-99-4357, pursuant to sections 104 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9604 and 9607. The proposed Consent Decree resolves civil claims of the United States against Advanced Resin Systems, Inc. ("Advanced Resin") in connection with the Archem Site, located in Houston, Texas. Advanced Resin will pay a total of \$100,000.00 to the United States in

reimbursement of response costs incurred at the Site by the United States Environmental Protection Agency.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044-7611, and should refer to *United States of America v. Advanced Resin Systems, Inc.*, DJ No. 90-11-2-1328/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, 515 Rusk, Ste. 3300, Houston, Texas 77002, and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044-7611. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of

\$4.75, payable to the Consent Decree Library.

Catherine McCabe,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01-7673 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States and State of Maine v. Allen's Transfer & Storage, et al.*, Civil No. ME Civ. No. 00-249-B-C and NH Civ. No. C.01-27-M (D.Me.), was lodged on March 7, 2001 with the United States District Court for the District of Maine.

The proposed consent decree embodies an agreement with 130 potentially responsible parties, pursuant to section 107 of CERCLA, 42 U.S.C. 9607, to pay \$2,821,261.75, in aggregate, and five federal potentially responsible parties to pay \$257,383.67, in aggregate, in reimbursement of past response costs at the Hows Corner Superfund Site in Plymouth, Maine ("Site"). A total of

\$2,552,976.96 of these amounts will be paid to United States and the balance will be paid to the State of Maine.

The monies paid by the settling defendants under the consent decree is to reimburse past costs incurred at the Site. The consent decree provides the settling defendants with releases for civil liability for EPA's and the State's past response costs at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044-7611, and should refer to *United States v. and State of Maine v. Allen's Transfer & Storage, et al.*, DOJ Ref. No. 90-11-3-1733/1.

The proposed consent decree may be examined at the Office of the United States Attorney, 99 Franklin Street, 2nd Floor, Bangor, ME 04401, and at the Region I Office of the Environmental Protection Agency, Region I Records Center, 1 Congress Street, Suite 1100, Boston, MA 02114-2023. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 8611, Washington, DC 20044-7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$38.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01-7675 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that on March 9, 2001, the Second Modified Consent Decree in *United States and Commonwealth of Massachusetts v. Lynn Water and Sewer Commission*, Civil Action No. 76-2184-RGS, was lodged with the United States District Court for the District of Massachusetts. In this action, the United States and the Commonwealth of Massachusetts seek compliance by the Lynn Water and Sewer Commission ("LWSC") with the Clean Water Act ("CWA"), 33 U.S.C. 1251, et seq., in

regard to combined sewer overflows from several of its outfalls.

The Second Modified Consent Decree provides that LWSC will implement sewer separation for the areas tributary to its outfalls 004, 005, and 006, instead of constructing the consolidation conduit and storage facility contemplated under the existing consent decree. Sewer separation is to be completed for the areas tributary to outfall 006 by the end of 2003, for the areas tributary to outfall 005 by the end of 2006, and for the areas tributary to outfall 004 by the end of 2009. The combined sewer overflow control strategy for LWSC's other CSO outfall, outfall 003, continues to be sewer separation as in the existing consent decree and is to be completed by the end of 2003.

The Department of Justice will receive comments relating to the proposed Second Modified Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044, and should refer to *United States and Commonwealth of Massachusetts v. Lynn Water and Sewer Commission*, D.J. Ref. 90-5-1-1-545B.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of \$7.75 payable to the "Consent Decree Library."

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 01-7674 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department of Justice policy codified at 28 CFR 50.7, notice is hereby given that on March 20,

2001, a proposed Consent Decree in *United States v. Viktron, L.P., et al.*, Civ. Action No. 00-C-1632, was lodged with the United States District Court for the Northern District of Illinois. The Consent Decree represents a settlement of the United States' claims under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, for injunctive relief and civil penalties against Viktron, L.P. and its general partner Electronic Support Systems Corporation ("Settling Defendants") for alleged violations of Sections 301 and 307 of the Act, 33 U.S.C. 1311 and 1317, the General Pretreatment Standards codified at 40 CFR 403, the Pretreatment Standards for New Sources ("PSNS"), Metal Finishing Point Source Category, codified at 40 C.F.C. 433, Subpart A, and the terms and conditions of Viktron's Industrial User Permit and an Administrative Order issued by EPA pursuant to Sections 308(a) and 309(a)(3) of Act, 33 U.S.C. 1318(a) and 1319(a)(3). The alleged violations occurred at Viktron's metal finishing facility in West Chicago, Illinois, which discharged pollutants into the West Chicago publicly owned treatment works, owned and operated by the City of West Chicago. Under the terms of the proposed ability-to-pay Consent Decree, Settling Defendants agree to pay a civil penalty of \$150,000 in installments over three years, plus interest, and commit to pay up to an additional \$50,000 in civil penalties depending on Viktron's sales over the next three years. Full payment of these amounts will discharge all claims alleged in the complaint. No injunctive relief is necessary because the Settling Defendants are no longer in operation and no longer own the West Chicago facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States v. Viktron, L.P., et al.* Civ. Action No. 00-C-1632; D.J. Ref. No. 90-5-1-1-06834.

The Consent Decree may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois, 60604, and the United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. In requesting a copy of the Consent Decree, please enclose a

check payable to the Consent Decree Library in amount of \$3.50 (14 pages at 25 cents per page reproduction cost).

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 01-7766 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 223-2001]

Privacy Act of 1974; Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of

Justice proposes to modify the following systems of records:

ATR-006	Antitrust Information Management System (AMIS)—Matter Report	2-20-98	63 FR 8660.
CIV-001	Civil Division Case File System	2-20-98	63 FR 8665.
CRM-001	Central Criminal Division Index File and Associated Records	2-20-98	63 FR 8663.
CRM-012	Organized Crime and Racketeering Section, General Index File and Associated Records	11-26-90	55 FR 49147.
CRT-001	Central Civil Rights Division Index File and Associated Records	2-20-98	63 FR 8661.
FBI-002	The FBI Central Records System	2-20-98	63 FR 8671.
TAX-001	Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases.	2-20-98	63 FR 8684.
TAX-002	Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases.	2-20-98	63 FR 8685.
USA-005	Civil Case Files	2-20-98	63 FR 8666.
USA-007	Criminal Case Files	12-21-99	64 FR 71499.

The Department has modified the above systems of records to include a new routine use that allows disclosure of information relating to health care fraud to private health plans, associations of private health plans, health insurers, and associations of health insurers, for the following purposes: To promote the coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist victims of such fraud to obtain restitution; to enable private health plans to participate in health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans. It should be noted that with regard to taxpayer information, the addition of this routine use is not intended to affect the confidentiality of such taxpayer information as provided for in 26 U.S.C. 6103.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by [30 days after publication in the **Federal Register**]. The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, United States Department of Justice, Washington, DC 20530-0001 (Room 1400, National Place Building).

A description of the modification to the Department's systems of records is provided below. In accordance with 5 U.S.C. 552a(r), the Department has

provided a report to OMB and the Congress.

Dated: March 19, 2001.

Stephen R. Colgate,
Assistant Attorney General for Administration.

DOJ Privacy Act Systems of Records

ATR-006	Antitrust Information Management System (AMIS)—Matter Report.
CIV-001	Civil Division Case File System.
CRM-001	Central Criminal Division Index File and Associated Records.
CRM-012	Organized Crime and Racketeering Section, General Index File and Associated Records.
CRT-001	Central Civil Rights Division Index File and Associated Records.
FBI-002	The FBI Central Records System.
TAX-001	Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases.
TAX-002	Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases.
USA-005	Civil Case Files.
USA-007	Criminal Case Files.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information relating to health care fraud may be disclosed to private health plans, or associations of private health plans, and health insurers, or associations of health insurers, for the following purposes: to promote the

coordination of efforts to prevent, detect, investigate, and prosecute health care fraud; to assist efforts by victims of health care fraud to obtain restitution; to enable private health plans to participate in local, regional, and national health care fraud task force activities; and to assist tribunals having jurisdiction over claims against private health plans.

* * * * *

[FR Doc. 01-7676 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-14-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium ("ALABC")

Notice is hereby given that, on April 3, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Lead-Acid Battery Consortium ("ALABC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BMG-Metall & Recycling GMBH, Arnoldstein, AUSTRIA; Bernard Dumas, S.A., Bergerac, FRANCE; and TAFE, Ltd., Chennai, INDIA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ALABC intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33522).

The last notification was filed with the Department on January 3, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 26, 2000 (65 FR 39427).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7777 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Biosynthesis of Chemical Intermediates

Notice is hereby given that, on May 4, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Biosynthesis of Chemical Intermediates has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Chemicals Group of Henkel Corporation, Cincinnati, OH has been acquired by Cognis B.V., Netherlands, and has changed its name to Cognis Corporation; Henkel Corporation is no longer a member of the venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Biosynthesis of Chemical Intermediates intends to file additional written notification disclosing all changes in membership.

On July 10, 1998, Biosynthesis of Chemical Intermediates filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the

Act on September 29, 1998 (63 FR 51952).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7780 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Biotechnology Research and Development Corporation ("BRDC")

Notice is hereby given that, on November 27, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Biology Research and Development Corporation ("BRDC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Home Products Corporation ("AHP"), Parsippany, NJ, which had been dropped as a member of this venture on June 30, 2000, rejoined the venture on September 29, 2000 for a period ending on December 31, 2003.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BRDC intends to file additional written notification disclosing all changes in membership.

On April 13, 1998, BRDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 1988 (53 FR 16919).

The last notification was filed with the Department on August 18, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 3, 2000 (65 FR 59017).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7783 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Joint Venture Between Cree Lighting Company, General Electric Company and Gelcore, LLC

Notice is hereby given that, on February 26, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Joint Venture between Cree Lighting Company, General Electric Company and GELcore, LLC ("Joint Venture") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, one party to this venture, Widegap Technology, LLC, Westlake Village, CA, has been reorganized and is now named Cree Lighting Company, Goleta, CA.

No other changes have been made in either the membership or planned activity of the group research project. The Joint Venture intends to file additional written notification disclosing all changes in membership.

On December 29, 1998, the Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 28, 1999 (64 FR 4471).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7773 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interoperability Consortium, Inc.

Notice is hereby given that, on April 17, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interoperability Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications

were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mastercard International, Purchase, NY; and Citicorp Development Center, Inc., Los Angeles, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interoperability Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On January 13, 2000, Interoperability Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published this notice in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2000 (65 FR 38596).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7776 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Mobile Wireless Internet Forum

Notice is hereby given that, on February 13, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Mobile Wireless Internet Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aepona Telecoms, Dublin Ireland; Mspect, Sunnyvale, CA; OKI Electric Industry, Chiba-Si, Chiba, Japan; Packet Machine, Tel Aviv, Israel; Winphoria Networks, Tewksbury, MA; and Xybridge Technologies, Richardson, TX have been added as parties to this venture. Also, Sharp Electronics Corporation, Nara, Japan; and Solect, Toronto, Ontario, Canada have been dropped as parties to this venture. IP Mobile, Richardson, TX has merged with Cisco, San Jose, CA. The following members have changed their names:

3Com to Commworks, a 3Com Company, Mount Prospect, IL; DDI Corporation to KDDI, Tokyo, Japan; Nettle Network Technologies to Lacuna Network Technologies, Arlington, VA; and phone.com to Openwave, Temple Terrace, FL.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Mobile Wireless Internet Forum intends to file additional written notification disclosing all changes in membership.

On May 25, 2000, Mobile Wireless Internet Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 11, 2000 (65 FR 49264).

The last notification was filed with the Department on November 13, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 11, 2001 (66 FR 2449).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7782 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Multiservice Switching Forum

Notice is hereby given that, on January 8, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Multiservice Switching Forum ("MSF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Beacon Networks, Marlborough, MA; Calix Networks, Petaluma, CA; Coppercom, Santa Clara, CA; Efficient Networks, Dallas, TX; General Bandwidth, Austin, TX; Data Connection Limited, Enfield, England, UNITED KINGDOM; and Voxpath Networks, Austin, TX have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and MSF intends to file additional written notifications disclosing all changes in membership.

On January 22, 1999, MSF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28519).

The last notification was filed with the Department on June 29, 2000. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 6, 2000 (65 FR 59874).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7778 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Personalization Consortium, Inc.

Notice is hereby given that, on March 5, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Personalization Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SLP Infoware, Boston, MA; ENCIRQ, San Francisco, CA; Fuji Xerox Co., Ltd., Tokyo, JAPAN; and Mobius Management Systems, Rye, NY have been added as parties to this venture. The following member has changed its name: Servicesoft to Broadbase, Menlo Park, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Personalization Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 15, 2000, Personalization Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 11, 2000 (65 FR 49266).

The last notification was filed with the Department on December 12, 2000. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 01-7772 Filed 3-28-01; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Portland Cement Association ("PCA")

The notice on behalf of Portland Cement Association ("PCA") published in the **Federal Register** on Wednesday, August 9, 2000 (65 FR 48738), which was a duplicate of a notice previously published on Tuesday, July 11, 2000 (65 FR 42726), is retracted.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 01-7779 Filed 3-28-01; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on February 26, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ztec, Albuquerque, NM; CMI Technology Inc., Seoul, Republic of Korea; International Test Technology, County Donegal, Ireland; and DiagnoSYS Ltd., Petersfield, Hampshire, United Kingdom have been added as parties to this venture. Also, Znyx, Fremont, CA has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems

Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 01-7781 Filed 3-28-01; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on March 2, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Dr. Prashant Agrawal, Kent Ridge Crescent, SINGAPORE has been added as a party to this venture. Also, America Online Inc., Irvine, CA; and Axis Communications, Inc., Mountain View, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on September 18, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the

Act on November 24, 2000 (65 FR 70613).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 01-7771 Filed 3-28-01; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—U.S. Steel Group (a Unit of USX Corporation) and Kobe Steel, Ltd.

Notice is hereby given that, on March 6, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), U.S. Steel Group has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are U.S. Steel Group (a unit of USX Corporation), Pittsburgh, PA; and Kobe Steel, Ltd., Kobe, JAPAN. The nature and objectives of the venture are developing new and/or improved steel sheet products, product technologies and/or product quality for automotive applications.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 01-7775 Filed 3-28-01; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Application Protocol Forum

Notice is hereby given that, on April 3, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Wireless Application Protocol Forum ("WAP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose

of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ACE*COMM Corporation, Gaithersburg, MD; Add2Phone Ltd., Helsinki, FINLAND; Algorithmic Research Ltd., Petach-Tikva, ISRAEL; Altis Consulting Ltd, Thattham, Berks, England, UNITED KINGDOM; America Online, Incorporated, Dulles, VA; American Express TRS Co., Inc., New York, NY; Andersen Consulting, Chicago, IL; ASP Global Ltd., Salford, England, UNITED KINGDOM; BarPoint.com, Fort Lauderdale, FL; Basic Sic Integration, LLC, Palo Alto, CA; Bell Mobility, Mississauga, Ontario, CANADA; Bidhit.com, Inc., Bothell, WA; BrainDock.com, New York, NY; Business Objects, Levallois Perret, FRANCE; Categorical Software Limited, Surbiton, Surrey, England, UNITED KINGDOM; Citigroup, Los Angeles, CA; Compaq Computer Corporation, Houston, TX; Convergys, Cincinnati, OH; Copernicus Limited, London, England, UNITED KINGDOM; Critical Path, Inc., San Francisco, CA; CT Motion, Rosh Ha'ayin, ISRAEL; Dansk Data Elektronik A/S, Herlev, DENMARK; DataChannel, Inc., Bellvue, WA; DataDesign AG, Munich, GERMANY; Datalink.net., Inc., San Jose, CA; Dialogue Communications Limited, Sheffield, South Yorkshire, England, UNITED KINGDOM; E-Plus Mobilfunk GmbH, Dusseldorf, GERMANY; EC-Gate NV, Toronto, Ontario, CANADA; Ecash Technologies, Inc., Bothell, WA; EDS e.Solutions Europe and Africa, Zaventem, Brussels, BELGIUM; ESRI, Inc., Redlands, CA; EuroTel Praha, spol.s.r.o., Praha, CZECH REPUBLIC; Extensity, Inc., Emeryville, CA; F5 Networks, Seattle, WA; Fenestrae B.V., JR Leioschenoam, THE NETHERLANDS; First Data Corporation, Coral Springs, FL; Go2Systems, Inc., Irvine, CA; GroupServe, Inc., Washington, DC; I-Group, Hingham, MA; In Fusio, Bordeaux, FRANCE; and Inktomi Corporation, Foster City, CA; International Computers Ltd., Helsinki, FINLAND; iobox Oy, Helsinki, FINLAND; IONA Technologies, Inc., Waltham, MA; Ionic Microsystems Pvt. Ltd., Bangalore, INDIA; JP Systems, Inc., Dallas, TX; KachinaNet.com, Fremont, CA; Kenwood Corp., Kanagawa, JAPAN; Lava2140, Los Angeles, CA; Ludi WAP S.A., Paris, FRANCE; Luminant Worldwide Corporation, Dallas, TX; Macalla Software Ltd., Dublin, IRELAND; MapInfo Corporation, Windsor, Berks, England, UNITED KINGDOM; Mercator Software, Wilton, CT; MobileID, Inc., Los Gatos, CA;

MobileWay, Puteaux, FRANCE; Mobilocity, Brooklyn, NY; Mosaic Software, Rondebosch, SOUTH AFRICA; MSC Konsult AB, Dandergd, SWEDEN; MTDS Oy, Espoo, FINLAND; MyWay.com, Andover, MA; NARUS, Inc., Palo Alto, CA; NCC Services, Ltd., Manchester, England, UNITED KINGDOM; netdecisions Limited, London, England, UNITED KINGDOM; Netlife AG, Hamburg, GERMANY; NetLight Consulting AB, Solna, SWEDEN; Network Appliance, Inc., Sunnyvale, CA; Nocom AB, Uppsala, SWEDEN; Northstream AB, Sollentuna, SWEDEN; Novell, San Jose, CA; Nuforia, Inc, Houston, TX; Nvision, Bracknell, England, UNITED KINGDOM; Objectsoft, Inc., Chicago, IL; OnDisplay, Inc., San Ramon, CA; Oven Digital, Inc., New York, NY; Pervasive Software Inc., Austin, TX; Phone Online, Inc., Knoxville, TN; Plumtree Software, Inc., San Francisco, CA; PocketMail Group Limited, Sydney, New South Wales, AUSTRALIA; Radguard Ltd., Tel Aviv, ISRAEL; Rage Software PLC, Liverpool, England, UNITED KINGDOM; Rare Medium Inc., New York, NY; ReadyCom, Inc., Chapel Hill, NC; Readcall Ltd., London, England, UNITED KINGDOM; Seagull Business Software, Dordrecht, THE NETHERLANDS; Sendo Limited, Birmingham, England, UNITED KINGDOM; Sensei Ltd, Aylesbury, Bucks, England, UNITED KINGDOM; Servicesoft Technologies, Natick, MA; Sinia Corporation, Mountain View, CA; SkyTel Communications, Jackson, MS; Slangsoft, Jerusalem, ISRAEL; Software.Com, Inc, Santa Barbara, CA; Speedia, Llc, Brooklyn, NY; STM Wireless, Inc, Irvine, CA; Surrey & City Consulting, Sutton, Surrey, England, UNITED KINGDOM; Tegarom Telematics GmbH, Bonn, GERMANY; Telecommunications Systems, Inc., Annapolis, MD; Telemig Celular Participacoes S.A., Brasilia, BRAZIL; Telsim Mobile Telekomunikayson, Istanbul, TURKEY; The Edge Consultants Pte Ltd, Singapore, SINGAPORE; Tietotekniikkayhtio Tieturi Oy, Helsinki, FINLAND; TrustLink AB, Stockholm, SWEDEN; TTP Communications Ltd, Royston, Hertfordshire, England, UNITED KINGDOM; Ubizen, Leuven, BELGIUM; US West, Denver, CO; UUNet Technologies Inc., Ashburn, VA; Vasco Data Security, Wemmel, BELGIUM; Vafone, Redwood City, CA; Vitria Technology, Inc., Sunnyvale, CA; Webtiss Technologies, Paris, FRANCE; Worldzap, Zug, SWITZERLAND; Xcert International, Inc., Walnut Creek, CA; ZKEY.Com, Los Angeles, CA; and Zsigo

Wireless Training, East Lansing, MI have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group reserach project. Membership in this group research project remains open, and WAP intends to file additional written notifications disclosing all changes in membership.

On March 18, 1998, WAP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on January 13, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 29, 2000 (65 FR 40133).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 01-7774 Filed 3-28-01; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SWRI"): Clear Diesel III

Notice is hereby given that, on January 4, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI"): Clean Diesel III has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Delphi Automotive Systems Corporation, Flint, MI has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI: Clean Diesel III intends to file additional written notification disclosing all changes in membership.

On January 12, 2000, SwRI: Clean Diesel III filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to

Section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on November 2, 2000. A notice was published in the **Federal Register** on December 29, 2000 (65 FR 83095).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7769 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Secure Digital Music Initiative

Notice is hereby given that, on March 27, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Secure Digital Music Initiative ("SDMI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Unitech Electronics Co., Ltd., Seoul, REPUBLIC OF KOREA; Aiwa Co. Limited, Tokyo, JAPAN; Analog Devices, Inc., Norwood, MA; Earjam, Inc., San Jose, CA; DnC Tech, Inc., Seoul, REPUBLIC OF KOREA; Cognicity, Inc., Edina, MN; HitHive Inc., Seattle, WA; Sunhawk.com Corporation, Seattle, WA; Motorola, Schaumburg, IL; Digital Way Co. Limited, Seoul, REPUBLIC OF KOREA; Telecom Systems Intl. Co. Limited, Tokyo, JAPAN; Viatch, Inc., Natick, MA; Cirrus Logic, Austin, TX; Blue Spike, New York, NY; MusicMatch, San Diego, CA; Broadcom HomeNetworking, Inc., Sunnyvale, CA; Sealtronic Technology, Seoul, REPUBLIC OF KOREA; Tornado Entertainment, London, England, UNITED KINGDOM; Digital Media on Demand, Allston, MA; Aegisoft Corporation, Rockville, MD; Voquette, Inc., Kfar Saba, ISRAEL; and Vedalabs, Inc., Baton Rouge, LA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SDMI intends to file additional written notification disclosing all changes in membership.

On June 28, 1999, SDMI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 2, 1999 (65 FR 67591).

The last notification was filed with the Department on October 4, 1999. A notice was published in the **Federal Register** on May 12, 2000 (65 FR 30612).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7768 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Test & Diagnostics Consortium, Inc.

Notice is hereby given that, on March 1, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Test & Diagnostics Consortium, Inc. ("TDC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aeronautical Radio, Inc. (ARINC), Annapolis, MD; Agilent Technologies, Inc., Palo Alto, CA; DoD, Lakehurst, NJ; Lockheed Martin Corporation, Bethesda, MD; Marconi Integrated Systems, San Diego, CA; Miltope Corporation, Hope Hull, AL; Northrup Grumman Corporation, Los Angeles, CA; and Raytheon Systems Company, Lexington, MA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TDC intends to file additional written notification disclosing all changes in membership.

On November 12, 1999, TDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2000 (65 FR 38579).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 01-7767 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Water Heater Industry Joint Research and Development Consortium

Notice is hereby given that, on February 9, 2000 and February 26, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Water Heater Industry Joint Research and Development Consortium ("the Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing an extension of its term. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the term of the Consortium has been changed from a term of five years beginning February 27, 1995 to a period of seven years.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Consortium intends to file additional written notification disclosing all changes in membership.

On February 28, 1995, the consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 1995 (60 FR 15789).

The last notification was filed with the Department on December 3, 1999. A notice was published in the **Federal Register** on May 12, 2000 (65 FR 30613).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 01-7770 Filed 3-28-01; 8:45 am]

BILLING CODE 4410-11-M

MERIT SYSTEMS PROTECTION BOARD

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), that at 2:30 p.m. on Friday, March 23, 2001, the members of the Merit Systems Protection Board met in closed session. The purpose of the meeting was to determine the disposition of certain motions and petitions filed in the case

of *Azdell and Fishman v. Office of Personnel Management*, docket numbers DC-300A-97-0368-N-1, DC-300A-97-0368-N-2, DC-97-0369-N-1, DC-97-0369-N-2, DC-300A-97-0368-C-1, DC-300A-97-0368-C-2, DC-300A-97-0369-C-1, and DC-300A-97-0369-C-2.

In calling the meeting, the Board determined that Board business required its consideration of these matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of 5 U.S.C. 552b(c)(10).

The meeting was held in the Board's conference room at 1615 M Street, NW., Washington, DC 20419

Dated: March 27, 2001.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 01-7931 Filed 3-27-01; 8:45 am]

BILLING CODE 1400-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 50-388]

PPL Susquehanna, LLC; Susquehanna Steam Electric Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. NPF-14, and NPF-22, issued to PPL Susquehanna, LLC (the licensee), for operation of Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would make administrative changes in the Technical Specifications (TSs), correcting the wording of the legends in Figure 3.4.10.1, "Reactor Vessel Pressure vs. Minimum Vessel Temperature," for both units, and correcting administrative errors in Section 5.6.5.b, regarding the Core Operating Limits Report (COLR), for Unit 2.

The proposed action is in accordance with the application for amendment submitted by PP&L, Inc. (the licensee before July 1, 2000), dated January 13, 2000, as supplemented by letter submitted by PPL Susquehanna, LLC (the licensee on and after July 1, 2000), dated September 6, 2000.

The Need for the Proposed Action

The proposed amendments would revise the wording of parts of the units' TSs, which are currently in error. The proposed amendments involve administrative changes to the TSs only. No actual plant equipment, regulatory requirements, operating practices, or analyses are affected by these proposed amendments.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the amendments are granted. No changes will be made to the design, licensing bases, and applicable procedures at the units. Other than the administrative changes, no other changes will be made to the TSs. Consequently, the action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Susquehanna Steam Electric Station, Units 1 and 2 dated June 1981.

Agencies and Persons Contacted

In accordance with its stated policy, on February 9, 2001, the staff consulted with the Pennsylvania State official, Mr.

Richard Janati, regarding the environmental impact of the proposed amendment. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed amendment will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see PP&L, Inc.'s letter dated January 13, 2000, as supplemented by PPL Susquehanna, LLC's letter dated September 6, 2000. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint, 11555 Rockville Pike (first floor), Rockville, Maryland. Publically available documents will be accessible electronically from the ADAMS Public Library component on the NRC Web site <http://www.nrc.gov> (the Electronic Reading Room).

Dated at Rockville, Maryland, this 23rd day of March 2001.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

*Project Manager, Project Directorate I-1,
Division of Licensing Project Management,
Office of Nuclear Reactor Regulation.*

[FR Doc. 01-7790 Filed 3-28-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Working Group on Termination of Uranium Mill Licenses in Agreement States

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of formation of working group and public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the formation of a working group on Termination of Uranium Mill Licenses in Agreement States. The working group will provide recommendations to the NRC on the NRC concurrence process for uranium license termination in Agreement States. The working group is composed of representatives from the NRC and Agreement States.

DATES: The first meeting will be held on April 24, 2001, from 2 p.m. to 4 p.m. at the NRC Headquarters, 11555 Rockville Pike, Room O-3-B4, Rockville, Maryland 20852. Agreement State representatives will participate in the

meeting by phone. These meetings will be open to the public. Future meetings will be announced on the NRC public meeting web site, <http://www.nrc.gov/NRC/PUBLIC/meet.html>.

FOR FURTHER INFORMATION CONTACT:

Kevin Hsueh, Health Physicist, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: 301-415-2598, e-mail: kph@nrc.gov.

SUPPLEMENTARY INFORMATION: The Office of State and Tribal Programs (STP) Procedure SA-900, "Termination of Uranium Mill Licenses in Agreement States," has been used as guidance by NRC staff for review of uranium license termination proposals as well as by Agreement State staff on preparation of such proposals. The NRC has made its concurrence determinations on one conventional and seven in-situ uranium mill license termination proposals submitted by Agreement States since the STP SA-900 procedure was issued in April 1999.

During NRC review of the license termination proposals, especially Washington State's proposal for termination of the Western Nuclear (Sherwood) mill license, NRC staff recognized that in some areas the guidance may need to be expanded to better characterize the level of detail in information which should be provided by an Agreement State in support of a license termination proposal. In addition, the NRC also received a comment letter from the National Mining Association recommending clarifying changes to the guidance provided in the STP SA-900 procedure.

The working group will identify areas that need improvements in the NRC concurrence process based on the review experience to date, and propose a draft revised SA-900 procedure that addresses issues identified by the working group and stakeholders. The working group is scheduled to complete the project by October 2001.

Dated at Rockville, Maryland this 23rd day of March, 2001.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Acting Director, Office of State and Tribal Programs.

[FR Doc. 01-7789 Filed 3-28-01; 8:45 am]

BILLING CODE 7590-01-p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27365]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

March 23, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 17, 2001, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 17, 2001, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70-9825)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, a registered holding company, and its public utility subsidiary, The Connecticut Light and Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037 (collectively, "Applicants") have filed a declaration under section 12(d) of the Act and rules 44 and 54 under the Act.

Applicants seek an order of the Commission approving the sale of CL&P's South Meadow electric generating station ("Station") to the Connecticut Resources Recovery Authority ("CRRA"), a public instrumentality and political subdivision of the State of Connecticut. CRRA performs the essential government functions of handling and disposing of solid waste and resource

recovery in Connecticut. The Station consists of two steam turbines and four jet turbine sets with a rated capability of approximately 250 megawatts, to generate electricity, in part from steam produced from combustion of municipal solid waste.

CRRA will pay CL&P \$10 million for the Station.¹ Also, CRRA will assume all but \$2 million of the on-site environmental obligations. Minor amounts of the "transmission" assets, which are jurisdictional to the Federal Energy Regulatory Commission, will be included with the Station. CL&P will retain either a fee interest or adequate easement rights for the existing substation, switchyard and related transmission and distribution facilities. CRRA will continue to use the Station to process municipal solid waste. CRRA will generate electricity for sale to CL&P and in the New England competitive markets.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-7791 Filed 3-28-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33-7964, File No. S7-08-01]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Conference; Request for Comments.

SUMMARY: The Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for their annual conference to be held on April 30, 2001. This meeting seeks to carry out the policies and purposes of Section 19(c) of the Securities Act of 1933, principally to increase cooperation between the Commission and state securities regulatory authorities in order to maximize the effectiveness and efficiency of securities regulation.

DATES: The conference will be held on April 30, 2001. We must receive your written comments by April 25, 2001 in order to be considered by conference participants.

¹ As of November 30, 2000, the net book value (excluding dismantlement reserves) of the Station was approximately \$2.9 million.

ADDRESSES: Please send three copies of written comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0609. Comments also can be sent electronically to the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7-08-01; if E-mail is used, please include this file number on the subject line. Anyone can inspect and copy the comment letters at our Public Reference Room, 450 5th Street, NW., Washington, DC 20549-0102. All electronic comment letters will be posted on the Commission's internet web site (<http://www.sec.gov>).¹

FOR FURTHER INFORMATION CONTACT: Marva Simpson, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549-0304, (202) 942-2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

The federal government and the states have jointly regulated securities offerings and the securities industry since the adoption of the federal regulatory structure in the Securities Act of 1933 (the "Securities Act").² Issuers trying to raise capital through securities offerings, as well as participants in the secondary trading markets, must comply with the federal securities laws as well as all applicable state laws and regulations. Parties involved in this process have long recognized the need to increase uniformity and cooperation between the federal and state regulatory systems so that capital formation can be made easier while investor protections are retained.

Congress endorsed greater uniformity in securities regulation with the enactment of Section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.³ Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out that Section's policy and purpose. Section 19(c) mandates greater federal and state cooperation in securities matters in order to:

- Maximize effectiveness of regulation;

- Maximize uniformity in federal and state standards;
- Minimize interference with the business of capital formation; and
- Reduce the costs, paperwork and burdens of raising investment capital, particularly by small business, and also reduce the costs of the government programs involved.

The Commission is required to conduct an annual conference to establish ways to achieve these goals. The 2001 meeting will be the eighteenth conference.

During 1996, Congress again examined the system of dual federal and state securities regulation. It considered the need for regulatory changes to promote capital formation, eliminate duplicative regulation, decrease the cost of capital and encourage competition, while at the same time promoting investor protection. Congress passed The National Securities Markets Improvement Act of 1996⁴ ("NSMIA") as a result. NSMIA contains significant provisions that realign the partnership between federal and state regulators. The legislation reallocates responsibility for regulation of the nation's securities markets between the federal government and the states in order to eliminate duplicative costs and burdens and improve efficiency, while preserving investor protections.

II. 2001 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")⁵ are planning the 2001 Conference on Federal-State Securities Regulation, which will be held April 30, 2001 in Washington, DC. At the conference, Commission and NASAA representatives will divide into working groups in the areas of corporation finance, market regulation and oversight, investment management, investor education, and enforcement. Each group will discuss methods to enhance cooperation in securities matters and improve the efficiency and effectiveness of federal and state securities regulation. Generally, only Commission and NASAA representatives may attend the conference to encourage open and frank discussion. However, each working group in its discretion may invite specific self-regulatory organizations

("SROs") to attend and participate in certain sessions.

The Commission and NASAA are preparing the conference agenda. We invite the public, securities associations, self-regulatory organizations, agencies, and private organizations to participate by submitting written comments on the issues set forth below. In addition, we request comment on other appropriate subjects. Conference attendees will consider all comments.

III. Tentative Agenda and Request for Comments

The tentative agenda for the conference consists of the following topics in the areas of corporation finance, market regulation, investment management, investor education, and enforcement.

(1) Corporation Finance Issues

NSMIA amended Section 18 of the Securities Act⁶ to preempt state blue-sky registration and review of offerings of covered securities.⁷ Covered securities, as defined by Section 18, include several types of securities. One class of covered securities is securities traded on the national markets like the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange LLC ("Amex") and the Nasdaq National Market System ("Nasdaq/NMS"). Covered securities also include registered investment company securities and some exempt securities and offerings.

The states retain some authority over offerings of covered securities despite this preemption. Except for nationally-traded securities, the states have the right to require fee payments and notice filings. The states also retain antifraud authority over all securities offerings, including offerings of covered securities.

Securities that are not covered securities remain subject to state registration requirements. These securities generally include the securities of smaller companies, like those quoted on the Nasdaq SmallCap market or the over-the-counter Bulletin Board, or in the "pink sheets." Securities issued under some federal exemptions from registration are not covered securities; the states retain authority to register or exempt those securities. These include securities issued in unregistered offerings under the following exemptions:

¹ We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

² 15 U.S.C. 77a *et seq.*

³ Pub. L. 96-477, 94 Stat. 2275 (October 21, 1980).

⁴ Pub. L. 104-290, 110 Stat. 3416 (October 11, 1996).

⁵ NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

⁶ 15 U.S.C. 77r.

⁷ 15 U.S.C. 77r(a) and (b).

- Section 3(a)(11) of the Securities Act and Rule 147 for intrastate offerings;⁸

- Section 4(2) of the Securities Act where the offering does not meet the safe harbor requirements of Rule 506 of Regulation D;⁹

- Regulation A;¹⁰ and
- Rules 504 and 505 of Regulation D.¹¹

The states' authority over securities offerings, particularly their ability to register and review offerings of non-covered securities, continues the need for uniformity between the federal and state registration systems, where consistent with investor protection. Staff from the Commission's Division of Corporation Finance and state representatives will discuss ways to increase uniformity between the systems. The group will focus primarily on the following topics:

A. Transactions Involving "Qualified Purchasers"

Under the provisions of Section 18 of the Securities Act, an additional category of covered securities is subject to preemption, *i.e.*, transactions involving qualified purchasers. This term is subject to definition by the Commission. The participants will discuss this provision.

B. Federal Exemptions

1. Regulation A

The participants will consider possible revisions to the Commission's Regulation A exemption from the registration requirements of the Securities Act. As presently constituted, the provision permits the offer and sale of up to \$5 million worth of securities in a 12-month period. An offering circular must be prepared for delivery before sale. Such offering materials are subject to Commission staff review before sale. Regulation A permits the use of unaudited financial statements. However, because the offering must be registered in most cases under state laws, issuers may be required to provide audited financial statements. Further, the current level of exemption may be too low to invite professional underwriting interest in these offerings. The conferees will consider possible changes to make the Regulation A exemption more useful to small

businesses, yet consonant with investor protection.

Regulation A also permits the offering of securities in the manner of "testing the waters" to see whether or not any potential offering of an issuer's securities would be favorably received by the investing public. The provision has not been widely used. The conferees will discuss the provision with a view to determining whether greater federal/state uniformity is an issue and can be achieved or whether other matters have caused the apparent lack of attractiveness in this provision.

2. Federal Coordinating Exemption for Offerings Exempt Under State Law

The Commission in 1996 adopted an exemption from federal registration for offerings up to \$5 million made in compliance with one of California's exemptions from state securities qualification requirements.¹² The California exemption—Section 25102(n) of the California Corporation Code—permits some forms of general solicitation and limits sales to persons called qualified purchasers. The federal exemption applies only to offers and sales that satisfy the conditions of the California exemption. Other states have now fashioned similar exemptions from their registration provisions. In addition, a number of states have adopted NASAA's Model Accredited Investor Exemption, which is patterned on the California provision. The Division and state representatives will discuss these exemptions and consider the current views relating to federal/state uniformity in this area.

3. Form D

As the result of a cooperative effort between NASAA and the Commission, in 1982, the Commission adopted Regulation D, which was intended to facilitate uniformity for limited offering exemptions at the state and federal level. Form D was adopted in conjunction with Regulation D. Form D serves as a notice of sales for use in exempt offerings under Regulation D and Section 4(6) of the Securities Act. Rule 503 requires issuers seeking an exemption under Regulation D to file Form D with the Commission within 15 days after the first sale.¹³ Issuers must also file the Form D for sales of securities in states that have adopted the Uniform Limited Offering Exemption ("ULOEE")¹⁴ and the Form D. Currently, the Commission and some states receive

paper filings. With the advent of electronic filing and advances in technology, it may be more timely and cost-effective to file the Form D using the EDGAR system. The conferees will discuss methods of simplifying the form for electronic filing purposes as well as the contents of the notice.

C. Securities of Blank Check Companies

A blank check issuer or company is one in the development stage with no specific business plan or purpose, or one that indicates that its plan is to engage in a merger or acquisition with an unidentified company or companies.¹⁵ In 1990, the U.S. Congress found that offerings by these kinds of issuers were common vehicles for fraud and manipulation in the market for penny stocks. The Commission has adopted several rules, as Congress directed, to deter fraud in connection with these offerings.¹⁶

The group will discuss matters of mutual concern relating to these offerings, including recent developments and possible new rules and revisions of existing rules.

D. Communications Restrictions Before, During and After a Registered Public Offering

The Commission staff is considering modifications to the Securities Act restrictions on communications during the offering period. In particular, the Commission staff will focus on whether current restrictions on communications may be reduced to accommodate new technologies without compromising investor protections. The conferees will consider the issues from these perspectives with a view toward defining the regulatory necessities for investor protection.

E. Plain English and Other Disclosure Processing Issues

As of October 1, 1998, issuers filing Securities Act registration statements must use plain English writing principles when drafting the front part of prospectuses, *i.e.*, the cover page and the summary and risk factors sections.¹⁷ These plain English principles include: active voice; short sentences; everyday language; tabular presentation or "bullet lists" for complex material, if possible; no legal jargon or highly technical business terms; and no multiple negatives.

The Division's staff, in its full review of a registration statement, examines the

⁸ 17 CFR 230.147.

⁹ 17 CFR 230.501 through 230.508.

¹⁰ 17 CFR 230.251 through 230.263.

¹¹ 17 CFR 230.504 and 230.505. Besides the listed securities, other securities also are considered covered securities. These include securities traded on regional exchanges and asset-backed and mortgage-backed securities.

¹² 17 CFR 230.1001.

¹³ 17 CFR 230.503.

¹⁴ The ULOEE provides a uniform exemption from state registration for offerings complying with Regulation D.

¹⁵ See Section 7(b)(3) of the Securities Act, 15 U.S.C. 77g(b)(3).

¹⁶ 17 CFR 230.419 and 17 CFR 240.15g-8.

¹⁷ Securities Act Release No. 7497 (January 28, 1998) [63 6370].

prospectus for compliance with the plain English requirements. If appropriate, the Division staff will issue comments to obtain improved plain English disclosures. Some states also review and issue comments on prospectus disclosures. The concurrent comment process from different regulators raises the prospect of inconsistent comments. For instance, the Division may ask for changes to conform to plain English requirements that seem contrary to state disclosure standards. The group will consider issues that have arisen in this area and ways to facilitate federal and state coordination in the comment process. Other areas of discussion will include the use of prospective information such as financial forecasts.

F. Uniform Securities Act

A committee of the National Conference of Commissioners on Uniform State Laws is in the process of drafting a new version of the Uniform Securities Act. The Uniform Securities Act is a uniform state securities law statute. Two versions are currently in force—the Uniform Securities Act of 1956 and the Revised Uniform Securities Act of 1985. The new version will modernize and update the law for many changes including, for example, NSMIA, technology advances, and internationalization of securities trading. The group will discuss the status of this redrafting effort and related matters.

(2) Market Regulation Issues

A. Books and Records

The Commission originally proposed amending the Books and Records Rules in 1996 in response to concerns raised by NASAA members.¹⁸ On October 11, 1996, NSMIA was enacted prohibiting any state from imposing broker-dealer books and records requirements that differ from, or add to, the Commission's requirements. It also directs the Commission to consult periodically with state securities authorities concerning the adequacy of its books and records requirements.

On October 2, 1998, in response to comments regarding the original proposal, the Commission repropose rule changes to clarify and expand recordkeeping requirements for purchase and sale documents, customer records, associated person records, customer complaints, and other matters.¹⁹ The repropose amendments

also specified the books and records that broker-dealers would make available at their local offices and would require a broker-dealer to update customer account records at least once every three years.

The Commission received approximately 115 comment letters in response to the reproposal. The Commission staff reviewed them and modified the repropose amendments in order to reduce the burden on broker-dealers without substantially detracting from the original objective of establishing rules to facilitate examinations and enforcement activities of the Commission, SROs, and state securities regulators. The participants may discuss these proposals.

B. Capacity Issues

The participants will discuss broker-dealer systems capacity issues in light of the increasing number of online brokerage accounts being opened by investors. According to a recent estimate, in 2000, there were more than 200 brokerage firms with an estimated 21 million accounts, valued at an estimated \$3.1 trillion.²⁰

C. SEC Proposals and Other Issues

On June 8, 2000, the Commission issued an order directing SROs to develop plans to implement decimal pricing by September 5, 2000 and to complete the conversion no later than April 9, 2001.²¹ By January 29, 2001, all exchange-listed stocks and their options were converted to decimal pricing. Decimal pricing began in selected Nasdaq stocks and their options on March 12, 2001 and in all remaining stocks and options by April 9, 2001. Participants may discuss issues associated with this process and its effects on market quality and trading behavior.

Rule 15c2-11 under the Securities Exchange Act of 1934 (the "Exchange Act") regulates the publication of quotations for securities not listed on a national securities exchange or quoted on Nasdaq.²² The Rule generally prohibits a broker-dealer from publishing a quotation for such a security in a quotation medium unless it has obtained and reviewed certain information about the issuer. The broker-dealer also must have a reasonable basis to believe the information is accurate and was obtained from a reliable source. The Commission proposed amendments to

Rule 15c2-11 on February 17, 1998,²³ and repropose amendment on February 25, 1999.²⁴ The Commission received over 370 comment letters in response, and is now considering what, if any, amendments to adopt. Participants may discuss the status of these proposed amendments.

1. Small Office Supervision and SRO Issues

Recently, the Commission has brought a number of enforcement proceedings in situations involving inadequate supervision of small, remote offices not subject to onsite supervision. A number of them involved investor losses from fraudulent conduct. In many cases, the firms did not have supervisory procedures that included regular onsite examinations, surprise examinations, or other means reasonably designed to prevent and detect such misconduct. The National Association of Securities Dealers ("NASD") has issued several notices to members providing guidance on supervision, including supervision of small offices. Among other things, the notices recommend the implementation of surprise examinations in situations where there are red flags, such as the employment of registered representatives with disciplinary histories. The Division would like to open a discussion as to the type of problems, if any, state regulators have observed in small offices that are not subject to onsite supervision.

The Commission approved several proposed rule changes relating to day trading activities. In July 2000, the Commission approved a proposal by the NASD that requires firms promoting a day trading strategy to disclose the financial risks of day trading and assess the appropriateness of day trading as a strategy for individuals. In February 2001, the Commission approved rule changes by the NYSE and the NASD to amend margin requirements for day trading customers of member firms. These margin rules will take effect six months following this approval. The participants may discuss issues relating to these recent events.

2. Financial Modernization Legislation

On November 22, 1999, the President signed the Gramm-Leach-Bliley Act of 1999 ("GLBA") into law. GLBA permits securities, insurance, and banking firms to enter each other's lines of business. In the coming years, the Commission staff will continue to work with other

¹⁸ Exchange Act Release No. 37850 (October 22, 1996) [61 FR 55593].

¹⁹ Exchange Act Release No. 40518 (October 9, 1998) [63 FR 54404].

²⁰ Online Financial Services Update, U.S. Bancorp Piper Jaffray (April 2000).

²¹ Exchange Act Release No. 42914 [65 FR 38010] (June 19, 2000).

²² 17 CFR 240.15c2-11.

²³ Exchange Act Release No. 39670 [63 FR 39670] (February 25, 1998).

²⁴ Exchange Act Release No. 41110 [64 FR 11124] (March 8, 1999).

financial regulators and the financial services industry to implement its various provisions. One ongoing project is to interpret the functional regulation provisions in Title II of GLBA. The participants may discuss this legislation.

3. Financial Modernization Legislation—Implementation of Privacy Rules

The Commission adopted privacy rules, designated Regulation S-P, on June 22, 2000. Regulation S-P implements Section 504 of GLBA, which requires federal agencies to adopt rules implementing notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers. It applies to investment advisers registered with the Commission, brokers, dealers, and investment companies. It requires those entities to provide customers with notice of their privacy policies and practices, including annual updates. In addition, disclosure of nonpublic personal information about a consumer to nonaffiliated third parties is prohibited unless the consumer has been provided information regarding the proposed disclosure and has not opted out of it. Regulation S-P also requires covered entities to adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information.

Regulation S-P became effective November 13, 2000. The Commission and other federal agencies that adopted such privacy regulations will begin enforcing them on July 1, 2001. The participants may discuss these developments.

4. Commodity Futures Modernization Act of 2000

In December 2000, the Commodity Futures Modernization Act of 2000 ("CFMA") was signed into law. The bill: (a) Lifts the previous statutory ban on single stock and narrow-based stock index futures; (b) clarifies the regulatory treatment of certain over-the-counter derivative instruments under the commodities and securities laws; and (c) adjusts regulatory oversight of futures exchanges by the Commodity Futures Trading Commission ("CFTC"). The CFMA provides for joint SEC/CFTC regulation of single stock and narrow-based stock index futures. State regulation of securities futures remains preempted, as has been the case for futures on other underlying products. Amendments to the securities laws also

clarify the Commission's anti-fraud authority over certain swap agreements.

In the coming months, the Commission staff will continue to work with other regulators and the financial services industry to implement various provisions of the CFMA. The participants may discuss this legislation.

D. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including: summits and examination coordination; branch office examinations; micro-cap issues; day trading; variable annuity bonus products and brokered certificates of deposit.

(3) Investment Management Issues

A. Electronic Filing and the Investment Adviser Registration Depository ("IARD")

Investment advisers began making electronic filings of Form ADV through the IARD in January 2001. A single electronic filing through IARD allows investment advisers to satisfy both their federal and state filing requirements. All investment advisers registered with the Commission are scheduled to make their initial electronic filing on IARD between January 1 and April 30, 2001. Members of the public will have access to investment adviser information on the IARD later this year.

Last year, the Commission amended Part 1 of Form ADV in preparation for electronic filing, but left unadopted proposed amendments to Part 2.²⁵ The Commission staff currently is reviewing the large number of comments received on these proposals.

Conferees will discuss their experience with the IARD and will discuss the experience of investment advisers in transitioning to electronic filing. They also will discuss state plans to mandate filing on IARD and to begin accepting filings by investment adviser representatives through IARD. Conferees will discuss public comments the Commission has received on proposed amendment to Part 2 of Form ADV, and the implementation of public access system.

B. Division of Regulatory Authority

In NSMIA, Congress divided regulatory responsibility for investment advisers between the Commission and state securities regulators. Advisers that have assets under management of \$25 million or more, or that advise registered investment companies,

generally register with the Commission. Advisers with under \$25 million in assets under management must register with the appropriate state securities authorities. Approximately 7,800 advisers currently are registered with the Commission. The conferees will discuss their experience with NSMIA and issues of mutual interest that have arisen from time to time under the new statute, including how to deal with advisers who are not registered with the appropriate regulator.

C. Other Current Issues and Rulemaking

In response to changes in the business activities of investment advisers and recent changes in federal law, the Commission's Division of Investment Management is considering a number of rulemaking initiatives under the Investment Advisers Act of 1940.²⁶ In addition, NASAA may be contemplating modifications to its model laws. Conferees will discuss pending initiatives and how they might work together on them.

(4) Investor Education and Assistance Issues

The Commission and NASAA currently pursue a number of programs to educate investors on how to invest wisely and to protect themselves from fraud and abuse. The states and NASAA have a lone-standing commitment to investor education, and the Commission intends to complement those efforts to the greatest extent possible. During the Investor Education Working Group session, participants at the conference will discuss the following investor education initiatives and potential joint projects:

A. Online Investor Protection

NASAA will discuss ongoing state initiatives to enhance investor protection online, including the status of the Investing Online Resource Center. Similarly, the Commission staff will brief NASAA on its continuing efforts to fight Internet fraud and to educate investors on how to use the Internet to invest wisely.

B. Financial Literacy 2001

In the spring of 1998, NASAA, the NASD, and the Investor Protection Trust ("IPT") joined forces to launch "Financial Literacy 2001," an unprecedented \$1 million campaign targeting 25,000 high school teachers across America. The goal of FL2001 is to encourage—and make it easier for—teachers in every state to teach the

²⁵ Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438].

²⁶ Securities Act Release No. 7911 (October 17, 2000) [65 FR 74988].

basics on saving and investing. Working together, NASAA, the NASD, and the IPT have developed a state-by-state customized classroom guide and have begun to provide aggressive distribution and teacher training. During the working group session, the states will brief the Commission on the progress of FL2001 and plans for dissemination of the FL2001 program in the coming year.

C. Facts on Saving and Investing Campaign

In the spring of 1998, NASAA and the Commission, in conjunction with the Council of Securities Regulators of the Americas, launched the *Facts on Saving and Investing Campaign*. The campaign is an ongoing, grassroots effort to educate individuals about saving, investing, and avoiding financial fraud. Twenty-one countries throughout the Western Hemisphere participated in the campaign's enormously successful kick-off week. In the U.S., campaign partners—including more than thirty government agencies, consumer organizations, and financial industry associations—held educational events and distributed information on saving and investing throughout the country. During the working group session, participants will discuss the campaign and future campaign initiatives. They will also discuss other initiatives for international investor education.

D. New Programs on Investor Education

Participants in the working group session will brainstorm ideas for new investor education programs, including joint NASAA and Commission initiatives.

E. Investor Education Resources

Participants in the working group session will assess existing resources for investor education—including brochures, videotapes, online materials, and other media—and identify gaps. The group will further discuss the most efficient and effective ways to provide educational resources to individuals at the grassroots level.

(5) Enforcement Issues

In addition to the above topics, state and federal regulators will discuss various enforcement-related issues of mutual interest.

(6) General

There are a number of matters that are applicable to all, or a number, of the areas noted above. These include EDGAR (the Commission's electronic disclosure system), rulemaking procedures, training and education of

staff examiners and analysts, and information sharing.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

By the Commission.

Dated: March 23, 2001.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-7709 Filed 3-28-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of April 2, 2001.

A closed meeting will be held on Tuesday, April 3, 2001, at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Tuesday, April 3, 2001 will be:

institution of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: March 27, 2001.

Johathan G. Katz,
Secretary.

[FR Doc. 01-7890 Filed 3-27-01; 11:05 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44093; File No. SR-NYSE-00-37]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Rescinding Parts of, or the Entire Text of, Exchange Rule 112A.10, Rule 321.25, Rule 392, Rule 393 and Rule 395, Which Reference Rescinded Exchange Rule 390 or Off-Board Trading Restrictions

March 22, 2001.

I. Introduction

On August 16, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to rescind parts of, or the entire text of, NYSE Rules that either reference rescinded NYSE Rule 390 or restrict off-Board transactions. The proposed rule change was published for comment in the **Federal Register** on September 27, 2000.³ No comments were received on the proposal. This order approves the NYSE's proposal.

II. Description of the Proposal

Former Exchange Rule 390, the NYSE's off-Board trading rule, prohibited Exchange members and their affiliates from effecting transactions in exchange-listed securities away from a national securities exchange. The Commission approved the rescission of Exchange rule 390 on May 5, 2000.⁴ As a result, the NYSE is proposing to rescind parts of, or the entire text of, the following Exchange rules that reference rescinded Exchange Rule 390, or off-Board trading restrictions: Rule 112A.10, Rule 321.25, Rule 392, Rule 393 and Rule 395.⁵

Rule 112A.10: Reports by Off-Floor Traders (Form 82-P)

Rule 112A.10 requires members or members organizations to send a weekly report on Form 82-P covering off-Floor trading, upon the request of the Exchange. Since Rule 390 has been rescinded, this practice is no longer in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43309 (September 20, 2000), 65 FR 58137.

⁴ Securities Exchange Act Release No. 42758 (May 5, 2000), 65 FR 30175 (SR-NYSE-99-48).

⁵ For purposes of this notice, the terms "off-Floor" and "off-Board" are used interchangeably.

effect and the report is no longer needed.

Rule 321.25: Formation or Acquisition of Subsidiaries—Off-Board transactions

Section .25 of Rule 321 requires subsidiaries of members or member organizations to obtain Exchange permission before effecting a transaction in a listed stock off the Floor of the Exchange. Since Rule 390 has been rescinded, such permission will no longer be needed before effecting a transaction in a listed stock off the Floor of the Exchange.

Rule 392: Notification Requirements for Offerings of Listed Securities

The reference in this Rule to "secondary distributions pursuant to Rule 393" is no longer necessary, as the Exchange is proposing to rescind Rule 393 (see below).

Rule 393: Secondary Distributions

Rule 393 requires the prior approval of the Exchange for member organizations to participate in an "over-the-counter" or "off-board" secondary distribution of a security admitted to dealing on the Exchange. The Exchange is proposing to rescind this Rule as it is an off-Board transaction restriction.

Rule 395: Off-Floor Transactions in Listed Rights

Rule 395 mandates that members, member organizations, and affiliated persons not effect any transaction in any subscription right admitted to dealing on the Exchange, in the over-the-counter market, either as principal or agent (subject to certain exceptions). The rescission of Rule 390 necessitates the rescission of this Rule because it is a restriction against off-Floor transactions; members, member organizations, and affiliated persons are no longer restricted from trading as principal or agent in the over-the-counter market in a covered security.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act⁶ because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect

investors and the public interest.⁷ The Commission believes that the proposal will correct inconsistencies in the NYSE Rules created by the rescission of Exchange Rule 390, by revising or eliminating Exchange Rules that either reference rescinded Exchange Rule 390, or restrict off-Board transactions in general. Moreover, by removing barriers to off-Board trading, the rescission of Rule 390 and revisions to these related Exchange Rules will help to support free and open markets within the national market system.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19 (b)(2) of the Act,⁸ that the proposed rule change (SR-NYSE-00-37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-7710 Filed 3-28-01; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 30, 2001. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

⁷ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205-7044.

SUPPLEMENTARY INFORMATION: *Title:* Size Status Declaration.

No: 480.

Frequency: On Occasion.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 4,200.

Annual Burden: 700.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01-7752 Filed 3-28-01; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3320]

State of Washington; Amendment #4

In accordance with a notice received from the Federal Emergency Management Agency, dated March 22, 2001, the above-numbered Declaration is hereby amended to include Benton, Clallam, Clark and Whatcom counties in the State of Washington as disaster areas due to damages caused by the earthquake beginning on February 28, 2001 and continuing through March 16, 2001.

In addition, applications for economic injury loans from small businesses located in Franklin and Walla Walla counties in the State of Washington; Umatilla and Morrow in the State of Oregon may be filed until the specified date at the previously designated location. Any counties contiguous to the above named primary counties and not listed here have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is April 30, 2001 and for economic injury the deadline is November 30, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 23, 2001.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 01-7753 Filed 3-28-01; 8:45 am]

BILLING CODE 8025-01-P

⁶ 15 U.S.C. 78f(b)(5).

DEPARTMENT OF STATE**[Public Notice 3623]****Bureau of Educational and Cultural Affairs Request for Grant Proposals: Teaching Excellence Awards Program and Secondary School Excellence Program**

SUMMARY: The Youth Programs Division, Office of Citizen Exchanges, of the Bureau of Educational and Cultural Affairs announces an open competition for the Teaching Excellence Award (TEA) program and the Secondary School Excellence Program (SSEP). Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to conduct the sixth year of the TEA program of recognition for excellence in the fields of English and American studies at the primary and secondary levels of education in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan and to conduct the fourth year of the SSEP, which facilitates institutional partnerships between schools in Armenia, Kazakhstan, Russia, Turkmenistan, Ukraine, and Uzbekistan and the United States. The total amount of funding available for this two-component program is \$5,290,800.

PROGRAM INFORMATION:**Component I: Teaching Excellence Awards Program***Overview*

The objective of the program is to select exemplary teachers in the ten participating countries through a merit-based competition and provide modest awards to them and their schools. The top national winners participate in a summer enrichment program in the United States.

The goals are (1) to give recognition to excellence in the teaching of English and American studies, (2) to promote innovation in teaching methodology in the New Independent States (NIS) of the former Soviet Union, and (3) to foster mutual understanding about the societies and educational systems of the U.S. and the ten participating NIS countries.

Background

The program was established in 1996. For the 1996–1997 program year, the teacher competition was conducted in Russia and Ukraine, and 900 educators were nominated, for which their schools received plaques. The competition culminated in the selection of 225

Russian and 75 Ukrainian regional winners of awards—\$200 worth of education materials for the teachers and \$2,000 worth of education equipment for their schools. Thirty Russian and 15 Ukrainian educators were selected as national winners and participated in a seven-week enrichment program in the U.S. Twenty American teachers were also selected from national excellence competitions who interacted with the NIS teachers and traveled to their countries for two-week programs. The program was repeated in 1997–1998 and expanded in the next two years to Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan. In 2000–2001, Armenia, Georgia, and Tajikistan are included, and Azerbaijan is added under the current solicitation.

Guidelines

Administration of the TEA program entails implementing the following activities:

- (1) conducting a competition for selecting exemplary, innovative teachers of English and American Studies in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan;
- (2) providing publicity and awards of educational equipment and materials to them and their schools;
- (3) selecting a portion of these educators as finalists to participate in a U.S.-based professional enrichment program;
- (4) arranging a six- to eight-week summer professional enrichment program in the United States;
- (5) recruiting and selecting American educators by merit, who will participate in the U.S. summer professional development program and in a two- to three-week program with counterparts in the NIS;
- (6) supporting TEA alumni in follow-on activities; and
- (7) evaluating and reporting on the program's process and results.

The organization that is awarded the grant to administer this program must have an infrastructure in the region under the close supervision of American nationals. The organization must have the ability to work closely with ministries of education and local educational and governmental authorities. It is essential that the competition be conducted as a high profile, merit-based process that encompasses all regions where it is feasible to elicit nominations. The competition should be broadly advertised to ensure that the maximum number possible of teachers and schools are made aware of it. A rigorous

screening and selection process should be conducted; certain countries may have special conditions that affect the process. The awards for regional winners should include a range of books and other educational materials and equipment such as copiers, fax machines and computers, which will be for use by the winner's school. The grantee should arrange for a six- to eight-week enrichment program in the U.S. for the national winners designed to enhance teaching methodologies in English as a foreign language and American studies. The grantee must recruit American secondary school educators to participate in aspects of the summer enrichment program and travel to the NIS for two- to three-week programs based in the schools of the NIS national winners. Close collaboration with Public Affairs Section (PAS) officers at U.S. embassies and American English teaching specialists is required.

Component II: Secondary School Excellence Program*Overview*

The Secondary School Excellence Program (SSEP) is designed to: (1) develop institutional linkages that serve the needs and interests of the participating schools and communities; (2) support democracy and educational reform in the NIS; and (3) advance mutual understanding between the youth and teachers of the U.S. and the NIS. This program is designed to offer continuity in the relationships developed between educators in the Teaching Excellence Awards program.

The program is designed to foster interaction and long lasting relationships between secondary schools in the United States and Armenia, Kazakhstan, Russia, Turkmenistan, Ukraine, and Uzbekistan. All projects must have both student and educator exchange components and must have planned project activity between the partner schools.

Background

The SSEP was started in 1998 to provide follow-on activities for the schools of the teachers who participated in the TEA program by linking their institutions in the U.S. and NIS. Through these school linkages, both students and educators at each school could work together on joint projects, participate in reciprocal exchange and hosting programs, and help deepen the relationships and reforms started under TEA. The incumbent has recruited, screened, and selected schools in all of

the participating countries, provided orientations for school coordinators, and supported both the logistical and programmatic components of each school partnership. Each year, the program has supported 20 to 24 partnerships and between 440 and 520 participants. The SSEP has been expanded to follow the growth of the TEA program where funding has been available for each country. With this grant, the program will be available in the countries of Armenia and Turkmenistan for the first time.

Guidelines

Administration of the SSEP entails implementing the following activities:

- (1) conducting a competition for the schools of TEA winners in the United States, Armenia, Kazakhstan, Russia, Turkmenistan, Ukraine, and Uzbekistan to participate in one-to-one school partnerships;
- (2) arranging workshops, preparing briefing materials, and providing advice to guide coordinators at each school in their preparations for and implementation of the school partnership project and exchanges;
- (3) providing logistical support for each delegation's travel to its partner school;
- (4) overseeing merit-based selection processes for all participants and ensuring transparency and credibility;
- (5) supporting the schools in their academic activities and joint project as needed; and
- (6) evaluating and reporting on the partnerships.

Another component of the SSEP, new this year, is the establishment of a fund of \$50,000 for special projects developed by TEA alumni. The grant recipient, in partnership with ECA, will invite and consider proposals from TEA alumni to conduct special projects that serve as follow-on to their TEA experience, but do not fit the school partnership model. Please refer to the POGI for further guidance.

The organization that is awarded the grant to administer this program must be able to select the participating schools through a merit-based process, inviting all eligible TEA schools to apply. In the event that there is not a sufficient number of TEA schools in the United States prepared to participate, the grantee organization may draw on secondary schools known to the organization through other networks. A screening committee will be assembled to review applications and select as many schools as can be supported with the available funding for each country. Preference will be given to schools that have continuing partnerships, not to

exceed three years of support under this program. Some schools' applications may express preference for a specific partner school; those that do not will be matched with an appropriate partner through a rationale to be declared by the applicant.

The grantee is responsible for conducting all activities directly or under sub-contracts. Programs must comply with J-1 visa regulations. Please refer to the Solicitation Package for further information.

Dates of Grant Activity

Grants should begin on or about July 1, 2001, and conclude about two years later, or as needed to complete activity. The exact starting date of the grant will be dependent on the availability of funds.

For TEA, the competition should be conducted in the fall of 2001; awards should be made in the spring of 2002; the enrichment program should take place in the summer of 2002; the American participants should travel to the NIS in the fall of 2002.

For SSEP, participating schools should conduct their exchanges in either a Spring 2002/Fall 2002 cycle or the Fall 2002/Spring 2003 school year.

Budget Guidelines

The Bureau anticipates awarding one grant for an amount not to exceed \$5,290,800 to support the program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Funding levels for the two program components must adhere to the following maximum amounts and to the country allocations provided in the POGI.

TEA—\$4,281,800
SSEP—\$1,009,000

The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and availability of funds. The participating countries may be

subject to change pending final allocations and applicants may be requested to include more or fewer countries in the NIS region.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY-01-42.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, (202) 619-6299, Fax (202) 619-5311, E-mail: jgreene@pd.state.gov or clantz@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau program officer Jocelyn Greene (TEA) or Carolyn Lantz (SSEP) on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at <http://exchanges.state.gov/education/RFGPs>. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington, D.C. time on *Friday, May 11, 2001*. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY-01-42, Program Management, ECA/EX/PM, Room 534, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal

Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.
2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.
5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).
6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.
7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.
8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by

Congress, allocated and committed through internal Bureau procedures.

Dated: March 21, 2001.

Helena Kane Finn,

Acting Assistant Secretary For Educational and Cultural Affairs, Department of State.

[FR Doc. 01-7795 Filed 3-28-01; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 3624]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Tibet Professional and Cultural Exchange Project

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the Tibet Professional and Cultural Exchange Project. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals that promote understanding between the people of the United States and the Tibetan ethnic group, through two-way, professional educational and cultural exchange projects.

Program Information

Overview

The Office of Citizen Exchanges welcomes proposals that directly respond to the following thematic areas. Given budgetary limitations, projects for other themes will not be eligible for consideration under the FY-2001 Tibet Professional and Cultural Exchange Project announcement.

Public Health Management

Projects submitted in response to this theme would be aimed at engaging public health leaders to combat the debilitating health problems ethnic Tibetans face, (from malnutrition to fatal pneumonia, tuberculosis and diarrhea). Exchanges would focus on developing and implementing appropriate public health policies, through seminars and outreach to public and private health planners and practitioners, to ensure the optimal welfare and economic viability of Tibetan communities. (Actual medical training and dispensing of medications are outside the purview of this theme and will not be accepted activities for funding based on exchange guidelines.)

Sustainable Development and Eco-Tourism

Exchanges funded under this theme would help American and Tibetan conservationists, tourism planners, and

economic development officials share their experience in managing tourism resources, particularly in ecologically fragile areas, and would contribute to better understanding of conservation and concepts essential to responsible economic development. Americans are in a good position to convey to their Tibetan counterparts the importance of sustainable forestry practices and sustainable harvesting of plant resources to short-term and long-term economic prospects.

Vocational Education

Proposals are sought which emphasize administration and development of vocational schools targeted towards the practical needs of ethnic Tibetan communities. Successful projects would help influence thinking among those responsible for economic planning in rural and urban areas where Tibetans live. Discussion of how to integrate education planning with economic development initiatives, how to diversify revenue sources, and how to recruit, train and retain strong faculty would all contribute towards dialogue on vocational education, an issue important to both Tibetans and Americans in a modern and changing economy.

Developing Entrepreneurship

Projects under this theme may focus on the skills Tibetans, many of whom come from rural backgrounds with rudimentary economies, need to function effectively in a modern economy (e.g. finance, accounting, and language skills). Exchanges that explore ways that both the government and the private sector can help promote entrepreneurship in sustainable ways, including access to credit, ecologically conscious tourism policies and investment, or English language training for trade or tourism purposes will be favored.

Guidelines

The Office seeks proposals that provide professional experience and exposure to American life and culture through internships, workshops and other learning-sharing experiences hosted by local institutions. The experiences also will provide Americans the opportunity to learn about Tibetan culture and the social and economic challenges Tibetans face today. Travel under these grants should provide for a two-way exchange. Proposals only seeking funding for Tibetans to travel the United States must provide a clear explanation detailing the rationale for a one-way exchange. Projects should not simply be

academic in nature; they should be designed to provide practical, hands-on experience in U.S. public/private sector settings that may be adapted to an individual's institution upon return home. Proposals may combine elements of professional enrichment, job shadowing and internships appropriate to the language ability and interests of the participants.

Applicants should identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments is required and should be included in the section on Institutional Capacity.

Exchanges and training programs supported by the institutional grants from the Bureau should operate at two levels: They should enhance institutional partnerships, and they should offer practical information to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: A strong existing partnership between a U.S. organization and an in-country institution; a proven track record of working in the proposed issue area; cost-sharing from U.S. and/or in-country sources; experienced staff with language facility; a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and a follow-on plan beyond the scope of the Bureau grant. The Bureau would like to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources.

Programs must comply with J-1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to \$60,000.

Applicants must submit a comprehensive budget for the entire program. Grant awards will not exceed \$175,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

- (1) All Participant Expenses (Tibetan and American)
- (2) Other Program Expenses as needed and justified
- (3) Administrative Expenses including indirect costs

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the Tibet Professional and Cultural Exchange Project and reference number: ECA/PE/C/EAP-01-38.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, room 216, SA-44, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, telephone number 202/260-5491, fax number 202/260-0440, or rharvey@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Raymond H. Harvey, on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at <http://exchanges.state.gov/education/RFGPs>. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, May 18, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 12 copies of the application should be sent to: U.S. Department of State, SA-44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/EAP-01-38, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104-319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106-113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Diplomacy section at the U.S. Embassy, will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department

elements. Final funding decisions are at the discretion of the Department of State's Acting Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.
2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.
5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).
6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.
7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.
8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation*: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives should be included with the application.

10. *Cost-effectiveness*: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing*: Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

AUTHORITY: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through The Conference Report on the FY-2001 Consolidated Appropriation Act that mandated support for 2001 Tibet Professional and Cultural Exchange Project.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: March 21, 2001.

Helena Kane Finn,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 01-7796 Filed 3-28-01; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG-2001-9187]

Tonnage—Application for Simplified Measurement

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability of form.

SUMMARY: The Coast Guard has revised the Application for Simplified Measurement (CG-5397) used to determine vessels' tonnages under the system of Simplified Measurement and has made the form available on the Web site of its Marine Safety Center. The new revision date is 12-00. The new form should help to reduce errors in calculating tonnage. Having it available on our Web site will provide easier access to obtaining the form, as well as information on formulation and estimation of vessels' tonnage.

DATES: The new Application for Simplified Measurement became effective on January 19, 2001. The form is available now. This notice calls for no public comments.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Frank Perrini, U.S. Coast Guard Marine Safety Center, Attn: Tonnage Survey Branch, 400 7th Street, SW., Washington, DC 20590-0001, telephone (202) 366-6441, e-mail fperrini@msc.uscg.mil.

SUPPLEMENTARY INFORMATION:

Background

Congress authorized a system of Simplified Measurement under the Tonnage Measurement Simplification Act of 1980 [Pub. L. 96-594] to provide owners of specific categories of vessels with an alternative to formal measurements of tonnage by the Coast Guard or by authorized measurement organizations. The rules for all domestic measurements of tonnage appear at 46 CFR part 69.

To get a vessel documented under the system for Simplified Measurement, an owner measures it, enters the dimensions on the Application for Simplified Measurement (CG-5397), and submits it to the National Vessel Documentation Center (NVDC) along with an Application for Documentation

(CG-1258), title evidence, processing fee, and any other requirement identified by the NVDC. Under some circumstances, in lieu of an Application for Simplified Measurement, the dimensions may be taken from a Builder's Certificate and First Transfer of Title (CG-1261) which has the information in Part III "Dimensions" completed. A documentation officer of the NVDC enters the data into a computer system to calculate the tonnage. If the vessel measures at least five net register tons and qualifies, the NVDC can process the Application for Documentation and issue a Certificate of Documentation reflecting the appropriate tonnage.

Until the advent of personal computers, owners of vessels lacked ready access to the formulas for Simplified Measurement and to copies of CG-5397. Many would have to call the Marine Safety Center (MSC) or the NVDC to determine their vessels' tonnages to compare them with thresholds either for documentation or to meet regulatory requirements. They would also have to ask the NVDC for paper copies of CG-5397.

Beyond the difficulties with obtaining copies of the form, there were a number of problems with the previous version of CG-5397, including these:

(1) Vessels' characteristics covered both sides of the form, requiring submitters and documentation officers, respectively, to fill out and review two sides.

(2) Certain characteristics such as hull material, propulsion type, hull shape, and deckhouse size were ambiguous.

(3) Statements on the regulatory application were not comprehensive.

(4) Nothing gave submitters either a description of the process or instructions on submitting the form.

Discussion

Purpose of Revision

The MSC revised the CG-5397 under its continuous-improvement program to reduce—

- (1) Errors in calculating tonnage;
- (2) The burden on the public in obtaining copies of the form; and
- (3) The need of the public for added information on formulation and estimates of vessels' tonnages.

All of the above serve to save time and resources for owners and builders of vessels, private documentation services, the NVDC, and the MSC.

Approach to Revision

The MSC reformatted the CG-5397 to place all the characteristics of vessels as input data on the obverse (front) page,

and to place definitions of dimensions of vessels, procedures for calculating tonnage and for documentation in general, and instructions on the reverse page. The number of entries on the new form diminished, thus lightening the burden of paperwork on the public.

The MSC uploaded the CG-5397 in its Web site, with a link to the page with forms from the Web site of the NVDC, to provide owners and builders of vessels, and private documentation services, with access to software for calculating tonnage and with the ability to download the form locally on a personal computer.

Access to Form

The new CG-5397 is available on the Web site of the MSC at www.uscg.mil/hq/msc and on the link to the page with forms from the NVDC at www.uscg.mil/hq/g-m/vdoc/nvdc.htm.

Superseded CG-5397 Forms

To avoid unnecessary burden to the public, the NVDC will continue to accept older versions of CG-5397 for documentation.

Dated: March 20, 2001.

Howard L. Hime,

Acting Director of Standards.

[FR Doc. 01-7386 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 30, 2001.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs

Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL-401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at <http://dms.dot.gov>.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 22, 2001.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
New Exemptions				
12644-N	RSPA-01-9072	Global Composites International, Inc. San Dimas, CA.	49 CFR 173.302(a), 173.304(a)(1), 175.3.	To authorize the manufacture, mark, sale and use of non-DOT specification cylinders for use in transporting certain flammable and non-flammable compressed gases. (modes 1, 2, 3, 4)
12645-N	RSPA-01-9068	Draeger Safety, Inc. Pittsburgh, PA.	49 CFR 173.301, 173.34	To authorize transportation in commerce of non-DOT specification cylinders manifolded with one pressure relief device to be used as part of a self contained breathing apparatus for transporting oxygen. (modes 1, 4)
12646-N	RSPA-01-9071	Consani Engineering Elsie River, SA.	49 CFR 178.270, 178.271, 178.272 ..	To authorize transportation in commerce of IM101 and IM102 portable tanks for use in transporting certain classes of hazardous materials. (modes 1, 2, 3)
12647-N	RSPA-01-9062	Wisconsin Public Service Corporation (WPSC) Green Bay, WI.	49 CFR 173.403, 173.427(b)(1)	To authorize transportation in commerce of two steam generator assemblies as surface contaminated objects that exceed the authorized quantity limitations. (mode 3)
12649-N	RSPA-01-9063	Matheson Tri-Gas East Rutherford, NJ.	49 CFR 173.302(a)(5), 173.302(f)	To authorize transportation in commerce of DOT 3AL cylinders filled with carbon monoxide not authorized for transportation by cargo vessel. (mode 3)

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12650-N	RSPA-01-9064	Coleman Powermate, Inc. Kearney, NE.	49 CFR 173.34(d)	To authorize transportation in commerce of 3AL cylinders equipped with spring-loaded pressure relief devices for use in transporting hydrogen absorbed in metal hydride. (modes 1, 2, 3, 4)
12651-N	RSPA-01-9065	I.W.I. Medical Waste Management, Inc. New Smyrna Beach, FL.	49 CFR 172.101 Col 8(b) & 8(c), 173.197.	To authorize transportation in commerce of solid regulated medical waste in non-DOT specification packaging consisting of a bulk outer packaging and a non-bulk inner packaging. (mode 1)
12652-N	RSPA-01-9061	Eagle-Picher Technologies, LLC Joplin, MO.	49 CFR 173.302(a), 173.34(d), 175.3	To authorize transportation in commerce of certain non-DOT specification pressure vessels containing compressed hydrogen, which are a component of a nickel hydrogen battery. (modes 1, 2, 4)
12656-N	RSPA-01-9144	Piper Impact, Inc. New Albany, MS.	49 CFR 178.35(G)	To authorize manufacture, marking, sale and use of DOT specification 3AL cylinders except that total weight and volumetric capacity records for each individual cylinder produced are not required in the inspector's report. (modes 1, 2)
12657-N	RSPA-01-9150	Oshkosh Truck Corporation Oshkosh, WI.	49 CFR 178.345-3(f)(3)(i)	To authorize transportation in commerce of cargo tanks equipped with attachments that exceed the authorized spacing limits. (mode 1)
12658-N	RSPA-01-9149	Montgomery Manufacturing Company Kennedale, TX.	49 CFR 172.201(a)(4)	To authorize transportation in commerce of certain hazardous materials with alternative information on shipping papers. (mode 1)
12661-N	RSPA-01-9217	United Parcel Service, Inc. (UPS) Atlanta, GA.	49 CFR 171.2(a)&(b), 172 Subparts C, D&E, 173.1, 173.22, 173.24, 177.801, 177.817.	To authorize transportation in commerce of certain hazardous materials that are not properly packaged, marked, labeled or classed in accordance with the 49 CFR. (mode 1)

[FR Doc. 01-7662 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received

the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in the earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 13, 2001.

ADDRESSES: Send comments to: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at <http://dms.dot.gov>.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 22, 2001.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
7954-M		Air Products and Chemicals, Inc., Allentown, PA (See Footnote 1)	7954
9048-M		Sulton Group—Div. of Daniel/Brooks Petroleum Opns, Tulsa, OK (See Footnote 2)	9048
9525-M		Air Products and Chemicals, Inc., Allentown, PA (See Footnote 3)	9525
11226-M		E.R. Carpenter, L.P., Pasadena, TX (See Footnote 4)	11226
11494-M		Atlantic Research Corp., Automotive Products Group, Knoxville, TN (See Footnote 5)	11494
11536-M		Boeing Satellite Systems, Inc., Los Angeles, CA (See Footnote 6)	11536
11650-M		Autoliv ASP, Inc., Ogden, UT (See Footnote 7)	11650
11782-M		Aeronex, Inc., San Diego, CA (See Footnote 8)	11782
12122-M	RSPA-98-4313	Atlantic Research Corp., Automotive Products Group, Knoxville, TN (See Footnote 9)	12122
12633-M	RSPA-01-8912	Isolair Helicopter Systems, Troutdale, OR (See Footnote 10)	12633
12637-M	RSPA-01-8916	Island Gases Limited, Christiansted, St. Croix, U.S., VI (See Footnote 11)	12637

¹ To modify the exemption to change the proper shipping name and placard provisions for the transportation of certain compressed gases in manifolded DOT Specification cylinders.

² To modify the exemption to authorize the use of an additional portable meter prover and an increase of the internal volume to 290 gallons for the transportation of Division 2.2 and Class 3 materials.

³ To modify the exemption to allow for the transportation of additional Class 3 materials in a non-DOT specification welded stainless steel cylinder.

⁴ To modify the exemption to allow for the transportation of Class 3 materials in DOT specification tank cars.

⁵ To modify the exemption to allow for the transportation of additional Division 2.2 materials in non-DOT specification cylinders for use as components of automotive vehicle safety systems.

⁶ To modify the exemption to allow for the transportation of additional Division 2.2 materials in non-DOT specification packaging.

⁷ To modify the exemption to authorize a design change of the non-DOT specification non-refillable cylinder utilizing a sidewall gas fill port with a maximum service pressure of 5000 PSIG.

⁸ To modify the exemption to authorize rail freight and cargo vessel as additional modes of transportation for Division 4.2 materials in non-DOT specification cylinders.

⁹ To modify the exemption to allow for the transportation of additional Division 2.2 materials in non-DOT specification cylinders, for use as components of automotive vehicle safety systems.

¹⁰ To reissue the exemption originally issued on an emergency basis for the transportation of gasoline in a non-DOT specification, non-bulk package (drum) mounted in a heli-torch frame.

¹¹ To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 2.2 materials in non-DOT specification vacuum insulated portable tanks.

[FR Doc. 01-7663 Filed 3-28-01; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Federal Benefit Payments Under Certain District of Columbia Retirement Plans

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice.

SUMMARY: The Department of the Treasury is delaying the effective date of its final regulations that would have established the methodology for determining the amount of Federal Benefit Payments under the provisions of the Balanced Budget Act of 1997, as amended (Act). The Act assigns the Secretary of the Treasury responsibility for payment of benefits under the District of Columbia (District) retirement plans for police and firefighters, and teachers for benefits based on credit for service accrued as of June 30, 1997, and under the District retirement plan for judges.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 622-1540, Department of the Treasury, Metropolitan Square Building, Room 6033, 15th and Pennsylvania Avenue, NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: In its notice of December 12, 2000, 65 FR 77500, the Department of the Treasury stated that final regulations concerning the methodology for determining Federal Benefit Payments (to be codified at 31 CFR 29.102(a)(3) and subpart C of part 29) would be effective when the automated pension replacement system being developed by Treasury becomes operational, which was expected to occur on March 31, 2001. Subsequently, to provide enhanced benefits to users and annuitants, Treasury decided to acquire an upgraded version of the replacement system software. This decision, coupled with the need to accommodate integration of the replacement system with systems implementation schedules of the government of the District of Columbia, protracted the implementation schedule for Treasury's replacement system. Because Treasury cannot establish at this time with reasonable certainty a date on which the automated pension replacement system will be operational, Treasury is postponing indefinitely the effective date of the regulations to be codified at 31 CFR 29.102(a)(3) and subpart C of part 29. Treasury will provide written notice in the **Federal Register** at least 30 days in advance of the effective date of these regulations.

Department of The Treasury.

James J. Flyzik.

Acting Assistant Secretary of the Treasury.

[FR Doc. 01-7694 Filed 3-28-01; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Issuance of Final Determinations Concerning Multifunctional Machines

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of final determinations.

SUMMARY: This document provides notice that Customs has issued two final determinations concerning the country of origin of certain multifunctional machines which are being offered for sale to the U.S. Government. Customs held in both determinations that the country of origin of the multifunctional machines is Japan.

DATES: The final determinations were issued on March 22, 2001. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of the final determinations within 30 days of March 29, 2001.

FOR FURTHER INFORMATION CONTACT: Burton Schlissel, Attorney-Advisor, Special Classification and Marking Branch, (202) 927-1034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on March 22, 2001, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), Customs issued two final determinations concerning the country of origin of certain multifunctional machines which are being offered to the U.S. Government. The U.S. Customs ruling numbers are HQ 561568 and 561734. Copies of the final determinations are attached. The final determinations were issued under procedures set forth in 19 CFR 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). Customs concluded in the two determinations that components imported into Japan are substantially transformed as a consequence of the assembly operations performed in Japan with numerous Japanese-origin parts, resulting in the multifunctional machines. Accordingly, the country of origin of the multifunctional machines is Japan. This document gives notice pursuant to § 177.29, Customs Regulations (19 CFR 177.29), of the two final determinations. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of the final determinations within 30 days of March 29, 2001.

Dated: March 23, 2001.

Stuart P. Seidel

Assistant Commissioner, Office of Regulations and Rulings.

March 22, 2001.

HQ 561734

CLA–02 RR:CR:SM 561734 BLS

Category: Classification

Fusae Nara, Esq., Winthrop, Stimson, Putnam & Roberts, One Battery Park Plaza, New York, New York 10004–1490

RE: U.S. Government procurement; final determination; country of origin of multifunctional machine; printer, copier, facsimile machine; substantial transformation; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511 *et seq.*); 19 CFR 177.21 *et seq.*

Dear Ms. Nara: This is in reference to your letter of November 5, 1999, on behalf of your client, Sharp Electronics Corporation (“Sharp”), requesting a final determination under subpart B of part 177, Customs Regulations (19 CFR 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), the Customs Service issues country of origin advisory rulings and final determinations regarding whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain “Buy America” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of a multifunctional machine, Model No. 6600J, which Sharp Corporation (“Sharp”) is offering for sale to U.S. Government agencies. Accordingly, Sharp is a party-at-interest within the meaning of 19 CFR 177.22(d)(1), and is entitled to request this final determination.

Facts

Sharp makes a multifunctional machine, Sharp Model Number FO–6600J (“6600J”), which can function as a printer, copier, and fax machine. The 6600J will be sold to U.S. Government agencies. You note that the 6600J is identical to the Model FO–6600 in structure, function and appearance, so that the service manual for Model FO 6600, which is enclosed, may serve as a reference for the 6600J.

You state that the 6600J is assembled in Japan with the use of Japanese and other foreign parts and components. Your letter included a bill of materials for this model, which indicates the countries from which each part, component, or subassembly is sourced. The bill of materials indicates that there are 227 parts/components/units (“parts”). Based on the information provided in the bill of materials, 108 parts are sourced from Japan, 92 parts from Thailand, three parts from China, and 24 parts from other countries.

The 6600J is assembled in Japan from eight subassemblies or units, each of which is also assembled in Japan. The subassemblies are as follows:

(1) *Scanner Unit*, which you characterize as the heart of the machine, is built in Japan with 126 parts and components. In the assembly of the Scanner unit, the following processes take place:

- Scanner driver unit is assembled;
- Scanner frame unit is assembled using over 40 pieces of parts, including light emitting diode (“LED”), sensors, gears, rollers, etc.
- The panel unit is built by connecting a panel assembly from Thailand and a document guide upper unit of Japanese origin;
- The optical guide is built from a charge coupled device (“CCD”), PWB imported from Thailand, mirror, lens, and other imported and Japanese parts;
- The scanner unit is built by combining the panel unit, optical unit, document guide lower unit and scanner driver unit.
- After the assembly, the scanner unit is tested to confirm that it scans printed letters and images properly;

(2) *Printer Unit:* The printer engine imported from China is assembled with 25 other parts and components into the printer unit. The assembly requires the connection of safety switches and cables to the printer engine.

(3) *Left Panel Unit:* The left side panel includes the plastic cabinet panel, speaker, telephone handset, and hook switch PWB.

(4) *Power Supply Unit:* The Power Supply PWB is produced in Japan and assembled with other parts and components to form a power supply unit, which is then incorporated into the upper chassis unit as described below.

(5) *Hopper Unit:* Various parts and plastic components are assembled with a gear and springs to form the hopper assembly.

(6) *Upper Chassis Unit:* The upper chassis unit is built with several PWBs, including control PWB unit, TEL LIU (telephone interface unit No. 1) PWB, interface PWB and line control PWB, all of which are imported from Thailand. Those PWBs are combined with the Japanese origin power supply unit, described above, and they are fastened onto a reinforced panel. The upper chassis unit holds the upper cassette of printing paper for Model No. FO–6600J.

(7) *Lower Chassis Unit:* The lower chassis unit includes TEL LIU 2 (telephone line interface unit No. 2) PWB, which is imported from Thailand. Combined with 28 parts on a reinforced panel, the lower chassis forms the cavity to hold the lower cassette of printing paper for Model No. FO–6600J.

(8) *Inner Tray Unit:* The inner tray unit to hold printout documents are assembled from seven parts.

In the final assembly, the above eight units or subassemblies built in Japan are assembled into a finished multifunctional machine with an additional 101 parts and components, including exterior panels. The upper chassis unit and lower chassis unit are connected to make the mechanism unit. The scanner unit, printer unit, hopper unit and inner tray unit are connected to the top of the mechanism unit. Then a front cabinet is connected to the front of the mechanism unit. After all units have been connected, cables, labels and other additional parts are attached to the mechanism unit to complete Model No. FO–6600J.

Finally, using sophisticated inspection equipment such as an exchanger, withstanding tester, sending level meter and dial tester, the finished product undergoes an extensive inspection procedure to confirm that all of its functions as a copier, computer printer, telephone and facsimile machine operate properly. The printing and scanning functions are tested to ensure that letters and images are properly scanned and printed. The computer printer function is tested to confirm that print commands from a computer are properly handled. The telecommunications functions are tested to ensure proper transmission and reception of telephone and facsimile signals. Then, Model No. FO–6600J is cleaned and packaged with product manual, trays, and a toner cartridge for shipment to the United States.

You request a final determination pursuant to 19 CFR 177.25 that the country of origin is Japan.

Issue

What is the country of origin of the multifunctional machine, Sharp Model Number FO–6600J?

Law and Analysis

As prescribed under Title III of the Trade Agreements Act, the origin of an article not wholly the growth, product, or manufacture of a single country is to be determined by the rule of substantial transformation. 19 U.S.C. § 2518(4)(B). An article is not a product of a country unless it has been substantially transformed there into a new and different

article of commerce with a name, character or use different from that of the article or articles from which it was transformed. 19 U.S.C. § 2518(4)(B)(ii); *see also United States v. Gibson-Thomsen Co. Inc.*, 27 C.C.P.A. 267 (CAD. 98) (1940). In determining whether the combining of parts or materials constitutes a substantial transformation, the issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 CIT 204, 573 F.Supp. 1149(1983), *aff'd*, 2 Fed. Cir. 105, 741 F.2d 1368 (1984).

Additionally, if the manufacturing or combining process is merely a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026, 1029(1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1993). In Customs Service Decision ("C.S.D.") 85-25 (September 25, 1984), Customs set forth the standards to determine when an assembly operation constitutes a substantial transformation. To substantially transform an article, an assembly must be complex and meaningful as opposed to a simple assembly. Factors to be considered include the time, cost and skill involved, the number of components assembled and the number of operations. *See also Texas Instruments v. United States*, 681 F.2d 778 (CCPA 1982).

In support of your assertion that the 6600J is substantially transformed in Japan, you cite Headquarters Ruling Letter ("HQ") 560433 (September 19, 1997), which involved the assembly of audio/video receivers from foreign components and 16 foreign subassemblies. In that case, Customs found that the components and subassemblies lost their separate identities and became an integral part of the finished audio/video receiver as a result of the manufacturing operations. The character of the foreign components was also changed as a result of the assembly in that the finished article, an audio/video receiver, is visibly different than any of the individual foreign components and it acquires a new use in that it can receive and process audio and video signals.

In reaching this conclusion, Customs cited to several prior HQs, which you also cite as support for finding that the 6600J is substantially transformed as a result of complex assembly operations in Japan. *See* HQ 734045 (October 8, 1991) (assembly of subassemblies and other components into a lap top computer is a substantial transformation); HQ 732170 (January 5, 1990) (television cabinet containing a tuner, speaker and circuit board was substantially transformed when assembled with domestic components into a finished television receiver); HQ 711967 (March 17, 1980) (television sets assembled in Mexico with components from Korea and picture tubes, cabinets, and additional wiring from the U.S. were products of Mexico for country of origin marking purposes).

Based on the information provided and consistent with the court decisions and Customs rulings cited above, we find that the components imported into Japan that are used in the production of the 6600J

multifunctional machine in the manner described above are substantially transformed as a result of the operations performed. Eight separate subassemblies are first assembled in Japan and then are joined together to create the finished multifunctional machine. The more than 227 parts and components, which are assembled in Japan, lose their separate identities when they become integral parts of the multifunctional machine. The finished machine clearly has a name, character and use distinct from the individual components from which it is made. Therefore, we find that the country of origin of the Model No. FO-6600J multifunctional machine is Japan.

Holding

Based on the facts presented, the non-Japanese parts, which are further processed and assembled into the multifunctional machine in Japan, in the manner described above, are substantially transformed. Accordingly, the country of origin of the Model No. FO-6600J multifunctional machine is Japan. Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29.

Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest, as defined at 19 CFR 177.22(d), may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Stuart P. Seidel,
Assistant Commissioner Office of Regulations
and Rulings.
March 22, 2001.

HQ 561568

CLA-02 RR:CR:SM 561568 MFC

Category: Classification.

Fusae Nara, Esq., Winthrop, Stimson, Putnam & Roberts, One Battery Park Plaza, New York, New York 10004-1490.

RE: U.S. Government procurement; final determination; country of origin of multifunctional machine; printer, copier, facsimile machine; substantial transformation; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); 19 CFR 177.21 *et seq.*

Dear Ms. Nara: This is in reference to your letter of November 5, 1999, on behalf of your client, Sharp Electronics Corporation ("Sharp"), requesting a final determination under subpart B of part 177, Customs Regulations (19 CFR 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), the Customs Service issues country of origin advisory rulings and final determinations regarding whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy America" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain multifunctional machines which Sharp Corporation ("Sharp") assembles in Japan from Japanese and other foreign components and which are being offered for sale to U.S. Government agencies. Accordingly, Sharp is a party-at-interest within the meaning of 19 CFR 177.22(d)(1), and is entitled to request this final determination.

Enclosed with the request were service manuals for Facsimile Model FO-4700 and a brochure and service manual for Facsimile Model FO-6600.

Facts

Sharp makes a multifunctional machine, Sharp Model Number FO-4700J ("J model"), which can function as a printer, copier, and fax machine. The J model will be sold to U.S. Government agencies. You note that the J model is identical to the Model FO-4700 in structure, function and appearance, so that the service manual for Model FO-4700 may serve as a reference for the J model. You also note that the Model FO-4700 is sold to the general U.S. market and is made in Thailand, while the J model will be sold to the U.S. Government and is assembled in Japan.

You state that the J model is assembled in Japan with the use of Japanese and other foreign parts and components. Your letter included a bill of materials for the J model, which indicates the countries from which each part, component, or subassembly is sourced. The bill of materials indicates that there are 302 parts/components/units ("parts"). Based on the information provided in the bill of materials, 155 parts are sourced from Thailand, 144 parts are sourced from Japan, and three parts are sourced from China.

The J model is assembled in Japan from seven subassemblies or units, each of which is also assembled in Japan. The subassemblies are as follows:

(1) *Scanner Unit*, which you characterize as the heart of the machine, is built in Japan with 99 parts. In the assembly of the scanner unit, the following processes take place:

- Contact image sensor (CIS) is assembled;
- Scanner frame unit is assembled using over 50 parts, including CIS unit, scanner drive unit, gears, rollers, etc.;
- Panel unit is built by connecting a panel assembly from Thailand and a document guide upper unit of Japanese origin;
- Scanner unit is built by combining the scanner frame unit, panel unit and document guide lower unit;
- After the assembly, the scanner unit is tested to confirm that it scans printed letters and images properly;

(2) *Speaker Unit*: A speaker is soldered to connector wires.

(3) *Upper Cover Guide Unit*: More than 30 components including hopper guides and sensors are assembled together.

(4) *Printer Unit*: Assembly of the printer engine imported from China with 10 other parts and components. The assembly requires the connection of safety switches and cables to the printer engine.

(5) *Left Panel Unit*: The cabinet unit panel includes the plastic cabinet panel, holders and hooks, and forms the space to hold the printer unit.

(6) *Power Supply Unit*: The power supply PWB (printed wiring board) unit is assembled with other parts and components to form a power supply unit, which is then incorporated into the printer unit.

(7) *Paper Feed Tray Unit*: Various parts and plastic components are assembled to form the paper feed tray unit.

In the final assembly in Japan, the above seven units or subassemblies are assembled into a finished multifunctional machine with an additional 90 parts and components. The scanner unit and power supply unit are connected to make the mechanism unit. The speaker unit, printer unit, upper cover unit and paper feed tray unit are connected to the top of the mechanism unit. Then, the front and rear cabinets are connected to the mechanism unit. After all units have been connected, cables, labels, and other additional parts are attached to the mechanism unit to complete the machine. You state that the processes in Japan require a number of skilled workers and sophisticated equipment.

The finished product undergoes inspections to ensure that it functions as a copier, computer printer, telephone and facsimile machine. The J model is then cleaned and packaged with product manuals, trays, and a toner cartridge for shipment to the U.S.

Your request seeks a final determination pursuant to 19 CFR 177.25 that the country origin is Japan.

Issue

What is the country of origin of the multifunctional machine, Sharp Model Number FO-4700J?

Law and Analysis

As prescribed under Title III of the Trade Agreements Act, the origin of an article not wholly the growth, product, or manufacture of a single country is to be determined by the rule of substantial transformation. 19 U.S.C. 2518(4)(B). An article is not a product of a country unless it has been substantially transformed there into a new and different article of commerce with a name, character or use different from that of the article or articles from which it was transformed. 19 U.S.C. 2518(4)(B)(ii); *see also United States v. Gibson-Thomsen Co. Inc.*, 27 C.C.P.A. 267 (CAD. 98) (1940). In determining whether the combining of parts or materials constitutes a substantial transformation, the issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 CIT 204, 573 F.Supp. 1149(1983), *aff'd*, 2 Fed. Cir. 105, 741 F.2d 1368 (1984).

Additionally, if the manufacturing or combining process is merely a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026, 1029(1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983). In Customs Service Decision ("C.S.D.") 85-25 (September 25, 1984), Customs set forth the standards to determine when an assembly operation constitutes a substantial transformation. To substantially transform an

article, an assembly must be complex and meaningful as opposed to a simple assembly. Factors to be considered include the time, cost and skill involved, the number of components assembled and the number of operations. *See also Texas Instruments v. United States*, 681 F.2d 778 (CCPA 1982).

In support of your assertion that the J model is substantially transformed in Japan, you cite Headquarters Ruling Letter ("HQ") 560433 (September 19, 1997), which involved the assembly of audio/video receivers from foreign components and 16 foreign subassemblies. Customs found that the components and subassemblies lost their separate identities and became an integral part of the finished audio/video receiver as a result of the manufacturing operations. The character of the foreign components was also changed as a result of the assembly in that the finished article, an audio/video receiver, is visibly different than any of the individual foreign components and it acquires a new use in that it can receive and process audio and video signals. In reaching this conclusion, Customs cited to several prior HQs, which you also cite as support for finding that the J model is substantially transformed as a result of complex assembly operations in Japan. *See HQ 734045* (October 8, 1991) (assembly of subassemblies and other components into a lap top computer is a substantial transformation); *HQ 732170* (January 5, 1990) (television cabinet containing a tuner, speaker and circuit board was substantially transformed when assembled with domestic components into a finished television receiver); *HQ 711967* (March 17, 1980) (television sets assembled in Mexico with components from Korea and picture tubes, cabinets, and additional wiring from the U.S. were products of Mexico for country of origin marking purposes).

Based on the information provided and consistent with the court decisions and Customs rulings cited above, we find that the components imported into Japan that are used in the production of the J model multifunctional machine in the manner described above are substantially transformed as a result of the operations performed. Seven separate subassemblies are first assembled in Japan and then are joined together, along with an additional 90 parts and components, to create the finished J model. The more than 300 parts and components which are assembled in Japan lose their separate identities when they become integral parts of the multifunctional machine. The finished machine clearly has a name, character and use distinct from the individual components from which it is made. Therefore, we find that the country of origin of the J model multifunctional machine is Japan.

You asked that our determination also be applied to similar multifunctional machines, Model Nos. FO-5550J, FO-5700J, and FO-5800J, which are produced using "virtually identical" production processes as the J Model at issue. To the extent that the processing of these other models is the same as that described above, this ruling applies.

Holding

Based on the facts presented, the non-Japanese parts, which are further processed

and assembled into the multifunctional machine in Japan, in the manner described above, are substantially transformed. Accordingly, the country of origin of the multifunctional machine, the J model, is Japan. Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29.

Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final 6 determination. Pursuant to 19 CFR 177.30, any party-at-interest, as defined at 19 CFR 177.22(d), may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Stuart P. Seidel,
Assistant Commissioner, Office of
Regulations and Rulings.

[FR Doc. 01-7711 Filed 3-28-01; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI-221-83 and FI-100-83]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking (FI-221-83) and temporary regulation (FI-100-83), Indian Tribal Governments Treated as States for Certain Purposes (§§ 305.7701-1 and 305.7871-1).

DATES: Written comments should be received on or before May 29, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mark, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Indian Tribal Governments Treated as States for Certain Purposes.
OMB Number: 1545-0823.

Regulation Project Number: FI-221-83 (notice of proposed rulemaking) and FI-100-83 (temporary regulation).

Abstract: These regulations relate to the treatment of Indian tribal governments as States for certain Federal tax purposes. The regulations provide that if the governing body of a tribe, or its subdivision, is not designated as an Indian tribal government or subdivision thereof for purpose of sections 7701(a)(40) and 7871 of the Internal Revenue Code, it may apply for a ruling to that effect from the Internal Revenue Service.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 25.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 25.

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 cost of operation, maintenance, and purchase of services to provide information.

Approved: March 20, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-7826 Filed 3-28-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service**

[INTL-50-86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL-50-86 (TD 8110), Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form (§§ 1.165-12 and 1.1287-1).

DATES: Written comments should be received on or before May 29, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form.

OMB Number: 1545-0786.

Regulation Project Number: INTL-50-86.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these

penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting requirements in this regulation are necessary to ensure that persons holding registration-required obligations in bearer form properly report interest income and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 750,000.

Estimated Time Per Response: 3 minutes.

Estimated Total Annual Burden Hours: 39,742.

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: March 22, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-7827 Filed 3-28-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****[INTL-536-89]****Proposed Collection; Comment Request for Regulation Project****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL-536-89 (TD 8300), Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984 (§ 1.163-5).

DATES: Written comments should be received on or before May 29, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Registration Requirements With Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984.

OMB Number: 1545-1132.

Regulation Project Number: INTL-536-89.

Abstract: Sections 165(j) and 1287(a) of the Internal Revenue Code provide that persons holding registration-required obligations in bearer form are subject to certain penalties. These sections also provide that certain persons may be exempted from these penalties if they comply with reporting requirements with respect to ownership, transfers, and payments on the obligations. The reporting and recordkeeping requirements in this regulation are necessary to ensure that persons holding registration-required

obligations in bearer form properly report interest and gain on disposition of the obligations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 5000.

Estimated Time Per Respondent/Recordkeeper: 10 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 852.

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: March 22, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-7828 Filed 3-28-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 8809****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 8809, Request for Extension of Time To File Information Returns.

DATES: Written comments should be received on or before May 29, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 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 Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Request for Extension of Time To File Information Returns.

OMB Number: 1545-1081.

Form Number: Form 8809.

Abstract: Form 8809 is used to request an extension of time to file Forms W-2, W-2G, 1042-S, 1098, 1099, 5498, or 8027. The IRS reviews the information contained on the form to determine whether an extension should be granted.

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, not-for-profit institutions, farms, and federal, state, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 2 hours, 40 minutes.

Estimated Total Annual Burden Hours: 133,000.

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: March 22, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer,

[FR Doc. 01-7829 Filed 3-29-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0525]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to change the account number and/or bank from which automatic deductions were previously authorized.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 29, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail irmnkess@vba.va.gov. Please refer to "OMB Control No. 2900-0525" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273-7079 or FAX (202) 275-5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies

must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA MATIC Change, VA Form 29-0165.

OMB Control Number: 2900-0525.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to change the bank account number and/or bank from which VA currently deducts his/her premium payments. VA uses the information to process the veteran's request.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: March 21, 2001.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01-7800 Filed 3-28-01; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Thursday,
March 29, 2001**

Part II

Environmental Protection Agency

40 CFR Parts 80 and 86

**Control of Emissions of Hazardous Air
Pollutants From Mobile Sources; Final
Rule**

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 80, and 86****[AMS-FRL-6924-1]****RIN 2060-AI55****Control of Emissions of Hazardous Air Pollutants From Mobile Sources****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: Today's action addresses emissions of hazardous air pollutants (HAPs) from motor vehicles and their fuels. Hazardous air pollutants refer to a range of compounds that are known or suspected to have serious health or environmental impacts. Motor vehicles are significant contributors to national emissions of several hazardous air pollutants, notably benzene, formaldehyde, 1,3-butadiene, acetaldehyde, and diesel particulate matter and diesel exhaust organic gases.

In today's action, we list 21 compounds emitted from motor vehicles that are known or suspected to cause cancer or other serious health effects. Our Mobile Source Air Toxics (MSAT) list includes various volatile organic compounds (VOCs) and metals, as well as diesel particulate matter and diesel exhaust organic gases (collectively DPM + DEOG). The selection methodology we used to develop this MSAT list, which may be used to add compounds to or remove compounds from the list in the future as new information becomes available, is also described. In today's action we also examine the mobile source contribution to national inventories of these emissions and the impacts of existing and newly promulgated mobile source control programs, including our reformulated gasoline (RFG) program, our national low emission vehicle (NLEV) standards, our Tier 2 motor vehicle emissions standards and gasoline sulfur control requirements, and our proposed heavy-duty engine and vehicle standards and

on-highway diesel fuel sulfur control requirements. Between 1990 and 2020, we project these programs will reduce on-highway emissions of benzene, formaldehyde, 1,3-butadiene, and acetaldehyde by 67 to 76 percent, and will reduce on-highway diesel PM emissions by 90 percent.

This action also finalizes new gasoline toxic emission baseline requirements which require refiners to maintain current levels of over-compliance with toxic emissions performance standards that apply to federal reformulated gasoline (RFG) and anti-dumping standards that apply to conventional gasoline (CG). Because the new baseline requirements do not require refiners to install new equipment or use technologies beyond what they were using in the baseline period (1998–2000), we project that this program will impose only negligible costs. The new baseline requirements are designed to prevent backsliding and to ensure that existing overcompliance with current standards continues. We are not setting additional vehicle-based air toxics controls at this time because the technology-forcing Tier 2 light-duty vehicle standards and those standards being developed in response to our recent proposal for heavy-duty engine and vehicle standards represent the greatest degree of toxics control achievable at this time considering existing standards, the availability and cost of the technology, and noise, energy, and safety factors, and lead time.

Finally, because of our continuing concern about the potential health impacts of public exposure to air toxics, today's action also describes a Technical Analysis Plan through which we will continue to improve our understanding of the risk posed by air toxics to public health and welfare. It will also allow us to evaluate the need for and appropriateness of additional mobile source air toxics controls for on-highway and nonroad sources, and their fuels. Based on the information developed through this technical

analysis plan, we will conduct a future rulemaking, to be completed no later than July 1, 2004.

DATES: This rule is effective May 29, 2001. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of May 29, 2001.

ADDRESSES: *Comments:* All comments and materials relevant to today's action have been placed in Public Docket No. A-2000-12 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M-1500, 401 M Street, SW, Washington, DC 20460. EPA's Air Docket makes materials related to this rulemaking available for review at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260-7548, and by facsimile (202) 260-4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214-4334; FAX: (734) 214-4816; E-mail: borushko.margaret@epa.gov

SUPPLEMENTARY INFORMATION:**Regulated Entities**

This action will affect entities that produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It will also affect entities that produce, distribute, or sell gasoline or diesel motor fuel.

The table below gives some examples of entities that may have to follow the regulations. Because these are only examples, you should carefully examine the regulations in 40 CFR parts 80 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes (1)	SIC codes (2)	Examples of potentially regulated entities
Industry	336111 336112 336120	3711	Motor Vehicle Manufacturers.
Industry	336112 336120	3711	Engine and Truck Manufacturers.
Industry	336311 336312 422720 454312 811198 541514 541690	3592 3714 5172 5984 7549 8742 8931	Alternative Fuel Vehicle Converters.

Category	NAICS codes (1)	SIC codes (2)	Examples of potentially regulated entities
Industry	811112 811198 541514	7533 7549 8742	Commercial Importers of Vehicles and Vehicle Components.
Industry	324110	2911	Petroleum Refiners.
Industry	422710 422720	5171 5172	Gasoline or Diesel Marketers and Distributors.
Industry	484220 484230	4212 4213	Gasoline or Diesel Carriers.

(1) North American Industry Classification System (NAICS).

(2) Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents through the Internet

Today's action is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of this preamble and regulatory language as well as the Response to Comments, the Technical Support Document (TSD) and other documents associated with today's action will be available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for Internet connectivity.

EPA Federal Register Web Site:

<http://www.epa.gov/docs/fedrgstr/epa-air/>

(Either select a desired date or use the Search feature.)

Office of Transportation and Air Quality (OTAQ) Air Toxics Web Site:
<http://www.epa.gov/otaq/toxics.htm>

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

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B. Basic Components of Today's Program

1. Identification of Mobile Source Air Toxics
2. Assessment of Emission Benefits From Current Standards
3. Consideration of Additional On-Highway Controls
4. Nonroad Air Toxics
5. Technical Analysis Plan and Commitment for Further Rulemaking
- C. EPA's Statutory Authority for Today's Action

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B. The Methodology Used to Identify Our List of Mobile Source Air Toxics

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2. Using IRIS to Identify Pollutants With Potential Serious Adverse Health Effects

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B. Impacts of Motor Vehicle Emission Controls on Emissions Inventories

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E. National Technology Transfer and Advancement Act

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X. Statutory Provisions and Legal Authority

I. Introduction

A. Background

Air toxics, which are also known as "hazardous air pollutants" or HAPs, are those pollutants known or suspected to cause cancer or other serious health or environmental effects. They include pollutants like benzene, perchloroethylene, methylene chloride, heavy metals like mercury and lead, polychlorinated biphenyls (PCBs), and dioxins. While the harmful effects of air toxics are of particular concern in areas closest to where they are emitted, they can also be transported and affect the health and welfare of populations in other geographic areas. Some can persist for considerable time in the environment and/or bioaccumulate in the food chain.

To address concerns about the potentially serious impacts of hazardous air pollutants on public health and the environment, the Clean Air Act (the Act), as amended in 1990, includes a number of provisions that have led EPA to characterize, prioritize, and control these emissions as appropriate. Since 1990, the Agency has worked to comply with the Act through a combination of regulatory approaches, partnerships, ongoing research and assessments, risk initiatives, and education and outreach. We have put in place many programs to reduce air toxic emissions that have resulted, and will continue to result, in reductions in ambient concentrations of air toxics. On the stationary source side, we have developed 46 stationary source standards for 82 different types of sources and have more under development. These standards are required under Sections 112 and 129 of the Act and provide for future evaluation of the need for additional stationary source regulations based on the remaining risk from air toxics after these standards are in effect. These actions have resulted, or are projected to result in, substantial reductions in HAP emissions.

On the mobile source side, many of the emission control programs put in place pursuant to the 1990 Clean Air Act Amendments reduce air toxics emissions from a wide variety of mobile sources. These include our reformulated gasoline (RFG) program, which has substantially reduced mobile source air toxics, particularly in urban areas which often have high levels of ambient air toxics, our national low emission vehicle (NLEV) program, our Tier 2 motor vehicle emissions standards and gasoline sulfur control requirements,

and standards for nonroad vehicles and equipment, such as locomotives, recreational marine engines, and aircraft. We have also proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements that would reduce toxics emissions from heavy-duty trucks.¹ Finally, certain other mobile source control programs have been specifically aimed at reducing toxics emissions from mobile sources (e.g., our lead phase-out programs).

While these mobile source standards were put in place primarily to reduce ambient concentrations of criteria pollutants through oxides of nitrogen (NO_x), volatile organic compound (VOC), carbon monoxide (CO) and particulate matter (PM) controls, and thereby to help states and localities come into attainment with the National Ambient Air Quality Standards (NAAQS) for ozone, PM, and CO, they have reduced and will continue to reduce on-highway emissions of air toxics significantly.² By 2020, we project these programs will reduce the levels of on-highway emissions of benzene by 73 percent, formaldehyde by 76 percent, 1,3-butadiene by 72 percent, and acetaldehyde by 67 percent from 1990 levels. In addition, by 2020, on-highway diesel PM emission reductions of 94 percent from 1990 levels are projected in a recent NPRM for heavy-duty engines.³

Nevertheless, because of the potentially serious effects exposure to air toxics may have on human health, it is reasonable to assess whether it is appropriate to establish additional mobile source controls that are specifically designed to reduce further or minimize increases in national

inventories of these pollutants. In today's action, pursuant to Section 202(l)(2) of the Act, the Agency has identified those compounds emitted from mobile sources that should be classified as mobile source air toxics, evaluated whether there are additional controls that can be established at this time, set new toxic emission performance standards, identified existing data gaps in our understanding of the risk posed to the public from mobile source air toxics, and committed to reevaluate the need for additional controls in 2003–2004.

Today's action provides the mobile source component of EPA's National Air Toxics Program: The Integrated Urban Strategy (IUATS), published July 19, 1999 (64 FR 38706). The overarching goal of the IUATS is to reduce cancer and noncancer risks associated with all sources of air toxics in urban areas. In urban areas, toxic air pollutants raise special concerns because sources of emissions and people are concentrated in the same geographic areas, leading to large numbers of people being exposed to the emissions of many HAPs from many sources. The IUATS identified 33 "urban HAPs" which pose the greatest threat to human health in the largest number of urban areas. These 33 compounds are a subset of the 188 compounds listed in Section 112(b) of the Clean Air Act and are listed in Table I–1. Thirteen of these compounds are also included on our Mobile Source Air Toxics list (see Section II, below). The IUATS is described in greater detail in Chapter 1 of the Technical Support Document for this rule. Additional information can also be obtained from the EPA's Unified Air Toxics website, <http://www.epa.gov/ttn/uatw>.

TABLE I–1.—LIST OF URBAN HAPS FOR THE INTEGRATED URBAN AIR TOXICS STRATEGY

Acetaldehyde ^a	Coke oven emissions	Mercury compounds ^a
Acrolein ^a	1,2-dibromomethane	Methylene chloride.
Acrylonitrile	1,2-dichloropropane (propylene dichloride).	Nickel compounds. ^a
Arsenic compounds ^a	1,3-dichloropropene	Polychlorinated biphenyls.
Benzene ^a	Ethyl dichloride (1,2-	Polycyclic organic matter. ^a
Beryllium compounds	Ethylene oxide	Quinoline.
1,3-Butadiene ^a	Formaldehyde ^a	2,3,7,8-tetrachlorodibenzo-p-dioxine (and congeners and TCDF congeners). ^a
Cadmium compounds	Hexachlorobenzene	1,1,2,2-tetrachloroethane.
Carbon tetrachloride	Hydrazine	Tetrachloroethylene.
Chloroform	Lead compounds ^a	Trichloroethylene.
Chromium compounds ^a	Manganese compounds ^a ...	Vinyl chloride.

^a Included on our Mobile Source Air Toxics list.

¹ See final rules: NLEV, 62 FR 31191 (June 6, 1997); Tier 2, 65 FR 6698 (February 10, 2000); land-based diesel nonroad, 63 FR 56968 (October 23, 1998); locomotive, 63 FR 18978 (April 16, 1998); recreational marine, 61 FR 52088 (October 4, 1996); commercial diesel marine, 64 FR 73300 (December

29, 1999); aircraft, 62 FR 25355 (May 8, 1997); RFG, 59 FR 7812 (February 16, 1994). See proposed rule HD2007, 65 FR 35430 (June 2, 2000).

² For example, included among the numerous chemicals that make up total VOC emissions—that

thus are reduced when VOCs are reduced—are several gaseous toxics (e.g., benzene, formaldehyde, 1,3-butadiene, and acetaldehyde).

³ 65 FR 35430, June 2, 2000.

Today's rule is our first attempt at addressing mobile source air toxics in a systematic and integrated manner. Additional analysis, however, will be necessary to evaluate the sufficiency of those controls and to determine whether there is a need for additional controls. Today's rule also contains a Technical Analysis Plan (TAP) that identifies key information gaps about the risk posed by mobile source air toxics and the feasibility of additional controls. In order to address these data gaps, the Agency will continue to compile, analyze, and conduct additional research in coordination with other toxics research activities that are ongoing in the Agency, including the National-Scale Air Toxics Assessment (NATA) headed by EPA's Office of Air Quality Planning and Standards (OAQPS) and the Air Toxics Research Strategy (ATRS) headed by EPA's Office of Research and Development (ORD).

The results of NATA will be used to identify areas of the country and pollutants where additional investigation is needed. NATA will begin with an analysis of the risks associated with the 33 "urban HAPs" identified in Table I-1. In the future, NATA will evaluate all 188 HAPs currently listed under Section 112(b) of the Act as well as diesel PM. NATA is described in greater detail in Chapter 1 of the Technical Support Document for this rule. Additional information can also be obtained from the NATA website (<http://www.epa.gov/ttn/uatw/nata>).

The Air Toxics Research Strategy (ATRS) is an Agency 10 year plan to guide and prioritize research in air toxics from various sources, including mobile sources. ATRS is also described in Chapter 1 of the Technical Support Document.

With this background, we now turn to an overview of today's action.

B. Basic Components of Today's Program

Today's action addresses mobile source air toxics emissions. In it, we identify our list of 21 mobile source air toxics (MSATs) and set new gasoline toxic emission performance baseline requirements for RFG and conventional gasoline. We also describe a Technical Analysis Plan to continue analysis and research that will aid us in evaluating and assessing the need for additional mobile source air toxics controls. The information acquired through our technical analysis will form the basis for a future mobile source air toxics rulemaking.

1. Identification of Mobile Source Air Toxics

There are hundreds of different compounds and elements that are known to be emitted from passenger cars, on-highway trucks, and various types of nonroad equipment. Section II of today's action identifies a list of 21 toxic compounds emitted from motor vehicles and describes the methodology we used to generate this list. This methodology may be used to add compounds to, or remove compounds from, the MSAT list in the future as new information becomes available.

2. Assessment of Emission Benefits From Current Standards

Today's action also describes how our current mobile source emission control programs are expected to reduce MSAT emissions. By 2020, we expect existing programs like the reformulated gasoline (RFG) program, national low emission vehicle (NLEV) program, Tier 2 motor vehicle emissions standards and gasoline sulfur control requirements (Tier 2), and our proposed heavy-duty engine and vehicle standards and on-highway diesel fuel sulfur control requirements (HD2007 rule), to significantly reduce on-highway emissions of key air toxics. Section III contains our on-highway toxics emissions inventory analysis and estimates of these expected reductions.

3. Consideration of Additional On-Highway Controls

Although we anticipate substantial reductions in emissions of key toxic pollutants by 2020, the serious potential health effects associated with many of these compounds lead us to evaluate whether additional controls are technologically feasible at this time. For the purpose of our analysis, we divide potential control measures into two broad categories: vehicle-based controls and fuel-based controls. Vehicle-based controls include programs that reduce evaporative and exhaust emissions from vehicles and engines. Fuel-based controls explore how changing fuel formulation can reduce air toxic emissions. In performing our analysis of additional controls in Sections IV and V, we followed the requirements specified in Section 202(l)(2) of the Act: these motor vehicle or motor fuel standards must "reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under [Section 202(a)], the availability and costs of the technology, and noise,

energy, and safety factors, and lead time."

Based on our analysis and the comments we received from various stakeholders, we are finalizing gasoline toxic emission performance standards that will help maintain current levels of overcompliance with existing gasoline toxics emission standards. These requirements are refiner-specific, based on each refinery's average 1998–2000 gasoline toxic emission performance levels for RFG and conventional gasoline. Consistent with our proposal, we are not setting additional air toxics emissions standards for motor vehicles in today's action. However, it is important to note that we have proposed stringent new diesel particulate matter standards for heavy-duty vehicles (HDV) that would reduce HDV PM emissions by 90%. We expect to issue a final rule for this category soon. We believe that it is not technologically feasible at this time to set additional motor vehicle controls under Section 202(l)(2) beyond the controls already adopted or proposed by the Agency. This decision is based on consideration of the technical feasibility, cost, and other factors relevant to a proposal of further controls at this time.

4. Nonroad Air Toxics

Section 202(l)(2) of the Act specifies that we set standards to control hazardous air pollutants from motor vehicles and motor vehicle fuels which, by definition, do not include nonroad engines or vehicles or their fuels. However, nonroad engines are also important contributors to national inventories of mobile source air toxics emissions. Therefore, we believe it is also helpful to include a discussion of nonroad sources in today's action. In addition, as noted above, today's action is part of EPA's Integrated Urban Air Toxics Strategy. As part of our effort to establish a comprehensive plan that seeks to reduce urban air toxic emissions, we intend to address both on-highway and motor vehicles and evaluate emissions and potential strategies relating to hazardous air pollutants from nonroad engines and vehicles.

5. Technical Analysis Plan and Commitment for Further Rulemaking

We believe our evaluation to date of the need for, and appropriateness of, additional mobile source toxics control measures provides adequate support for today's action. At this time, EPA is also engaged in other toxics-related activities as part of NATA, the IUATS, ATRS, and other rulemaking activities. This emerging information will help us to

further evaluate potential additional mobile source air toxics controls in the future.

Building on these Agency toxics activities, and to increase our understanding of mobile source air toxics, we will implement the Technical Analysis Plan described in Section VII below. This Plan will be coordinated with the other research activities within the Agency in several key areas, including development of emission factors for nonroad sources, analysis of toxics exposures in microenvironments, and examination of additional fuel- and vehicle-based air toxics controls for both motor vehicles and nonroad engines and equipment. Our TAP will be fully coordinated and integrated with activities conducted as part of NATA, the IUATS, and the ATRS. This will allow us to take full advantage of what is collectively learned and provide a solid basis for future action, including a future rulemaking, to be completed no later than July 1, 2004.

C. EPA's Statutory Authority for Today's Action

Today's action is established pursuant to Section 202(l) of the Clean Air Act. That Section consists of two parts. Section 202(l)(1) calls on EPA to study the need for and feasibility of controlling toxic air pollutants associated with motor vehicles and motor vehicle fuels. That study is to focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain. The Act specifies that, at a minimum, the study focus on emissions of benzene, formaldehyde, and 1,3-butadiene.

We completed the study required under Section 202(l)(1) in April 1993. The report, entitled "Motor Vehicle-Related Air Toxics Study," is available on our website (<http://www.epa.gov/otaq/toxics.htm>). Specific pollutants or pollutant categories discussed in the 1993 report include benzene, formaldehyde, 1,3-butadiene, acetaldehyde, diesel particulate, gasoline particulate, gasoline vapors, and selected metals. The emissions and exposure aspects for several of the air toxics covered in this report were recently updated in November 1999. The 1999 report, entitled "Analysis of the Impacts of Control Programs on Motor Vehicle Toxics Emissions and Exposure in Urban Areas and Nationwide," is also available on our website, and is described in more detail in Section I.E., below. We sought peer review comments on both the 1993 and 1999 reports. We considered the 1993 comments in developing the 1999

document and will consider the 1999 comments in developing our future activities (e.g., in the development of version 4 of the Hazardous Air Pollutant Exposure Model, HAPEM4, described in Section VII, below).

Section 202(l)(2) instructs us to set standards to control hazardous air pollutants from motor vehicles, motor vehicle fuels, or both. These standards, which may be revised from time to time, are to reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the motor vehicle standards established under Section 202(a) of the Act, the availability and cost of the technology, and noise, energy and safety factors, and lead time. The regulations are to apply, at a minimum, to benzene and formaldehyde emissions, and are to be set under Section 202(a) or 211(c) of the Act. Section 211(c) of the Act authorizes the Agency to control or prohibit the manufacturer, introduction into commerce, offering for sale, or sale, of any fuel or fuel additive if any emission product of such fuel or fuel additive causes or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare.

II. What Are the Mobile Source Air Toxics?

A. Introduction

There are hundreds of different compounds and elements that are known to be emitted from passenger cars, on-highway trucks, and various nonroad equipment. Several of these compounds may have adverse effects on human health and welfare.⁴ In recognition of this fact, Congress instructed EPA, in Section 202(l)(2) of the Act, to set standards for hazardous air pollutants from motor vehicles and their fuels. Except for benzene and formaldehyde (specifically mentioned in 202(l)(2)), the Act does not specify the compounds that should be considered in such a control program. Therefore, the first step in developing a mobile source air toxics control program is to identify the compounds that should be treated as hazardous air pollutants for purpose of Section 202(l)(2). Since EPA data suggest that nonroad engines and on-highway vehicles emit the same pollutants, EPA

⁴ Our authority under 202(a) and 211(c) allows us to address air pollution that impacts health or welfare. This initial MSAT list focuses on human health. Additional compounds may be added in the future due to their ecological impacts, material damage, or visibility impairment and it is noteworthy that some of the MSATs on the list have important ecological impacts.

has identified this list as a list of mobile source air toxics (MSATs).⁵ We are listing 21 MSATs using the methodology described below.

B. The Methodology Used to Identify Our List of Mobile Source Air Toxics

EPA developed the list of MSATs by first searching for lists of compounds in all available databases and recent studies (i.e., ten years old or less) which speciated emissions from motor vehicles and their fuels. Data for vehicles and engines more than ten years old are considered to be outdated and thus are judged not to be representative of current emissions. The lists did not include emissions from alternative-fueled vehicles, currently in a very small number of vehicles, such as flexible-fueled vehicles. We then compared the speciated lists of compounds in these studies to the list of compounds in EPA's Integrated Risk Information System (IRIS) database. IRIS is a database of compounds that identifies EPA's consensus scientific judgment on the characterization of the potential serious adverse health effects that may result from a lifetime exposure to a substance (discussed in more detail below).

By comparing the lists of compounds provided in the emission speciation databases and studies to the list of compounds in IRIS, we generated a list of 21 compounds. An evaluation of the potential for serious adverse health effects as reflected in IRIS and in the ongoing agency scientific assessments of these compounds indicates that these compounds warrant inclusion as MSATs.

It is important to note that inclusion on the list is not itself a determination by EPA that emissions of the compound in fact present a risk to public health or welfare, or that it is appropriate to adopt controls to limit the emissions of such a compound from motor vehicles or their fuels. The purpose of the list is to provide a screening tool that identifies those compounds emitted from motor vehicles or their fuels for which further evaluation of emissions controls is appropriate. In conducting any such further evaluation, pursuant to sections 202(a) or 211(c) of the Act, EPA would consider whether emissions of the compound cause or contribute to air pollution which may reasonably be anticipated to endanger public health or

⁵ We have chosen to call our list of toxics a mobile sources list to acknowledge that nonroad sources may also contribute emissions of these pollutants. For purposes of Section 202(l)(2), each of the MSATs is considered a "hazardous air pollutant from motor vehicles and motor vehicle fuels."

welfare. Such an evaluation would also consider the appropriate level of any controls, based on the criteria established in section 202(l)(2). Inclusion of a compound on the MSAT list does not decide these issues, but instead identifies those compounds for which such an evaluation would appear to be warranted.

With regard to emissions from alternative-fueled vehicles, most of the compounds included in the exhaust are included on our list of MSATs (e.g., formaldehyde, acetaldehyde). It should be noted that, depending on the fuel used, these vehicles may also emit unburned ethanol and methanol.

EPA compared the lists of compounds emitted from motor vehicles with lists or sources of information on toxic substances other than IRIS to determine the reasonableness of the MSAT list. Based on this comparison, we requested comments on the possible addition of propionaldehyde and 2,2,4-trimethylpentane to the MSAT list. We are not adding these compounds to the MSAT list at this time due to the absence of an Agency consensus view as expressed on IRIS regarding the adverse health effects of these compounds. The MSAT list will be re-evaluated in the future as new information is acquired about emissions and/or health effects for any mobile source pollutant. Compounds may be added to or removed from the list in future rulemaking notices.

1. Identifying Pollutants Emitted From Mobile Sources

In identifying a list of MSAT, EPA first searched for lists of compounds from all available databases and recent (i.e., ten years old or less) studies that speciated the emissions from motor vehicles and their fuels. Many toxic air pollutants are hydrocarbons (HCs) by their chemical nature and thus will be identified only if the HCs are chemically separated (speciated). In addition, the compounds that comprise the particulate phase of mobile source emissions must also be chemically speciated. Many test programs that characterize vehicle emissions identify only total hydrocarbons and particulate

matter without separating the individual species of hydrocarbons and other elements.

The databases and recent studies reporting emissions from light-duty gasoline vehicles (LDGV), heavy-duty diesel vehicles (HDDV), heavy-duty gasoline vehicles (HDGV), and gasoline-powered nonroad engines are identified in Appendix I located at the end of Chapter 2 of the TSD. Data for other vehicle and engine types (e.g., light-duty diesel engines and nonroad diesel engines) either do not exist or are outdated (more than 10 years old) and thus are judged not to be representative of current emissions. However, it is unlikely that the lack of recent data for these particular vehicle and engine types would lead us to overlook compounds that should be included on our list of MSATs, because the combustion processes for these missing vehicle and engine types are similar to those for the vehicle and engine types for which we do have data.

2. Using IRIS to Identify Pollutants With Potential Serious Adverse Health Effects

The Integrated Risk Information System (IRIS) is an EPA database of scientific information that contains the Agency consensus scientific positions on the potential serious adverse health effects that may result from lifetime (chronic) exposure to substances found in the environment.⁶ IRIS currently provides health effects information on over 500 specific chemical compounds.

IRIS contains chemical-specific summaries of qualitative and quantitative health information. IRIS information may include the reference concentration (RfC) for noncancer health effects resulting from chronic inhalation exposure, the reference dose (RfD) for noncancer health effects resulting from chronic oral exposure, and the carcinogen assessment for both oral and inhalation exposure. The RfC or RfD is an estimate (with uncertainty spanning perhaps an order of magnitude or more) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious noncancer effects during a lifetime.

Because of the public health conservative methodology in deriving the RfC or RfD, it is possible that exposure above the RfC or RfD may not pose an appreciable risk; however the significance of exceedances must be evaluated on a case-by-case basis. Combined with information on specific exposure situations, the summary health hazard information in IRIS may be used in evaluating potential public health risks from environmental contaminants. IRIS also lists compounds for which the Agency has reviewed currently available information and concluded that (1) there are insufficient data to calculate an RfC or RfD for the noncancer hazard potentially posed by the compound(s), and/or (2) there is an absence of sufficient information to identify a cancer hazard.

Before a substance is listed on the IRIS database, it goes through a thorough scientific evaluation. This consensus and review process, managed by EPA's Office of Research and Development (ORD), consists of (1) an annual **Federal Register** announcement of the IRIS agenda and a call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessment and draft IRIS summaries, (4) internal EPA peer review, (5) external peer review, (6) Agency consensus review and management approval within EPA, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries and supporting documents into the IRIS database.

C. List of Mobile Source Air Toxics

In our notice of proposed rulemaking we listed 21 MSATs. We received comments on six proposed MSATs as well as other compounds. We are finalizing this list of 21 compounds, but we have changed the listing for diesel exhaust to diesel particulate matter and diesel exhaust organic gases. A discussion of the comments received on the proposed MSAT list is provided below and the MSAT list is provided in Table II-1.

TABLE II-1.—LIST OF MOBILE SOURCE AIR TOXICS (MSATs)

Acetaldehyde	Diesel Particulate Matter + Diesel Exhaust Organic Gases (DPM + DEOG)	MTBE
Acrolein	Ethylbenzene	Naphthalene.
Arsenic Compounds ¹	Formaldehyde	Nickel Compounds. ¹
Benzene	n-Hexane	POM. ³
1,3-Butadiene	Lead Compounds ¹	Styrene.

⁶ EPA IRIS Database, <http://www.epa.gov/iris/intro.htm>

TABLE II-1.—LIST OF MOBILE SOURCE AIR TOXICS (MSATs)—Continued

Acetaldehyde	Diesel Particulate Matter + Diesel Exhaust Organic Gases (DPM + DEOG)	MTBE
Chromium Compounds ¹	Manganese Compounds ¹	Toluene.
Dioxin/Furans ²	Mercury Compounds ¹	Xylene.

¹ Although the different metal compounds generally differ in their toxicity, the onroad mobile source inventory contains emissions estimates for total metal compounds (i.e., the sum of all forms).

² This entry refers to two large groups of chlorinated compounds. In assessing their cancer risks, their quantitative potencies are usually derived from that of the most toxic, 2,3,7,8-tetrachlorodibenzodioxin.

³ Polycyclic Organic Matter includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 degrees centigrade. A group of seven polynuclear aromatic hydrocarbons, which have been identified by EPA as probable human carcinogens, (benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, chrysene, 7,12-dimethylbenz(a)anthracene, and indeno(1,2,3-cd)pyrene) are used here as surrogates for the larger group of POM compounds.

By comparing the lists of compounds identified in the motor vehicle emission databases and studies with the toxic compounds listed in IRIS, we identified 21 compounds. Each of these pollutants are known, probable, or possible human carcinogens (Group A, B or C) and/or pollutants for which the Agency has calculated an RfC or RfD.⁷ We therefore consider each of these compounds to be MSATs.

In response to public comments we are changing the way we list diesel exhaust as an MSAT. We believe a better approach is to list diesel particulate matter and diesel exhaust organic gases (DPM + DEOG) as the MSAT. This listing approach is more precise about the components of diesel exhaust expected to contribute to the observed cancer and noncancer health effects and provides a framework for developing regulatory control strategies.

Currently available science, while suggesting an important role for the particulate phase component of diesel exhaust, does not attribute the serious cancer and noncancer health effects independently to diesel particulate matter separate from the organic gas phase components. Therefore, this listing approach does not constitute two separate MSAT listings but a single listing meant to capture the collection of emissions potentially responsible for the cancer and noncancer health effects related to diesel exhaust.

While this listing departs slightly from the approach described above, we believe this is reasonable because (1) there are several nontoxic components of diesel exhaust (e.g., water vapor, nitrogen, oxygen) that we are excluding from the listing, (2) this listing includes the components of diesel exhaust that are likely to contribute to either the cancer or the noncancer hazard (with the exception of the gaseous phase criteria pollutants such as NO_x, SO₂ and

CO which are subject to National Ambient Air Quality Standards), (3) the more precise listing provides Federal and State government, industry, and public interest groups an ability to focus on the components of diesel exhaust that pose a potential concern for public health, and (4) this focus provides specific targets for emissions reductions should future analysis indicate that additional controls are necessary.

Regarding the listing of metals, we have chosen to list the entire group of metal compounds if any compound of the metal has been detected in motor vehicle exhaust and any compound of the metal is listed in IRIS as potentially causing adverse human health effects. Literature values report only the total amount of the metal compound identified and not the specific form of the metal being emitted in motor vehicle exhaust. For example, chromium (Cr) can be emitted from combustion sources in different forms, the most toxic of which is Cr+6. In the literature, the form of Cr emissions from mobile sources are unidentified. In our list of MSAT, we therefore list chromium compounds generally, and do not attempt to list specific forms of these metals because we lack metal speciation information. When we assess the range of potential health impacts associated with exposure to chromium compounds, we consider the health effects associated with all forms of the compound for which we have health effects information. For chromium, the most toxic form in IRIS is Cr+6; hence the health impacts described for chromium compounds refer to these most serious effects even though it is highly unlikely that all motor vehicle emissions are Cr+6. EPA believes this listing approach is a reasonable, health-protective way to handle the uncertainty surrounding motor vehicle emissions of metals. Moreover, it is consistent with Congress' list of HAP for stationary sources in Section 112(b) of the Act. At the same time we recognize that to accurately assess the actual health risks associated

with exposure to metal emissions from mobile sources, identification of the specific forms of the metals emitted would be important.

With regard to emissions from alternative-fueled vehicles, most of the compounds included in the exhaust are included on our list of MSATs (e.g., formaldehyde, acetaldehyde). It should be noted that, depending on the fuel used, these vehicles may also emit unburned ethanol and methanol. Low level ethanol mixtures (10% ethanol and 90% gasoline) are widely used in the United States. Higher level ethanol mixtures (e.g., 85% ethanol) are used as alternative fuel sources in a small number of flexible fuel vehicles. There is a paucity of data on potential inhalation effects of ethanol, and the compound is not listed in IRIS. One commenter responded to our request for comment on the addition of ethanol to the list of MSATs based on the presence of ethanol in alternative fuels and stated that ethanol should not be listed as an MSAT. At this time EPA is not including ethanol in the list of MSATs because we do not have an Agency consensus view as expressed on IRIS regarding the potential adverse health effects associated with exposure to ethanol. The Agency is continuing toxicity testing and risk assessment of potential adverse health effects resulting from exposure to this compound. We will reassess available information regarding potential health effects of exposure to ethanol when we evaluate whether additional controls are appropriate in 2003.

We did not include methanol on our proposed list of MSAT because it was not identified in our analysis of speciated emissions from motor vehicles. Instead, in the NPRM, we requested comment on whether methanol and ethanol, by virtue of their use in alternative fuel vehicles, should be included on the list.

During the comment period, one commenter directed EPA to studies that identify methanol as an emissions

⁷ A further discussion of the potential cancer and noncancer risks, and other dose-response information for each MSAT can be found in Chapter 3 of the TSD.

product of motor vehicles burning reformulated gasoline. This commenter suggested that further research needed to be conducted to determine whether methanol should be added to the list of MSAT. Recently submitted comments echoed the need to conduct further research and requested more time to consider the addition of methanol to the MSAT list.

In order to provide a full opportunity for public comment and to respond to these comments in more detail, we will address the addition of methanol to the MSAT list in a separate rulemaking. We believe it is reasonable to defer making a decision on listing methanol until after today's rulemaking, because listing in today's rulemaking would not result in additional controls. The existing motor vehicle VOC controls will reduce emissions of methanol along with other gaseous toxics and fuel controls will need to be considered in subsequent rulemakings. As part of the future notice addressing addition of methanol to our list of MSAT, we will also evaluate possible controls in accordance with section 202(l)(2) as appropriate.

In the notice of proposed rulemaking we compared lists of emitted compounds to four lists of toxic air pollutants to confirm that our MSAT list was reasonable. The four lists of toxic air pollutants we used were: the Clean Air Act (CAA) Section 112(b) list of hazardous air pollutants; California EPA (CalEPA) list of toxic air contaminants (TAC); U.S. Department of Health and Human Service Agency for Toxic Substances and Disease Registry (ATSDR) list of Minimal Risk Levels (MRLs); and International Agency for Research on Cancer (IARC) monographs on cancer. Comparing these four lists against the emissions speciation studies and databases, we identified two additional compounds not included on our list of MSATs—propionaldehyde and 2,2,4-trimethylpentane. Comments we received on these compounds suggested either that (1) further study was needed to determine the potential for adverse health effects or that (2) both compounds should be added to the list of MSATs based on their presence in the CAA section 112(b) HAP list, or due to the presence of these compounds on the emissions lists.

At this time EPA is not including propionaldehyde or 2,2,4-trimethylpentane in the list of MSATs because we do not have an Agency consensus view as expressed on IRIS regarding the potential adverse health effects associated with exposure to these pollutants. EPA assessments of these compounds have been proposed and we will use all currently available

information to reassess the possible inclusion of these compounds in the list of MSATs when we evaluate whether additional controls are appropriate in 2003.

III. How Are Motor Vehicle Emission Control Programs Reducing MSAT Emissions?

In the previous section we identified the 21 MSATs. We now turn to an evaluation of how our various mobile source control programs will affect the inventories of these air toxics.

The data and information available on emissions of these 21 MSATs vary considerably. While we have baseline inventory data for all of the MSATs except naphthalene, we do not have inventory projections for all of them. Therefore, we are examining the projected impacts of our current and proposed mobile source control programs by groupings of air toxics. We do have specific projections of future emissions for five gaseous toxics (benzene, formaldehyde, 1,3-butadiene, acetaldehyde, MTBE) and for diesel PM (as the surrogate for DPM + DEOG) and we present these in this section. We do not have emissions projections for the remaining gaseous toxics (acrolein, POM, styrene, toluene, xylene, ethylbenzene, naphthalene, and n-hexane) but, because these compounds are part of VOCs, we believe it is reasonable to utilize VOC emissions inventory projections to estimate the expected impact of our control programs on these other gaseous MSATs. Finally, we also do not have emissions inventory projections for the metals on the MSAT list (arsenic compounds, chromium compounds, mercury compounds, nickel compounds, manganese compounds, and lead compounds) or for dioxins/furans. While metal emissions and dioxin/furans emissions are associated with particles and it is possible that some of these compounds track PM emissions to some extent, we do not have good data on these relationships. Therefore, we are not presenting emission projections for these compounds in this action. We believe this is reasonable because the mobile source contribution to metals inventories is small and comes primarily from engine wear and impurities in engine oil, or from fuel additives.

As we describe in the following discussion, there have been and will continue to be significant reductions in MSAT emissions as a result of our mobile source regulations. By 2020, we project on-highway emission control programs (up to and including our Tier 2 control program and our proposed

2007 heavy-duty engine rule) will reduce benzene emissions by 73 percent, formaldehyde emissions by 76 percent, 1,3-butadiene emissions by 72 percent, and acetaldehyde emissions by 67 percent from 1990 levels. Under these same controls we project on-highway diesel PM emissions will be reduced by 94 percent by 2020, as compared with 1990 levels. Nonroad engines and equipment also contribute substantially to levels of MSAT emissions and have only in recent years been subject to emission standards. Since nonroad engines are not subject to the same stringent controls as on-highway vehicles, the reductions from these sources are more moderate than those for on-highway sources.

The discussion in this section consists of two parts. First, we describe current inventories of MSAT emissions. Next, we describe how our on-highway emission control programs will reduce these inventories. Interested readers should refer to Chapter 4 of our TSD for more detailed information about the methodology we used to compile these inventories and the results of our analysis. We consider the impacts of our nonroad engine control programs on MSAT emissions in Section VI of this preamble.

A. Baseline Inventories

We developed inventory estimates for several gaseous MSATs (acetaldehyde, benzene, 1,3-butadiene, formaldehyde, MTBE) and also for diesel PM as part of the 1999 study, "Analysis of the Impacts of Control Programs on Motor Vehicle Toxic Emissions and Exposure in Urban Areas and Nationwide," (hereafter referred to as the 1999 EPA Motor Vehicle Air Toxics Study, or the 1999 Study).⁸ The pollutants examined in the 1999 Study were chosen because we had adequate data to perform a rigorous modeling analysis for those pollutants. The 1999 Study examined the impact of a variety of parameters including fuel properties, emission control technologies, and type of in-use operation on the 1990 and 1996 emissions inventories for these six pollutants. The 1990 baseline represents estimated emissions before any of the programs added by the 1990 Clean Air Act Amendments were implemented. The 1996 estimates reflect toxics emissions with some of the new Clean Air Act programs in place, such as Phase 1 of the RFG program. Note that

⁸ Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999, EPA420-R-99-029/030. This report can be accessed at <http://www.epa.gov/otaq/toxics.htm>.

since completion of the 1999 Study, we have updated our estimates of diesel PM emissions and our estimates of toxics emissions from heavy-engines (as part of

improvements made with regard to heavy-duty engine modeling). Our updated baseline toxics inventory estimates are presented in Table III-1. It

should also be noted that these estimates are only for on-highway vehicles.

TABLE III-1.—ANNUAL EMISSIONS FROM ON-HIGHWAY VEHICLES FOR SELECTED AIR POLLUTANTS
[Short tons per year]^a

Compound	1990 Emissions	1996 Emissions ^b
1,3-Butadiene	36,000	24,000
Acetaldehyde	41,000	31,000
Benzene	257,000	171,000
Formaldehyde	139,000	93,000
Diesel PM	235,000 ^c	182,000
MTBE	55,000	67,000

^aIn this notice we report emissions in terms of short tons as opposed to metric tons.

^bThe 1996 estimates are based on updated inventories taking into consideration the proposed 2007 and later model year heavy-duty engine standards.

^cFor 1990, we used diesel PM estimates from EPA's Trends Report.

The 1996 National Toxics Inventory (NTI) prepared in connection with the Agency's NATA activities also contains emission estimates for 1,3-butadiene, acetaldehyde, benzene, formaldehyde and MTBE. The 1996 NTI emission estimates for these compounds differ slightly from those generated in the 1999 EPA Motor Vehicle Air Toxics Study, due to revisions made to the NTI based on updated vehicle miles traveled (VMT) information provided by a number of states, minor changes to the emissions model used (the MOBTIX model), and revised heavy-duty information. Since DPM + DEOG is not

included on the list of 112(b) hazardous air pollutants, which is the focus of the 1996 NTI, DPM + DEOG estimates were not compiled in the 1996 NTI.

The 1996 NTI also contains 1996 emissions estimates for several other MSATs, and includes data for nonroad⁹ as well as on-highway sources. We present these data in Table III-2. We also indicate the on-highway and nonroad percentages of the national inventories for these MSATs (the total national inventories include emissions from on-highway and nonroad mobile sources, major and area stationary sources, and other sources such as forest

fires). Between the 1999 EPA Motor Vehicle Air Toxics Study and the 1996 NTI, we have baseline inventory data for all of the 21 MSATs except naphthalene.¹⁰ (For DPM + DEOG, we do not have inventory data on the DEOG portion. For this analysis, we are using DPM as a surrogate for DPM + DEOG.) While good baseline data exist for many of the MSATs, they do not exist for all. As noted earlier, we plan to conduct additional research in coordination with other toxics research activities that are ongoing in the Agency to improve our characterization of toxics emission from mobile sources.

TABLE III-2.—1996 ON-HIGHWAY AND NONROAD EMISSION INVENTORIES OF SOME MSATs FROM THE 1996 NTI
[Short tons]

Compound	On-Highway		Nonroad		Mobile Sources	
	Tons	Percent of Total National Emissions	Tons	Percent of Total National Emissions	Tons	Percent of Total National Emissions
1,3-Butadiene ^a	23,500	42	9,900	18	33,400	60
Acetaldehyde ^a	28,700	29	40,800	41	69,500	70
Acrolein ^a	5,000	16	7,400	23	12,400	39
Arsenic Compounds ^a	0.25	0.06	2.01	0.51	2.26	0.57
Benzene ^a	168,200	48	98,700	28	266,900	76
Chromium Compounds ^a	14	1.2	35	3	49	4.2
Dioxins/Furans ^{a, b}	0.0001	0.2	N.A.	N.A.	0.0001	0.2
Ethylbenzene	80,800	47	62,200	37	143,000	84
Formaldehyde ^a	83,000	24	86,400	25	169,400	49
Lead Compounds ^a	19	0.8	546	21.8	565	22.6
Manganese Compounds ^a	5.8	0.2	35.5	1.3	41.3	1.5
Mercury Compounds ^a	0.2	0.1	6.6	4.1	6.8	4.2
MTBE	65,100	47	53,900	39	119,000	86
n-Hexane	63,300	26	43,600	18	106,600	44
Naphthalene	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Nickel Compounds ^a	10.7	0.9	92.8	7.6	103.5	8.5
POM (as sum of 7 PAH) ^a	42.0	4	19.3	2	61.3	6
Styrene	16,300	33	3,500	7	19,800	40
Toluene	549,900	51	252,200	23	802,100	74

⁹The nonroad inventory in the 1996 NTI includes emissions data for aircraft, commercial marine vessel, locomotives, and other nonroad engines. Note that under the Clean Air Act definition, nonroad vehicles do not include aircraft. For convenience, in this action the term "nonroad" will

include aircraft except where otherwise noted. It should be noted that the NONROAD model, on which the estimates for nonroad engines other than locomotive, commercial marine vessels, and aircraft are based, is still draft, and the emissions estimates based on this model are subject to change.

¹⁰Naphthalene emissions are not reported in the 1996 NTI separately from 16-PAH. See Chapter 3 of the TSD for the explanation of the linkage between diesel exhaust and diesel PM.

TABLE III-2.—1996 ON-HIGHWAY AND NONROAD EMISSION INVENTORIES OF SOME MSATs FROM THE 1996 NTI—
Continued
[Short tons]

Compound	On-Highway		Nonroad		Mobile Sources	
	Tons	Percent of Total National Emissions	Tons	Percent of Total National Emissions	Tons	Percent of Total National Emissions
Xylene	311,000	43	258,400	36	569,400	79

^a These compounds are also on the list of urban HAPs for the Integrated Urban Air Toxics Strategy.

^b Mass given in tons of TEQ (toxic equivalency quotient). The EPA Office of Research and Development (ORD) has recently developed an inventory for dioxin and dioxin-like compounds using different methods than those used in the 1996 NTI. For 1995, the EPA-ORD estimate of on-highway emissions of dioxin compounds is 0.00005 tons TEQ, comprising 1.5 percent of the national inventory in that year. (The TEQ rates the toxicity of each dioxin and furan relative to that of 2,3,7,8-TCDD, which is assigned a TEQ of 1.0.)

The above inventory data reflect certain interesting characteristics of mobile source air toxics emissions. First, mobile sources account for the majority of the national inventory of three of the gaseous MSATs that are included on the urban HAP list. These three are 1,3-butadiene (60 percent), acetaldehyde (70 percent), and benzene (76 percent). Mobile sources account for 39 percent of the national inventory of acrolein, and 49 percent of the national inventory of formaldehyde, two other gaseous urban HAPs. All of these MSATs are formed as part of the combustion process except for benzene, which is also released through evaporative emissions from gasoline.

Second, with regard to the other MSATs that are included on the urban HAP list, the mobile source contribution generally is small (arsenic compounds, chromium compounds, manganese compounds, mercury compounds, nickel compounds, POM, and dioxins/furans). The sole exception is lead compounds. Mobile sources contribute 23 percent to national inventories of lead compound emissions, due primarily to nonroad sources and, more specifically, to the use of a lead-additive package used to boost the octane of aviation gasoline.¹¹ The mobile source contribution to the other metals on the urban HAP list comes primarily from engine wear, some fuel additives, or impurities in engine oil.

With regard to the gaseous MSATs that are not included on the urban HAP list (ethylbenzene, MTBE, n-hexane, toluene, and xylene), mobile source contributions are high because of the presence of these compounds in gasoline.

In addition, mobile sources account for almost all diesel PM emissions. A limited number of stationary sources,

such as large generators, do operate on diesel fuel. Because there are relatively few stationary sources that operate on diesel fuel, we believe that diesel PM from stationary sources is relatively small compared to diesel PM from mobile sources. (However, for this analysis we have not generated an estimate of diesel PM from stationary sources.) As shown in Table III-1, above, we estimate that 1996 on-highway diesel PM emissions are approximately 182,000 tons. We estimate that 1996 nonroad diesel PM emissions are approximately 346,000 tons, as discussed in Section VI of this notice.¹²

B. Impacts of Motor Vehicle Emission Controls on Emission Inventories

1. Description of Emission Control Programs

Many of the programs that we have put in place since the passage of the 1990 Clean Air Act Amendments to achieve attainment of the National Ambient Air Quality Standards (NAAQS) for ozone, PM and CO have also reduced MSAT emissions. For example, measures to control hydrocarbons from motor vehicles are also effective in controlling gaseous toxics. In addition, certain programs address air toxics directly, such as the RFG program and the gasoline lead phase-out. In this section we briefly describe several categories of mobile source emission control measures that have helped reduce inventories of these harmful compounds. These programs include:

- More stringent vehicle standards and test procedures. The 1990 Clean Air Act Amendments set specific emission standards for hydrocarbons and for PM. Air toxics are present in both of these pollutant categories. As vehicle manufacturers develop technologies to

comply with the hydrocarbon and particulate standards (*e.g.*, more efficient catalytic converters), we expect air toxics to be reduced as well. Since 1990, we have developed a number of programs to address exhaust and evaporative hydrocarbon emissions and PM emissions. Some of the key programs are the Tier 1 and NLEV standards for light-duty vehicles and trucks; enhanced evaporative emissions standards; the supplemental federal test procedures (SFTP); urban bus standards; and heavy-duty diesel and gasoline standards for the 2004/2005 time frame.

- Recent motor vehicle/fuel control initiatives. Two of our recent initiatives to control emissions from motor vehicles and their fuels are the Tier 2 control program and our proposed 2007 heavy-duty engine rule. Together these two initiatives define a set of comprehensive standards for light-duty and heavy-duty motor vehicles and their fuels. In both of these initiatives, we treat vehicles and fuels as a system. The Tier 2 control program establishes stringent tailpipe and evaporative emission standards for light-duty vehicles and a reduction in sulfur levels in gasoline fuel beginning in 2004. The proposed 2007 heavy-duty engine rule would establish stringent exhaust emission standards for heavy-duty engines and vehicles for the 2007 model year as well as reductions in diesel fuel sulfur levels starting in 2006.

- Limits on gasoline volatility. Volatility is a measure of how easily a liquid evaporates. As described earlier, some toxics such as benzene are present in gasoline and get into the air when gasoline evaporates. We imposed limits on gasoline volatility in the early 1990s to control evaporative emissions of both hydrocarbon and toxic compounds (most air toxics are hydrocarbons, so programs designed to reduce hydrocarbon emissions also reduce air toxics).

- Reformulated gasoline. The 1990 Clean Air Act Amendments required

¹¹ Aviation gasoline is used by a relatively small number of aircraft, those with piston engines, which are generally used for personal transportation, sightseeing, crop dusting, and similar activities.

¹² It should be noted that the nonroad diesel PM emissions estimate is based on the draft NONROAD model and is subject to change.

reformulated gasoline to be introduced in the nation's most polluted cities beginning in 1995. From 1995 through 1999, these gasolines were required to provide a minimum 16.5 percent reduction in air toxics emissions over typical 1990 gasolines, increasing to a 21.5 percent minimum reduction beginning in the year 2000. The air toxics reductions have been achieved mainly by further reducing gasoline volatility and by reducing the benzene, aromatics, sulfur, and olefin content of the gasoline.

- Phase-out of lead in gasoline. One of the first programs to control toxic emissions from motor vehicles was the removal of lead from gasoline. Beginning in the mid-1970s, unleaded gasoline was phased in to replace leaded gasoline. The phase-out of leaded gasoline was completed January 1, 1996 when lead was banned from motor vehicle gasoline. The removal of lead from gasoline has essentially eliminated on-highway mobile source emissions of this highly toxic substance.

- Ensuring emissions are controlled throughout the vehicle's life. Many of our vehicle standards require certification of new engines and vehicles, but ensuring continued performance of emission controls can be difficult. The Clean Air Act establishes several programs to make sure vehicle emission controls are functioning properly in actual use. These programs include requirements for periodic emission inspections (I/M, or inspection and maintenance programs) and for computerized on-board diagnostic systems that alert drivers and mechanics to malfunctioning emission controls.

We encourage the interested reader to refer to Chapter 1 of our TSD for more detailed information about these programs.

2. Emission Reductions From Control Programs

We expect the mobile source emissions control programs described above to have beneficial impacts on national inventories of MSATs. The remainder of this section summarizes our MSAT inventory projections. First, we present an overview of the methodologies used to project future emissions inventories. Next, we present the results of our inventory projections. We encourage interested readers to refer to Chapter 4 of our TSD for a more detailed discussion of these projections and how we developed them. The inventory projections in this section are for on-highway vehicles only. Projections of nonroad MSAT emissions are included in Section VI of this preamble.

a. Overview of Inventory Sources

We developed inventory projections that reflect our current and proposed control programs, described above, for five gaseous MSATs, for VOC, and for diesel PM for the years 2007 and 2020. The inventory projections for the five gaseous toxics are based on the 1999 EPA Motor Vehicle Air Toxics Study, updated to incorporate a variety of new information on on-highway vehicles.

The 1999 Study estimated on-highway motor vehicle air toxics emissions for ten urban areas (Atlanta, Chicago, Denver, Houston, Minneapolis, New York City, Philadelphia, Phoenix, Spokane, and St. Louis) and 16 geographic regions. These areas were selected to reflect the range of potential fuels, temperatures, and I/M programs observed in the United States. Every county in the country was then "mapped" to one of these modeled areas or regions. Mapping was done based on a combination of geographic proximity, I/M program, and fuel control programs. The estimation methodology used in the 1999 Study was similar to that used in our original 1993 Motor Vehicle Related Air Toxics Study. In our approach, the MOBILE model is used to generate total organic gas (TOG) emissions from on-highway motor vehicles by vehicle class and model year. Toxics fractions, developed as a percentage of the toxic compound of interest contained in TOG emissions, are then applied to the MOBILE-based TOG emission rates (reported in grams per mile) to arrive at toxics emission rates (reported in grams per mile or milligrams per mile). For light-duty vehicles, information developed for the Complex Model was used to develop these relationships. These toxics fractions are developed as a function of vehicle class (e.g., light-duty, heavy-duty), fuel type (e.g., gasoline or diesel), fuel composition, and technology type (e.g., non-catalyst, catalyst).

We do not have detailed emissions data for gaseous MSATs other than the five gaseous MSATs examined in the 1999 Study. However, we expect the trend for other gaseous MSATs, including acrolein, POM, styrene, xylene, toluene, ethylbenzene, naphthalene, and n-hexane, to follow that of VOC, since all of these compounds are VOCs. We recognize that some gaseous MSATs may not decrease at the same rate as VOCs overall. Without having more detailed emission data for each of the MSATs, however, we are unable to project how those rates may differ. Because we do not have emissions data for DEOG, we are using diesel PM as the surrogate for

the MSAT listed as DPM and DEOG. Where we have data regarding specific constituents in the diesel exhaust organic gas phase we present that information.

Our VOC and diesel PM emission estimates are derived from several sources. The 1996 and later values are based on updated modeling that factors in the impact of the proposed 2007 heavy duty engine standards. The 1990 VOC emission estimate is based on the 1999 EPA Motor Vehicle Air Toxics Study,¹³ and the 1990 diesel PM is from EPA's Trends Report.¹⁴

We are not reporting inventory trends for the metals on our list of MSATs (arsenic compounds, chromium compounds, mercury compounds, nickel compounds, manganese compounds, and lead compounds) or for dioxins/furans because we do not have good data on these relationships at this time. Metals in mobile source exhaust can come from fuel, fuel additives, engine oil, engine oil additives, or engine wear. Formation of dioxin and furans requires a source of chlorine. Thus, while metal emissions and dioxin/furan emissions are associated with particles and it is possible that some of these compounds track PM emissions to some extent, there are a number of other factors that contribute to emissions, and we do not have good data on these relationships.

We did receive one comment regarding inputs to the emission inventory modeling performed for the NPRM. The National Petrochemical and Refiners Association (NPRA) commented that the vehicle miles traveled (VMT) growth rates for heavy-duty vehicles, which were based on 1998 estimates from the Energy Information Agency (EIA), were too high. In support of their comments, NPRA submitted EIA's 1999 estimates which were lower than those from 1998 used by EPA. For the inventory projections contained in today's action, we have retained the same growth rates used in the NPRM analysis. Based on discussions with EIA, we believe the 2000 growth estimates will be higher than both the 1999 estimates NPRA referenced and the 1998 estimates we used in the NPRM analysis.¹⁵ However,

¹³ The analysis methodology is described in a memorandum from Meredith Weatherby, Eastern Research Group, to Rich Cook, EPA, entitled "Estimating of 1990 VOC and TOG Emissions" in EPA Air Docket A-2000-12.

¹⁴ EPA, 2000. National Air Pollution Emission Trends, 1900-1998 (March 2000). Office of Air Quality Planning and Standards, Research Triangle Park, NC. Report No. 454/R-00-002.

¹⁵ "Early Release of the Annual Energy Outlook 2001," available at www.eia.doe.gov/oaif/aeo/earlyrelease/index.html, Energy Information

because the final 2000 numbers are not yet available from EIA, we are retaining the use of the growth rates used in the NPRM as a more reasonable estimate than the 1999 growth estimates.

b. Emission Reductions

Table III-3 presents the annual emission projections for on-highway vehicles for five gaseous toxics, VOC, and diesel PM with our current on-highway control programs and the proposed 2007 and later model year

heavy-duty engine standards. The 1996 inventories presented in Table III-3 are slightly higher than the 1996 inventories presented in Table III-2 because the estimates of heavy-duty vehicle VMT have been updated and improved since the VMT estimates for the 1996 NTI were prepared.

TABLE III-3.—ANNUAL EMISSIONS INVENTORIES FROM ON-HIGHWAY VEHICLES ^a
[Thousand short tons per year]

Compound	1990	1996	2007	2020
1,3 Butadiene	36	24	12	10
Acetaldehyde	41	31	17	13
Benzene	257	171	89	68
Formaldehyde	139	93	43	34
Diesel PM	235	182	85	15
MTBE ^b	55	67	26	18
VOC	7,585	4,933	3,028	2,153

^a Includes the impact of our current on-highway control programs and the proposed 2007 and later model year heavy-duty engine standards.

^b These estimates do not include consideration of EPA's examination of options to phase down or otherwise control the use of MTBE under the Toxic Substances Control Act, or legislative authority that EPA has asked Congress to provide the Agency to address MTBE use in gasoline.

Table III-4 summarizes the percent reductions we expect in on-highway emissions of gaseous MSATs, VOC, and

diesel PM from 1990 and 1996 levels in 2007 and 2020 as a result of our current on-highway control programs and the

proposed 2007 and later model year heavy-duty engine standards.

TABLE III-4.—REDUCTIONS IN ON-HIGHWAY VEHICLE EMISSIONS ^a

Compound	Reduction in 2007		Reduction in 2020	
	From 1990 (Percent)	From 1996 (Percent)	From 1990 (Percent)	From 1996 (Percent)
1,3 Butadiene	67	50	72	57
Acetaldehyde	58	46	67	57
Benzene	65	48	73	60
Formaldehyde	69	54	76	64
Diesel PM	64	53	94	92
MTBE ^b	52	61	67	73
VOC	60	39	72	56

^a Includes the impact of our current on-highway control programs and the proposed 2007 and later model year heavy-duty engine standards.

^b These estimates do not include consideration of EPA's examination of options to phase down or otherwise control the use of MTBE under the Toxic Substances Control Act, or legislative authority that EPA has asked Congress to provide the Agency to address MTBE use in gasoline.

The results of this analysis show that on-highway emissions of the five gaseous MSATs examined are expected to decline by 67 to 76 percent by 2020 from 1990 levels with our existing and proposed control programs. For some gaseous MSATs, the reductions are even greater. Likewise, VOC inventories from on-highway vehicles are projected to decrease by 72 percent between 1990 and 2020 and we assume that other gaseous toxics would decrease by approximately 72 percent as well. Finally, diesel PM emissions are projected to decline by 94 percent by 2020 from 1990 levels.

IV. Evaluation of Additional Motor Vehicle-Based Controls

We are not establishing new standards for motor vehicles in this rulemaking to control MSAT emissions. Based on the information available to the Agency at this time, we have determined that our proposed and current control programs for VOC and diesel PM emissions from motor vehicles will achieve the greatest degree of MSAT control that is feasible when cost and other relevant factors are considered. This section summarizes our rationale for this determination, including the relationship between EPA's vehicle-based control programs and the control of MSATs (especially for those programs established after the 1990 Clean Air Act Amendments), the

impact of our most recent efforts to control VOCs, and the possibility of additional control. The Technical Support Document contains additional information.

It is important to note that while we are not adopting new vehicle-based controls in this rulemaking, we will continue to consider the need for, and feasibility of, vehicle-based controls in the future and as part of our Technical Analysis Plan. As we have in the past, we will also continue to look for opportunities to control MSAT emissions in conjunction with other pollutants (e.g., NO_x, SO₂, VOC). Most of the vehicle-based comments focused on these types of controls. These

comments are addressed in the Response To Comments document.

A. MSATs and Motor Vehicle-Based Controls

The majority of gaseous MSATs are hydrocarbons that are primarily the result of incomplete combustion of petroleum fuels. Since a small amount of raw fuel passes through the engine unburned, MSATs present in the fuel are also emitted in the exhaust. In either case, the technologies used to reduce exhaust hydrocarbons also reduce the hydrocarbon species listed as MSATs. This is true whether control is achieved through engine or component modifications, add-on devices, or the use of aftertreatment devices such as oxidation or three-way catalysts. We are not aware of vehicle or engine technologies that selectively reduce MSATs without reducing other hydrocarbons to a similar degree.

The other major source of hydrocarbon emissions from motor vehicles is fuel vapors. These emissions occur when components of the liquid fuel (gasoline or diesel) evaporate when on board the vehicle. The emissions are normally separated into refueling emissions and evaporative emissions (hot soak, diurnal, and running losses). The nature and amount of potential MSATs associated with fuel vapors depend primarily on the fuel composition and the temperatures involved. Gasoline is volatile and evaporates at normal ambient temperatures, while diesel fuel is relatively non-volatile. Thus evaporative

emissions are only a significant issue for gasoline-fueled vehicles (or vehicles using volatile alternative fuels). Evaporative and refueling emissions are controlled by eliminating sources of potential liquid and vapor leaks within the vehicle fuel system and venting any vapors to an activated carbon canister or similar device. Activated carbon effectively adsorbs most hydrocarbon compounds, including the common evaporative-related MSATs.

Particulate matter emissions from motor vehicles are primarily composed of partially burned carbon and hydrocarbons from the fuel and engine oil, and to a lesser degree, metals and other inorganic compounds from contaminants or additives in the fuel or engine oil, or products of engine wear in the oil. Since our PM exhaust emission standards apply without regard to the source of the PM, manufacturers must account for all of these emissions. Manufacturers have significantly reduced PM emissions associated with unburned fuel and engine oil through combustion system and engine modifications. In some cases, they have also achieved reductions using aftertreatment.

To understand the relationship between the Agency's current emission control program for on-highway vehicles and the control of MSATs, it is important to first understand the structure and scope of our current emission control programs. EPA's emission control program for on-highway vehicles has historically been divided into two broad vehicle/engine

categories that we regulate: "light-duty" (vehicles 8,500 pounds gross vehicle weight rating (GVWR) or less) and "heavy-duty" (vehicles above 8,500 pounds GVWR).¹⁶ Within these light-duty and heavy-duty categories, we further distinguish vehicles and sometimes establish different emission limits based on vehicle size or other factors.

B. Vehicle-Based Standards To Reduce MSATs From Light-Duty Vehicles

Before we began regulating automobile exhaust, vehicles typically emitted more than 9 grams per mile (gpm) HC in exhaust emissions. Our HC emission standards in the 1970s and 1980s cut these levels by more than an order of magnitude, to 0.41 gpm in 1980. In 1991, we finalized Tier 1 controls for light-duty vehicles and light-duty trucks to be phased in from 1994 to 1996 (56 FR 25724). In 1998, we developed an innovative, voluntary nationwide program to make new cars, called National Low Emission Vehicles (NLEV), significantly cleaner than Tier 1 cars (63 FR 926). The NLEV program went into effect in the Northeast states in 1999 and will go into effect in the rest of the country in 2001. Table IV-1 illustrates the declining HC exhaust standards through the NLEV program.¹⁷ Also shown in the table are the number of miles for which the standards apply, which has increased with time. Thus manufacturers need to make their emission control systems more durable and reliable over a longer period of time.

TABLE IV-1.—HYDROCARBON (HC) EXHAUST EMISSION STANDARDS FOR LIGHT-DUTY VEHICLES
[GPM]

Year	1972	1975	1980	1994	2001
Standard	3.4	1.5	0.41	^a 0.31	^b 0.09
Applicability (Miles)	50,000	50,000	50,000	100,000	120,000

^a The 1994 standard is a nonmethane hydrocarbon (NMHC) standard.

^b The 2001 standard is a nonmethane organic gas (NMOG) standard. This standard will be replaced by the new multi-level Tier 2 NMOG standards, but the average standard level should remain at approximately 0.09 gpm.

In December 1999, the Agency finalized the Tier 2/sulfur rule establishing light-duty requirements that will be phased-in beginning with the 2004 model year. These requirements phase-in a set of tailpipe emission standards that will, for the first time, apply the same standards to passenger cars, light-duty trucks (LDTs), and larger passenger vehicles. To enable the very clean Tier 2 vehicle emission control technology to be introduced and

to maintain its effectiveness, nationwide gasoline sulfur requirements were also put into place. The Tier 2 program begins in 2004 for passenger cars and light LDTs (LDTs up to 6,000 pounds GVWR), while an interim program begins in 2004 for heavy LDTs (LDTs over 6,000 pounds GVWR). For heavy LDTs and MDPVs (medium-duty passenger vehicles), the Tier 2 standards will be phased in beginning in 2008, with full compliance in 2009. Thus,

when fully implemented, all vehicles designed for passenger use will have to meet the stringent new emission standards.

The Tier 2 program is designed to focus on reducing the ozone and particulate matter air quality impact of these vehicles. Ozone reductions will be achieved through control of nitrogen oxides and non-methane hydrocarbons. As discussed above, it is the control of HC through the NMOG standards that

¹⁶ EPA recently created the new category of "medium-duty passenger vehicles" (MDPVs) that

includes passenger vehicles 8,500–10,000 pounds GVWR.

¹⁷ Our programs achieve VOC reductions through standards that limit HC, NMHC, or NMOG.

results in the control of the gaseous toxics. The Tier 2 rule also established stringent PM standards. Control of PM emissions will occur through reductions in gasoline sulfur and the use of aftertreatment for diesel vehicles. Because all Tier 2 standards are fuel neutral, the PM standards apply to both gasoline and diesel vehicles.

The Tier 2 standards will reduce new vehicle NO_x levels to an average of 0.07 grams per mile. The NMOG standards vary depending on which of the various "bins" (i.e., certification categories) the manufacturers choose to use in complying with the average NO_x standard. However, we expect significant reductions in NMOG emissions from these vehicles as a result of the more stringent NMOG standards in the bins and the need to select bins to meet the NO_x average. When fully phased-in, we expect fleet average NMOG levels at or below the 0.09 g/mi level. This will represent a 99 percent reduction from uncontrolled pre-1970 levels. Since these controls should be at least as effective at reducing MSATs, these standards should also reduce MSATs to a similar extent from uncontrolled levels.

The Tier 2 rule also finalized formaldehyde standards that harmonize federal standards with the California's LEV II program. Section 202(l)(2) of the Clean Air Act instructs the Agency to promulgate regulations that, at a minimum, apply to emissions of benzene and formaldehyde. We believe that the shift to a toxics emissions performance requirement will limit emissions of these two pollutants. In response to comments, we also considered setting more stringent vehicle-based formaldehyde standards in this FRM. However, since we are not aware of any technology that could specifically reduce formaldehyde emissions, we have no confidence that more stringent vehicle or engine formaldehyde standards would be feasible. Nevertheless, we remain confident that the combination of our Toxics Performance Standard, Tier 2 formaldehyde standards and Tier 2 NMOG standards described above will

achieve significant reductions in formaldehyde emissions.

In order to meet strict Tier 2 standards on a fleet-wide average, manufacturers will have to use a combination of sophisticated calibration changes and emission system hardware modifications to increase and maintain high control system efficiency. They will be challenged to maintain tight air-fuel control and improved catalyst performance, especially achieving better catalyst thermal management. Minimizing the time necessary for the catalyst to reach its operating temperature will be especially critical, since the vast majority of emissions occur in the minute or less which passes before the catalyst "lights off." Many manufacturers are going to have to depend more on the precious metal palladium for oxidation of NMOG and CO emissions, as well as the reduction of NO_x. Palladium is more tolerant to high temperatures and will enable manufacturers to increase catalyst efficiency in a broad range of in-use conditions. These technologies will be highly effective at reducing MSATs, including benzene and formaldehyde.

Our existing regulations also contain test procedures to measure evaporative hydrocarbon emissions during a simulated parking event (diurnal emissions) and immediately following a drive (hot soak emissions). In 1993, we finalized more stringent evaporative emission test procedures which apply to light-duty and heavy-duty gasoline vehicles. That rule also addressed fuel spitback and spillage during refueling. These procedures were fully phased in by 1999 (58 FR 16002). The Tier 2 rule included even more stringent requirements. The Tier 2 evaporative standards represent, for most vehicles, more than a 50-percent reduction in diurnal plus hot soak standards from those that will be in effect in the years immediately preceding Tier 2 implementation. These standards should achieve similar reductions in gaseous MSATs. In fact, since the activated carbon used to capture evaporative emissions preferentially adsorbs larger organic molecules, these

controls may achieve a greater degree of control of MSATs, which are generally larger and heavier than many other gasoline components. Under these requirements, it is likely that manufacturers will also need to upgrade materials and both increase the reliability of fuel/vapor hose connections and fittings and reduce the number used in the system. We have also finalized on-board refueling vapor recovery (ORVR) requirements for light-duty gasoline vehicles (59 FR 16262, April 6, 1994). ORVR is a nationwide program for capturing refueling emissions by collecting vapors from the vehicle gas tank and storing them in the vehicle during refueling. The fuel vapors are then purged into the engine air intake to be burned while the vehicle is being driven.

Taken as a whole, the Tier 2 program presents the manufacturers with significant challenges in the coming years. It will require the use of hardware and emission control techniques and strategies not used in the fleet today. Bringing essentially all passenger vehicles under the same emission control program regardless of their size, weight, and application is a major engineering challenge. While there may be other prototype technologies on the horizon which could potentially reduce cold-start emissions and therefore air toxics, we have concluded that it would not be appropriate to set tighter standards in this FRM based on these prototype technologies. We are not convinced that these technologies would be feasible and cost effective on a fleet-wide basis in the near future. This is discussed in more detail in Chapter 6 of the TSD.

C. Vehicle-Based Standards To Reduce MSATs From Heavy-Duty Engines

Table IV-2 summarizes the hydrocarbon and PM standards for heavy-duty engines. Also shown in the table are estimates of emission rates from uncontrolled engines. In addition, the standards in our recently proposed 2007 heavy-duty rulemaking are also shown in the table.¹⁸

TABLE IV-2.—HC AND PM EXHAUST EMISSIONS AND STANDARDS FOR HEAVY-DUTY ENGINES

	Gasoline (Otto-Cycle)	Diesel	
	Exhaust HC	Exhaust HC	Exhaust PM
Uncontrolled Emissions	10–13 g/bhp-hr	4 g/bhp-hr	0.7 g/bhp-hr.
Current Standards	1.1 g/bhp-hr ^a	1.3 g/bhp-hr	0.10 g/bhp-hr.
2004/5 Standards	0.25 g/bhp-hr ^b	0.4 g/bhp-hr ^c	0.10 g/bhp-hr.

¹⁸ 65 FR 35429, June 2, 2000.

TABLE IV-2.—HC AND PM EXHAUST EMISSIONS AND STANDARDS FOR HEAVY-DUTY ENGINES—Continued

	Gasoline (Otto-Cycle)	Diesel	
	Exhaust HC	Exhaust HC	Exhaust PM
Proposed 2007 Standards	0.14 g/bhp-hr	0.14 g/bhp-hr	0.01 g/bhp-hr.

^a Current standard is 1.9 g/bhp-hr for Otto-cycle vehicles over 14,000 GVWR.

^b Standard was set as a 2005 NMHC+NO_x standard; level shown is estimated equivalent NMHC standard.

^c Standard is a 2004 NMHC+NO_x standard; level shown is estimated equivalent NMHC standard.

With regard to exhaust emission standards, the proposed 2007 heavy-duty engine standards would reduce hydrocarbon emissions to levels approaching 0.1 g/bhp-hr for both gasoline and diesel. This would result in a significant reduction even when compared to the 2004 standards. Similarly, the new exhaust PM standard for heavy-duty diesel engines is stringent. This standard (0.01 g/bhp-hr) is a 90-percent reduction from current standards which are currently being achieved with significant combustion chamber and engine modifications. Achieving a 0.01 g/bhp-hr standard will require the use of catalyzed PM traps. This technology will also result in HC emission reductions. It is further worth noting that the proposed 2007 standards include provisions for a closed crankcase for turbocharged diesel engines. Crankcase emissions from these engines are a significant source of MSATs (PM and hydrocarbons) that has previously remained uncontrolled.

For chassis-certified gasoline-powered heavy-duty vehicles, EPA proposed that beginning in 2007 they meet exhaust hydrocarbon standards of similar stringency to those discussed above for Tier 2. These include hydrocarbon standards of 0.195 g/mi for vehicles of 8,500–10,000 lbs GVWR and 0.23 g/mi for vehicles of 10,001–14,000 lbs GVWR.

Fuel quality changes will enable gasoline and diesel-powered vehicles/engines to meet the more stringent standards over their full life. As part of the Tier 2 rule, EPA promulgated provisions limiting gasoline sulfur levels to 30 ppm average and 80 ppm cap. This program phases in beginning in 2004, and will enable a new generation of vehicle emission control for heavy-duty gasoline vehicles and also improve the emission performance of the current fleet. Sulfur is a fuel contaminant, and controlling sulfur will also reduce sulfate PM emissions. The 2007 heavy-duty proposal mentioned above also includes provisions that would greatly reduce the sulfur content of current on-highway diesel fuel. Not only would this reduction enable the emission control technology now under

development, but it would also reduce sulfate PM emissions.

We have recently extended our onboard diagnostic (OBD) requirements to heavy-duty gasoline engines up to 14,000 pounds GVWR (65 FR 59896, October 6, 2000). These OBD provisions require that vehicle manufacturers install dashboard indicators that alert drivers to the need for emission-related maintenance, and electronic monitors that store codes in the vehicle's computer to assist mechanics in the diagnosis and repair of the malfunction. As some of the commenters noted, requiring that all highway vehicles incorporate these OBD systems will ensure good control of in-use emissions, including MSAT emissions. We are in the process of developing a proposal that would address OBD provisions for all other heavy-duty vehicles.

We have also proposed in the 2007 rulemaking more stringent evaporative standards, which will force even further refinements in fuel/vapor systems. Beginning in 2005, onboard refueling vapor control will be required for all heavy-duty gasoline-powered vehicles (65 FR 59896, October 6, 2000). This would reduce emissions by 95 percent from current uncontrolled levels. In addition, as part of the proposed 2007 rulemaking, EPA proposed to reduce evaporative emission standards by 50 percent over current standards. Both refueling controls and further evaporative controls will reduce evaporative emissions of air toxics from heavy-duty vehicles even further.

The proposed rulemaking for 2007 heavy-duty engine and vehicle standards contains extensive analysis and discussion of the technological feasibility of potential HC and PM emission controls for heavy-duty engines. That draft analysis demonstrated EPA's belief at the time of the proposal that those heavy-duty standards would be the greatest degree of emission reduction achievable through the application of technology that will be available considering costs and other relevant factors. EPA believes that the proposed rule to establish 2007 model year standards for heavy-duty diesel engines satisfies the criteria in

section 202(a) as well as 202(l)(2) and therefore defers to the technical decisions made in that rulemaking.

D. Conclusions Regarding Vehicle-Based Standards

We are not establishing new standards for motor vehicles in this rulemaking to control MSAT emissions. We believe our decision in this regard is appropriate given the information currently available. We are also confident that our existing programs (and proposed programs, if finalized) will continue to achieve very significant reductions in MSAT emissions.

The Tier 2 program represents a comprehensive, integrated package of exhaust, evaporative, and fuel quality standards. The Tier 2 program will achieve significant reductions in NMHC, NO_x, and PM emissions from all light-duty vehicles in the program. These reductions will include reductions in MSATs. Emission control in the Tier 2 program will be based on the widespread implementation of advanced catalyst and related control system technology. The standards are very stringent and will require manufacturers to make full use of nearly all available emission control technologies. To illustrate this point, it is worth noting that about 80 percent of all remaining emissions from a well-maintained Tier 2 vehicle will occur in the first 60 seconds of operation, before the catalyst "lights-off." Manufacturers will have to optimize both their cold-start strategies and the efficiency of warmed systems to achieve the Tier 2 levels. Compliance with the Tier 2 standards will require the application of emission technology not widely used in the light-duty fleet today and in some cases the use of technological approaches still under development. Based on the information available to the Agency at this time, we believe that the technologies that will be applied to meet the Tier 2 requirements provide the greatest achievable reductions in emissions of air toxics as well, considering costs and other relevant factors.

The existing emission control program for heavy-duty engines and

vehicles has already achieved major reductions in MSAT emissions. New more stringent emission standards for heavy-duty engines will take effect in 2004 and 2005. We have also proposed a further initiative that would require additional control of heavy-duty vehicle/engine emissions (65 FR 35430, June 2, 2000). This would establish new heavy-duty engine and vehicle emission standards beginning with model year 2007. The 2007 rulemaking is being finalized separately in a broader rulemaking that addresses the complicated implementation issues associated with proposed emission standards. In developing a final rule that would establish these standards, the Agency intends to adopt standards that would result in the greatest achievable reductions in emissions of air toxics as well, considering costs and other relevant factors.

We have also made significant progress in the area of in-use operation. To address the malmaintenance issue, we have established OBD requirements for manufacturers (both light-duty and heavy-duty). To address both the malmaintenance and tampering issues, we are working with states to develop and optimize inspection and maintenance (I/M) programs that monitor the emission performance of in-use vehicles. Historically, these programs have relied on tailpipe testing to identify high-emitting vehicles. However, these programs have begun to rely more on the OBD systems to identify the high-emitting vehicles, as well as the cause of the emission problem. We are also investigating ways in which we could encourage the use of new emission controls on older vehicles. As described in the Response to Comments, these are not being finalized in this FRM.

V. Evaluation of Additional Fuel-Based Controls

The previous section evaluated motor vehicle controls in the context of mobile source air toxics (MSATs). The primary purpose of this section is to discuss the fuel program being promulgated today. We discuss the form of the rule, major areas of comment including our response and final decisions on those aspects, and the details of the fuels program. We also discuss why we are not at this time considering other fuel controls as a means of reducing MSATs. The details of our technical analyses of these fuel issues can be found in Chapter 7 of the Technical Support Document (TSD). The Response to Comments Document contains our responses to all of the relevant

comments on the fuels aspects of this rulemaking.

A. Form of the Rule

1. What Is the Form of the Rule EPA Is Promulgating Today?

We are finalizing new toxics emissions performance requirements (TPR) for gasoline. This anti-backsliding program will require, beginning with calendar year 2002, that a refinery's or importer's annual average total toxics emissions performance, as predicted by the Complex Model, for its baseline production volume of reformulated gasoline (RFG) not exceed its 1998–2000 baseline RFG total toxics emissions performance. Likewise for conventional gasoline (CG), this rule will require that the exhaust toxics emissions performance of a refinery's or importer's baseline production volume of CG not exceed its 1998–2000 baseline exhaust toxics emissions performance for CG.

The 1998–2000 baseline RFG or CG toxics emissions performance value is the average performance of the gasoline produced at the refinery (or imported) over the three year period 1998 through 2000. Emission values are determined using the Complex Model,¹⁹ and compliance with the program is determined separately for RFG and CG. We have included in our program a number of compliance flexibilities, such as a deficit and credit carryforward, and a compliance margin, to offset unexpected or unusual variances in the gasoline quality of a refinery (or importer). We believe that these provisions will help to ensure that this program does not require new capital investments or changes in refinery operations, and thus will not pose an additional burden on refiners. Were this program to require new investments in the refining sector, we would be concerned that it would impose an economic burden on refiners that would be inconsistent with our finding that an anti-backsliding program at negligible cost is the most stringent program that we can justify in the near term.

The current rule is designed to avoid increases in toxic emissions from gasoline while imposing the least cost

on the refining industry. Some have claimed that a refinery-specific performance requirement is inherently unfair because those refineries that have overcomplied to the greatest extent will receive the most stringent new baseline requirement. We recognize generally that setting standards based on current production may appear to penalize those who have voluntarily overcomplied. In fact, there is at least one refinery that has sought and received Agency recognition for its efforts to voluntarily overcomply with existing requirements.

The Agency recognizes as a general matter the importance of providing appropriate incentives for the regulated community to take actions consistent with improving the environment. However, in this case, we believe that setting refinery-specific standards is the most appropriate and equitable approach to ensuring that emissions do not increase above current levels. As we explained in the NPRM, we believe that these refineries that have overcomplied have done so primarily because it was economically advantageous. In most cases, the financial incentive to overcomply is due to proximity to a market for chemical benzene. If the Agency were to establish a single, nationwide standard, commenters could legitimately characterize such an action as penalizing those refineries that are not located near petrochemical markets. Since each refinery is unique in terms of construction and location, any single standard will create varying degrees of challenges. Faced with a situation where a significant number of refineries have overcomplied with existing standards, the Agency has sought to craft a rule that represents the greatest degree of emission reductions achievable considering costs. The regulation that we finalize today achieves these goals.

2. Why Did EPA Change From the Proposed Benzene Fuel Content Form of the Rule to the TPR?

In the Notice of Proposed Rulemaking, we proposed a benzene content requirement in order to capture the significant amount of overcompliance above and beyond the requirements of the federal reformulated gasoline and anti-dumping programs. Average benzene levels in 1998 and 1999 were 0.66 volume percent for RFG and 1.11 volume percent for conventional gasoline. These national average benzene levels are significantly below current requirement of 0.95 volume percent for RFG and average conventional gasoline baselines of 1.3 volume. Benzene emissions account for

¹⁹ The Complex Model is a regulatory tool for estimating emissions for the reformulated gasoline and anti-dumping programs. The Complex Model inputs are eight specified fuel parameters: benzene, oxygen content (by oxygenate type), sulfur, Reid Vapor Pressure, aromatics, olefins and the percents evaporated at 200°F and 300°F (E200 and E300). Complex Model outputs are the estimated emissions (VOC, toxics, NO_x) resulting from the fuel parameters specified. The Complex Model also calculates percent reductions of the input slate of fuel parameters and resulting emissions compared to a base set of fuel parameters and resulting base emissions.

roughly 70% of motor vehicle air toxics (i.e., benzene, formaldehyde, acetaldehyde, 1,3-butadiene and POM).

The Agency asked for comment on two other forms of the rule: benzene emissions performance and toxics emissions performance. The Agency did not propose a toxics performance form because of concerns that capping the total mass of toxics would allow benzene emissions to potentially increase if other air toxics declined. However, subsequent refinery modeling showed that benzene emissions would be unlikely to increase in the future following implementation of RFG Phase II and Tier 2 low sulfur gasoline standards, and the proposed low sulfur diesel standards. We viewed a benzene emissions requirement as tantamount to a benzene content requirement, but more difficult to quantify and enforce because there is not currently such a rule in effect.

We received a significant number of comments on this proposal during the public hearing and in written comments submitted to the Agency. In general, commenters from the petroleum industry stated that there are significant costs associated with the benzene content form of the rule. These same commenters pointed out that there was little environmental benefit to the proposed requirements to justify their costs. Others commented that the Agency's concern about benzene emissions would be better served by a performance requirement since there is expected to be upward pressure on aromatics due to future environmental regulations and capping benzene fuel content will not prevent increases in fuel aromatics. Several commenters found that the rule did not go far enough to protect public health and welfare from the potential risk from mobile source air toxics.

In response to these comments, and based on refinery modeling performed for this rulemaking, the Agency will finalize a toxics performance requirement instead of a benzene content requirement. The Agency's general rationale is twofold: a toxics performance requirement captures a larger amount of the overcompliance with the existing standards while imposing less costs on the refining industry than the proposed benzene content requirement. This action is consistent with comments received from the regulated industry and the Agency's updated refinery modeling.

Evaluation of a Benzene Content Standard

The Agency evaluated the benzene content standard in terms of its

expected environmental performance and its potential cost to industry. Section 112(k) of the Clean Air Act identifies five toxic air pollutants related to gasoline—benzene, 1,3-butadiene, acetaldehyde, formaldehyde and POM. Benzene emissions are about 70 percent of the total mass of these toxics, but all of these toxics are known or probable human carcinogens and pose a risk to public health and welfare. Benzene emissions are a function of benzene fuel content, but other components in the fuel also influence benzene emissions, such as total aromatics, sulfur, and Reid Vapor Pressure. Controlling the benzene content of RFG and CG would in effect control only a portion of the benzene emissions, which in turn are only a portion of total toxic emissions. The Agency is concerned ultimately with reducing ambient concentrations and exposure to air toxics.

The costs related to a benzene content standard were calculated using a refinery model. The Agency found that a benzene content standard would impose aggregate annual costs (including amortized capital and all the operating costs) of \$74 million for refineries in PADDs I, II, and III. On a per gallon basis, the annual cost of the proposed benzene content standard was predicted to be 0.0702 c/gal. Since gasoline production in PADDs I, II, and III represents about 91% of the national gasoline supply without California refiners, if we extrapolate this cost to the rest of the U.S., the aggregate cost would be approximately \$81 million for the nation. California gasoline production is not included in this cost analysis because this regulation does not apply to California gasoline.

It is important to note that there are some advantages related to fuel content standards. Compliance and enforcement are aided by the ability to test the fuel rather than relying on estimates derived from a model. A fuel content standard does not rely on an emissions model that may not fully estimate emissions from the vehicle fleet on the road today or in the future. Thus the decision to shift from a fuel content to an emissions based requirement in this rule should not be viewed by the reader as suggesting that the Agency in a general sense is no longer interested in controls on specific fuel components. It is simply in this particular case that we found an emissions performance requirement to be superior under a combined consideration of broader environmental benefits and lower costs.

Evaluation of a Toxics Performance Requirement

There are several advantages for adopting a toxics performance requirement. It allows for a more comprehensive approach to capping air toxics emissions at current levels. By focusing on the five toxic compounds modeled by the Complex Model instead of only benzene, the mass emissions of air toxics placed under anti-backsliding constraints is substantially increased. Also, by focusing on emissions instead of fuel content, the new rule will establish an appropriate performance requirement while simultaneously providing some additional flexibility to regulated entities. Finally, it offers broader protection to public health because all five toxics included in the toxics performance requirement are known or probable human carcinogens.

Section 202(l)(2) of the Clean Air Act instructs the Agency to promulgate regulations that, at a minimum, apply to emissions of benzene and formaldehyde. The shift to a toxics emissions performance requirement will limit emissions of these two pollutants along with emissions of 1,3-butadiene, POM and acetaldehyde. Thus, while refiners will have the ability to adjust fuel parameters in ways that will increase the emissions of one or more of these pollutants, any such increase must be offset by reductions in the emissions of the other pollutants.

All of the pollutants covered by the toxics performance control are carcinogens. The nationwide inventories and ambient concentrations of all of these five pollutants are heavily influenced by motor vehicle emissions. Without today's anti-backsliding program, the current standards would leave room for toxics emissions from gasoline-fueled motor vehicles to increase by 70,000 tons per year (based on 1996 inventory levels) as described in the Technical Support Document. This would amount to a 14% increase, on average, in RFG areas, and a 18% increase, on average, in CG areas. Capping the overall toxics emissions performance of gasoline to reflect current overcompliance is an appropriate means of addressing the potential adverse public health impacts that could occur if this backsliding from current levels were to occur. While we are not able to quantify the risk to public health that would result if backsliding were to occur, we believe a precautionary approach is appropriate. By adopting anti-backsliding controls, this precautionary approach will protect public health by reducing the potential risks to public health from backsliding.

The Act also instructs the Agency to take costs into consideration. As stated previously, numerous petroleum refineries provided written testimony that a benzene content requirement would impose significant costs on the industry. The Agency conducted refinery modeling for this rule which accounted for the impact on refinery operations and fuel properties of Tier 2 low sulfur gasoline and low sulfur diesel fuel. This modeling analysis, discussed in more detail in the TSD, found that the costs associated with the benzene content requirement were significantly higher than the costs that a toxics performance requirement would impose on the industry.

3. What Are the Benefits of the TPR?

The purpose of today's action is to prevent future increases above the current level of air toxic emissions derived from existing fuel properties. This anti-backsliding measure will ensure that mass emission rates (in milligrams per mile, mg/mi) of air toxics from motor vehicles do not increase while the Agency gathers additional information for a forthcoming rulemaking in 2003–2004.

The Clean Air Act identified five air toxics in the federal reformulated gasoline program: benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and POM. The RFG program established

a toxics emissions performance standard for RFG, and an anti-backsliding toxics standard for conventional gasoline based on 1990 baseline toxics levels for each refinery. On average, refineries have overcomplied with the toxics emissions performance standards for both RFG and CG. Table V–1 compares the percent reductions required for RFG Phase I and the national average CG mass toxics emissions with actual national average performance in 1998, which was the most recent year for which complete and accurate data was available. On a national average, greater overcompliance was experienced for RFG than for CG.

TABLE V–1.—OVERCOMPLIANCE WITH TOXICS PERFORMANCE STANDARDS FOR RFG AND CG

	Phase I Standards	1998 Average	Percent difference in emissions (Percent)
RFG, Percent Reduction from statutory baseline, ...	16.5% reduction	28.1% reduction	15%
Total Toxics Performance (equivalent mg/mi)	(45.3 mg/mi)	(38.4 mg/mi)	
CG, Mass Emissions, ...	47.3 mg/mi ^a	44.7 mg/mi	6%
Exhaust Toxics Performance			

^a Volume-weighted average of refinery-specific standards.

The 1998 average values were based on volume-weighted toxics performance values for batch reports for all refineries in the U.S. which produced gasoline in 1998. The data available to us at this time does not allow us to account for the impact of imports on these nationwide average values. The values in Table V–1 differ slightly from those in the NPRM because we excluded noncomplying refineries from the analysis and volume-weighted only actual emissions in units of mg/mi instead of percent change values for each refinery.

Overcompliance with RFG standards resulted in substantial toxics reductions beyond what was required by law. We have estimated reductions in the total toxics inventories due to overcompliance of 70 thousand tons in 1996 and 40 thousand tons in 2007, using the inventories from the 1999 EPA Motor Vehicle Air Toxics Study (see TSD). While we do not believe that refiners are likely to increase their toxics content in the absence of this regulation, it is nonetheless important to ensure that these benefits are maintained in the event of unforeseen circumstances that may otherwise result in backsliding on toxics standards up to existing legal limits. Without this regulation, such backsliding could occur if refineries increase benzene or aromatics to increase octane levels, or if they change their refinery operations in

reaction to unforeseen future circumstances.

4. What Are the Costs of the TPR?

In conjunction with this rulemaking, we analyzed refinery modeling results for gasoline production regions in the Atlantic and Gulf Coasts, specifically PADDs²⁰ I and III. This modeling analysis used the average regional gasoline fuel properties produced in 1999 to quantify the emissions performance of gasoline in these regions in 1999. The refinery modeling also predicted the likely regional fuel properties after refineries modified their operations to comply with the future requirements for Phase II RFG, Tier 2 low sulfur gasoline, and proposed low sulfur diesel fuel (hereafter future fuel regulations). The Agency applied the Complex Model to evaluate the projected emissions performance of the predicted gasoline properties in these regions. The reader should refer to the TSD which accompanies this rule for more detailed discussion of the refinery modeling.

The Agency is currently pursuing a separate rulemaking under the Toxic Substances Control Act (TSCA) to address the use of MTBE, and thus we have deferred consideration of MTBE controls to that rulemaking. Note that the EPA and the United States Department of Agriculture jointly

announced, on March, 2000, the Administration's legislative principles for protecting drinking water supplies, preserving clean air benefit and promoting renewable fuels and urged Congress to take action consistent with these principles. These actions were based initially on recommendations of EPA's Blue Ribbon Panel on Oxygenates in Gasoline.

The Agency recognizes that the use of MTBE does have an impact on emissions of toxic air pollutants from motor vehicles. The Blue Ribbon Panel found that present toxic emission performance of RFG can be attributed, to some degree, to the use of oxygenates. Further, the Panel recommended that any future change in the use of MTBE in gasoline should "ensure that there is no loss of current air quality benefits."²¹ The anti-backsliding nature of this rulemaking is consistent with the Panel's recommendations. Should the Agency take action in the future to limit the amount of MTBE in fuel, its impact on emissions of air toxics—and the potential for additional costs due to today's action—would be carefully considered. As EPA develops any regulatory actions to address MTBE and water resource issues, the Agency will consider the overall impact on the

²¹ Achieving Clean Air and Clean Water: The Report of the Blue Ribbon Panel on Oxygenates in Gasoline, EPA420-R-99-21, September, 1999, at 6–7.

²⁰ Petroleum Administration for Defense Districts.

refining industry of any such action and, along with today's rule, and other relevant factors.

Because the new baseline requirements do not require refiners to install new equipment or use new technologies beyond what they were using in the baseline period (1998–2000), this program imposes only negligible costs. This conclusion is based on our analyses of likely refiner behavior based on the expected requirements in the time frame applicable for this rulemaking. Unforeseen circumstances could change a refiner's actions needed to comply with this rule, which in turn could lead to additional costs depending on their chosen course of action.

In contrast, the proposed benzene content standard was predicted to impose higher costs while capturing a smaller amount of the existing overcompliance with toxic standards. As stated previously, the Agency found that a benzene content standard would impose aggregate annual costs (including amortized capital and all the operating costs) of \$74 million for refineries in PADDs I, II, and III. On a per gallon basis, the annual cost of the proposed benzene content standard was predicted to be 0.0702 c/gal. Since gasoline production in PADDs I, II, and III represents about 91% of the national gasoline supply without California refiners, if we extrapolate this cost to the rest of the U.S., the aggregate cost would be approximately \$81 million for the nation. California gasoline production is not included in this cost analysis because this regulation does not apply to California gasoline.

There are limitations to the ability of a refinery model to predict the costs associated with each refinery. This inherent limitation of refinery modeling is of particular concern with the refinery-specific requirement that is adopted today. To help ensure that each refinery affected by this rule is faced with the type of costs estimated by the Agency's refinery modeling, we incorporated several flexibilities into the final rule. We have expanded the baseline period from two to three years, provided a one-year carryforward for credits and deficits, and adopted compliance margins for RFG and CG.

B. Issues and Areas of Comment on Non-implementation Related Aspects of the Program

1. What Is the Relationship Between the RFG and Anti-dumping Requirements and the Toxics Anti-backsliding Requirements?

The reformulated gasoline program established a toxics performance standard for gasoline used in those metropolitan areas with the worst ozone levels. An anti-dumping toxics standard was established for gasoline used in those areas not required to have RFG and which did not opt to use RFG. The anti-dumping toxics standard was intended to prevent refineries from shifting certain less desirable fuel components into the conventional gasoline pool as a result of RFG production. The anti-dumping program was an anti-backsliding program for exhaust toxics and NO_x relative to the baseline year of that program, 1990. Today's anti-backsliding requirements are in addition to the applicable RFG or anti-dumping requirements for gasoline. Today we are establishing refinery-specific toxics performance requirements (TPR) for reformulated and conventional gasoline. A refiner will now have to meet both today's toxics requirements and the applicable toxics performance for RFG or anti-dumping.

In the NPRM, we asked for comment on repealing the anti-dumping program. We received comments from many refiners in support of this recommendation from the National Petrochemical & Refiners Association (NPRA). However, we find that we cannot repeal the anti-dumping program. The anti-dumping program is required by the Clean Air Act and we cannot ensure that today's requirements and the Tier 2 gasoline sulfur requirements will exactly duplicate the anti-dumping program. For example, the gasoline sulfur standards do not guarantee that all conventional gasoline will meet the individual NO_x performance standards because some anti-dumping individual baselines have even lower average sulfur levels than the gasoline sulfur program will require. Additionally, the flexibilities provided in today's rule, such as deficit and credit carryforward, could cause the anti-backsliding toxics emissions performance to exceed the anti-dumping toxics performance requirement in a given year. Nonetheless, we understand the refiners' concerns on this issue, and we will take steps to ensure that the compliance process, including any reporting requirements, is as streamlined as possible.

Because we are promulgating toxics performance requirements that are identical in form to the toxic performance standards already in place, today's rule does not change the ability of States to regulate gasoline characteristics or components. As discussed in the NPRM, we believe a toxics performance requirement may not cause States to be prohibited by section 211(c)(4) of the Act from setting their own fuel benzene standard. Note that any such State fuel benzene standard could only be set for conventional gasoline because the reformulated gasoline regulations impose a federal benzene standard on RFG, thus preempting States from setting a more stringent RFG benzene standard.

EPA recognizes the concerns expressed by the petroleum industry that a patchwork of different state fuel standards, sometimes referred to as "boutique" fuels, may increase the likelihood of disruptions in the fuel supply. In most situations, EPA believes that a uniform national program is the best way to protect public health and minimize disruption to the efficiency of the country's fuel distribution network. EPA's general expectation is that States will consider these issues in evaluating whether adoption of a state fuel program would be warranted.

2. How Are Incremental Production Volumes of RFG Affected by This Rule?

In the NPRM, we proposed to apply the RFG requirements determined for this final rule to those volumes of RFG up to the baseline volume of RFG. We did not propose to extend the requirements to incremental RFG production volumes, but asked for comment on the appropriate requirements to apply to a refinery's incremental volume of RFG. Incremental volume of RFG means that amount of RFG produced in a calendar year above the RFG annual average baseline (1998–2000) volume of the refinery. Based on projections of vehicle miles traveled (VMT), RFG demand is expected to increase about 1.5% per year.

We sought comment on two approaches for regulating the incremental RFG volume. The first would be to apply the individual refinery requirement to the incremental volume, in effect subjecting all of a refinery's annual RFG production to its individual baseline under today's program. The other would be to apply a non-individual requirement to the incremental volume. This could be a national control level based on the current national average toxics performance of RFG (or some less

stringent level), but would not be less stringent than the applicable standard under the RFG program.

Many refiners did not want the incremental volume of RFG subject to any controls (i.e., the individual refinery baseline or the national average baseline) other than the current applicable RFG standards. Some refiners commented that we should exempt incremental volumes of CG from the final requirements as well. DOE pointed out that future growth in gasoline demand will likely be addressed through increased imports as well as greater use of existing FCC units and reformers, all of which would likely increase the toxic emission characteristics of all gasoline, be it RFG or CG.

This rulemaking contains several unique factual circumstances that bear on this issue. The Agency has a strong interest in creating incentives, and not creating disincentives, for refiners to produce additional barrels of cleaner-burning RFG in the future. Placing new constraints on incremental RFG production may unnecessarily hamper the expanded use of RFG and its associated air quality benefits.

Gasoline production in the United States is expected to increase by about 1.5 percent per year for the next several years. In the few years between promulgation of this rule and the reevaluation in 2003–2004, incremental volumes will only account for a small fraction of total US gasoline production and consumption. Such a small fraction is unlikely to have a material effect on the anti-backsliding goal of this rule.

Moreover, to determine the potential effect of excluding incremental volumes from this regulation, we investigated the historical impact of volume increases on fuel benzene content for RFG and CG. Pool-average benzene levels in CG did not show a statistically significant increase. While pool-average RFG did show a statistically significant increase when production volume increased, the increase was small—on the order of an increase of 0.005 benzene volume percent per 1 percent total volume. Thus the incremental volume exclusion is unlikely to have a material impact on air toxic emissions from gasoline. See the Technical Support Document for details.

While our analysis focused only on fuel benzene content, there is some reason to believe that other changes in fuel properties associated with incremental volumes (e.g., increases in sulfur and olefins) may contribute to some toxics emissions. These incremental volumes could affect both the fuel properties and toxics emissions

of both CG and RFG, because incremental volumes are primarily a function of growth in demand for gasoline, which affects both CG and RFG. However, requiring refiners to meet a more stringent toxics standard for these incremental volumes could require additional capital investment and thereby impose a constraint on incremental gasoline production. As a result, we have decided to exclude incremental volumes from our anti-backsliding program for both RFG and CG.

After consideration of these comments on this issue and our analysis of incremental production volumes, we are finalizing a program in which the toxics performance requirements finalized today will not apply to incremental volumes of RFG or CG. Any volumes of gasoline that are above a refinery's baseline volume will thus be subject only to the existing toxics standards under either the RFG or anti-dumping programs. For RFG, incremental volumes will remain subject to the current 21.5 percent standard for total toxics given in 40 CFR § 80.41(f). Incremental volumes of CG will remain subject to the current CG requirements for exhaust toxics emissions. For those refineries or importers that are unable to establish a volume baseline for 1998 to 2000 either because they were not operating during that period, or did not exist as a refining or importing facility, the applicable standard shall be the 1998–2000 national average toxics performance for RFG and CG. We believe this approach ensures that increasing gasoline demand can be addressed without requiring additional toxics reductions that might not be achievable under Section 202(l)(2) in the near-term.

3. Does This Rule Contain Any Small Refiner Provisions?

We did not have a SBREFA panel for this rule because we believe this rule will not have a significant impact on a substantial number of small refiners. At the same time, however, we are sensitive to small refiner concerns about their ability to meet these anti-backsliding requirements. Nevertheless, we believe that no small refiner provisions are needed in this rule for two reasons. First, because this is an anti-backsliding measure, refiners are not expected to have to install new equipment or change their operations to comply with the requirements. Second, we included a number of flexibilities in this program, such as deficit and credit carryforward, and a compliance margin. These flexibilities will help those small refiners that may experience temporary

short-term difficulties due to supply or operational problems. We believe these flexibilities are sufficient to preclude significant negative impacts of this rule on both small and large refiners.

4. Is This rule Expected to Constrain the Potential for Expanded Use of Ethanol in Conventional Gasoline?

While refinery modeling to answer this particular question has not been performed, the Agency does not believe that the toxics performance requirement will constrain the potential for expanded use of ethanol in conventional gasoline. If ethanol is used in conventional gasoline at ten percent by volume, gasoline components such as aromatics, benzene and olefins will be diluted by ten percent, thus lowering associated toxic emissions. Ethanol does have the effect of increasing exhaust emissions of acetaldehyde, but acetaldehyde contributes only about 6 percent to the mass of five toxics air pollutants used in the Complex Model to model toxics performance (benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and POM).²² Thus even a relatively large increase in acetaldehyde emissions should be offset by a ten percent decrease in more than 90 percent of the remainder of toxic emissions.

5. Is Diesel Fuel Control a Part of Today's Regulation?

The fuel controls being set in today's action are only for gasoline. We are not setting air toxics requirements for diesel fuels because, unlike for gasoline, we do not have data that would allow us to correlate individual diesel fuel properties with toxics emissions. We do not have a model to explore the toxics impacts of different diesel fuel formulations and therefore, a diesel fuel reformulation program, similar to the reformulated gasoline program, is not a viable toxics control option. We intend to include research on diesel fuel-related air toxics in our Technical Analysis Plan.

C. What Are the Components of the Anti-backsliding Toxics Performance Program?

1. Start Date

We are finalizing the January 1, 2002, program start date as proposed. Because this is an anti-backsliding program, lead time is not needed to install hardware or make operational changes. Thus, beginning with the 2002 calendar year, a refinery's or importer's annual average

²² The estimated acetaldehyde contribution of 6.4 percent was based on a Complex Model output from 1998 production of CG.

toxic emissions performance, determined separately for RFG and CG, cannot exceed its baseline toxics emissions performance, determined over the three years 1998–2000. The first report associated with today's rule will be due February 28, 2003, the same date as the reformulated gasoline and anti-dumping reports are due for calendar year 2002.

2. Separate Compliance Determination for RFG and CG

As discussed in the NPRM, our proposal to keep compliance separate for RFG and CG under this program is consistent with the current treatment of these two fuel types in the RFG and anti-dumping programs. Separate compliance determinations for RFG and CG ensure that one pool is not made cleaner at the expense of the other. No supporting arguments for combining the pools were provided in the comments. Thus, we are finalizing this provision as proposed.

3. Baseline Development and Submittal

We proposed a two-year baseline period, 1998–1999, and requested comment on this and other baseline period options. There were many comments on this issue. Many commenters expressed concern about refinery fluctuations during a given time period which could cause a baseline not to reflect typical operations. Many commenters suggested that we should provide flexibility in the baseline setting process. Several individual refiners and one industry commenter suggested lengthening the baseline period to encompass more refinery operational fluctuations, thus establishing a more accurate baseline that is true to normal operations.

In the final rule, we are finalizing a three year baseline period, encompassing the years 1998, 1999 and 2000. This baseline period, which is one year longer than the baseline period we proposed, provides baseline values which are truer to a refinery's "normal" operating mode. Though two commenters opposed inclusion of 2000 because it was a transition year (from Phase 1 to Phase 2 RFG requirements) and, according to these commenters, not representative of refinery operations over time, we believe that including 2000, precisely because it is a Phase II RFG year, improves the baseline because it adds data to the baseline determination which is the most recent available. Including 2000 also helps to further offset (by virtue of a 3-year average versus a 2-year average) the effects of unit turnarounds at the refinery. At the same time, we do not

expect significant differences, on average, between a baseline established using the 2-year averaging approach and one developed using the 3-year approach. However, we believe that for an individual refinery, the 3-year averaging approach provides that refinery with a more robust baseline. Finally, given that this rule does not require any capital improvements or operational changes by refiners to achieve its goals, and since refiners will have the 2000 data, we believe this data should be included in the baseline determination.

We are requiring that refiners and importers submit to us information which establishes separate TPR baselines for their RFG and CG. For RFG, the applicable TPR baseline is total toxics emissions, calculated as a percent reduction from the statutory baseline. For CG, the applicable TPR baseline is exhaust toxics emissions, in mg/mile. Both baselines are determined using the Complex Model. These forms of the TPR are consistent in form with the existing toxic emission requirements of the reformulated gasoline and anti-dumping programs.

The baseline submittal must contain the batch report number and volume of each batch (or composite) of gasoline produced or imported in 1998, 1999 and 2000. Additionally, the refiner or importer must determine and report the applicable toxics emission performance level of each batch by evaluating the measured fuel parameters of each batch in the appropriate seasonal version of the Phase II Complex Model. Because this data is already required to demonstrate compliance with RFG and anti-dumping requirements, a refiner must simply submit the same information found in its original submittals of its RFG and anti-dumping reports. Submissions of these baselines will be very similar to the streamlined electronic process which has been implemented for Tier 2 gasoline sulfur baseline submissions. The Agency will handle the toxics baselines under today's program in a manner consistent with the submissions and associated guidance for Tier 2 sulfur baseline submissions.

Finally, all of the toxics emissions performance of RFG and CG produced over the 3-year baseline time period must be volume-weighted to determine the baseline toxic emission performance levels for RFG and CG. The average annual volume over the 3-year baseline time period must also be reported. A refinery which exceeded (that is, was out of compliance) with the applicable toxics standard in any of the baseline years must use the applicable RFG or

CG standard as its toxics emission performance value for gasoline produced that year in its baseline determination.

Baselines must be submitted no later than June 30, 2001. Though we proposed to notify refiners of their toxics baselines within 120 days of submittal, after further consideration we are modifying this provision slightly from the proposal: we will notify refiners and importers of their baseline approvals by October 31, 2001, or within 4 months of submittal, whichever is later.

4. Baseline Adjustment

In response to the proposed benzene content requirement, one commenter suggested that a refiner that has a low baseline benzene level (because it produced benzene for the petrochemical market during the baseline period) should be able to increase its baseline benzene level to some minimum benzene level which would be set by EPA. Because we have switched to a TPR for this final rule, this regulation does not directly affect on fuel benzene content. Nonetheless, we can address the issue raised by the commenter since it is relevant, in a broad sense, to the baseline setting process.

In general, we do not believe that EPA should allow baselines established under this rule to be adjusted because of refining or marketing decisions of the refiner. It is our belief that, in general (and absent refinery disasters or other similar, critical events), during the baseline period, every refinery was operating to maximize profits, considering its crude slate, operating units, product mix, marketing plan, etc. With regard to refineries that achieved low emissions levels due to benzene extraction, we do not believe there is any basis for expecting the benzene market to change in such a way that warrants setting a minimum toxics performance level. In fact, projections of the benzene market suggest continued growth (see TSD).

In addition, because we are promulgating a TPR, which is a function of all of the fuel parameters evaluated by the Complex Model, and not a single fuel parameter requirement (like a fuel benzene content requirement), it is not clear how we would set such a minimum toxics emission level to account for changes in the petrochemical market. We would have to consider each of the eight Complex Model fuel parameters separately, and this would be complicated by the fact that the fuel parameters' effects on toxics emissions vary considerably.

Nonetheless, we are allowing a refiner to petition EPA for a permanent adjustment of its TPR baseline. Refiners requesting such an adjustment must demonstrate how circumstances during 1998–2000 materially affected the baseline toxics determination. Because we believe that the deficit and credit carryforward, compliance margin, and inclusion of a third baseline year sufficiently consider and minimize the potential compliance burden for those refiners that experience unusual refinery operational issues, we expect that the number of baseline adjustments will be small. Baseline adjustments will likely be limited to those refineries that experienced unexpected operational problems during the baseline period which could not have been avoided through due diligence and planning.

5. Compliance Margin

A compliance margin refers to the cushion refiners typically included in their fuel production to ensure that their fuel will meet compliance requirements over a 12-month period. Without such a cushion, the refiner could fall into noncompliance due to minor operational problems. Compliance margins are most important to a refiner when trying to meet a per-gallon requirement, but can also be useful for meeting averaging requirements, for example, to account for test method variability, or other factors that might affect a refiner's ability to comply.

Though we did not propose to include a compliance margin on the fuel benzene content requirement in our NPRM, additional information gleaned from refinery modeling and comments has led us to include a compliance margin on the TPR being finalized today. Though refinery modeling shows that post-2004 RFG total toxics and CG exhaust toxics emissions in PADDs I and III will, on average, be lower than during the baseline period, the difference is not large enough to ensure that refiners won't have to go beyond what our anti-backsliding requirements strictly call for. Also, at this time, we do not know whether the lower toxics emissions predicted by refinery modeling is true of gasoline in the other PADDs. Thus we believe that a compliance margin is needed to ensure that this rule is achievable in the near term.

We are instituting separate compliance margins for RFG and CG because of the different format in which compliance with the applicable requirement is determined. EPA examined batch data from selected refineries in 1998. The toxic emission properties of each batch of RFG and CG

were compared against their respective regulatory limits. A statistical analysis was performed to quantify the difference between the regulatory standard and the actual emissions characteristics of the fuel. This difference is commonly referred to as a "compliance cushion." A more detailed discussion of the methodology used to determine the values of the compliance margins associated with today's rule is located in the TSD.

The compliance margin we determined for RFG toxics performance is 0.7%. Thus, for example, if refinery X has a volume-weighted RFG total toxics performance during 1998–2000 of –29.6% (percent change from the statutory baseline), without a compliance margin –29.6% is its anti-backsliding requirement. With a compliance margin of 0.7%, refinery X's anti-backsliding requirement becomes –28.9%, that is, its requirement becomes slightly less stringent as a result of including the compliance margin. Thus, under this program, refinery X's RFG must have an annual average total toxics emissions reduction from the statutory baseline of at least 28.9%.

EPA determined a compliance margin of 2.5 mg/mile for CG. Thus for refinery Y with a volume-weighted CG exhaust toxics performance during 1998–2000 of 105.0 mg/mile, including the compliance margin increases its CG anti-backsliding toxics requirement to 107.5 mg/mile. Thus, for refinery Y's CG, its annual average exhaust toxics emissions must be no greater than 107.5 mg/mile.

6. Foreign Refiner Provisions

Under the anti-dumping program, foreign refiners are allowed to develop an individual baseline representing the quality and quantity of gasoline they shipped to the U.S. in 1990. Those that develop an individual baseline can designate each batch of gasoline destined for the U.S. as subject to their individual requirement or, by default, as subject to the importer's anti-dumping requirement, which in most cases is the statutory baseline.

A similar provision is included in this rule. Under this rule, a foreign refiner may develop a toxics anti-backsliding baseline for gasoline it sent to the U.S. during the baseline period (1998–2000) if it already has an individual anti-dumping baseline or is simultaneously developing such a baseline. For compliance purposes, it may then designate, on a batch-by-batch basis, whether that gasoline will be subject to its individual anti-backsliding requirement or will be included in the

importer's compliance determination. A foreign refiner with both an individual anti-dumping baseline and an individual toxics anti-backsliding baseline must make a single designation for the batch. In other words, if the foreign refiner includes that batch in its own anti-dumping compliance determination, it is also included in its anti-backsliding compliance determination. In this way, foreign refiners are treated in the same manner as domestic refiners, and the potential compliance confusion surrounding different designations on a single batch are avoided.

7. Default Baseline and Applicability

The default toxics anti-backsliding baseline is the set of values used by a regulated party that has insufficient data from which to establish a unique individual anti-backsliding baseline. In the proposal, we discussed that a refiner or importer with less than 12 consecutive months of applicable data during the baseline period would have the default anti-backsliding baseline as its individual baseline under this program. We are finalizing this provision as proposed. Additionally, a refiner or importer which did not produce or import one or more types of gasoline (either RFG or CG) during the baseline period but who produces or imports that type of gasoline after December 31, 2000 will have the applicable default toxics anti-backsliding baseline; it will be subject to the default toxics baseline plus the compliance margin for that type of gasoline.

The default baseline consists of a reformulated gasoline total toxics emissions performance value (measured as a percent reduction from statutory baseline) and a conventional gasoline exhaust toxics emissions performance value (measured in mg/mile). The final default baseline will be the average of all of the reported applicable (i.e., RFG or CG) toxics emissions performance values over the baseline period 1998 through 2000. However, since the 2000 annual compliance reports are not due from refiners and others to EPA until February 2001, we will not be able to determine a default set of baseline values which corresponds to our baseline period (1998–2000) until later in 2001. At that time, we will issue the final default baseline.

At this time, we have calculated draft default baseline values based on 1998–1999 RFG and CG reports; these interim default baseline values are 26.01% (reduction from statutory baseline) for RFG and 92.14 mg/mile for CG, representing compliance under the

Phase II Complex Model. As discussed in the TSD, we do not expect the final default baseline to be significantly different from these values. Until the final default baseline is issued by EPA, the draft default baseline values plus the compliance margins discussed above (26.71% reduction from statutory baseline for RFG and 94.64 mg/mile for CG) are the requirements for those subject to the default baseline under this Subpart. Even though the default baseline represents only two of the three baseline years, we believe it is sufficient, in the absence of the 2000 information, for two reasons. First, the three year baseline period was designated to better capture normal operations at a refinery. In most cases, there are no normal operations to capture for an entity subject to the default baseline. Second, we do not expect a baseline determined using 1998 through 2000 data to be significantly different from a baseline determined using 1998 through 1999 data.

8. Compliance Period and Deficit and Credit Carryforward

In the proposal, we discussed compliance periods of varying length different from the proposed single calendar year compliance period. Refiners who commented on this issue supported either a one-year compliance period with deficit carryforward or a two-year compliance period. As discussed in the NPRM, a one-year compliance period is consistent with the compliance periods of other gasoline programs (and thus represents minimal additional reporting burden for refiners and importers), and it is short enough that temporal variations in toxics emissions are minimized. For these reasons, we are finalizing a one-year compliance period as proposed.

We do realize, however, that even for an anti-backsliding program, unusual situations can happen which can significantly affect refinery operations, and which could cause the refinery to be out of compliance with its requirement. To this end, we proposed and are finalizing a one year deficit carryforward. This will allow a refinery to exceed its anti-backsliding toxics requirement for one year. In the next year, it must make up the deficit as well as be in compliance for that year. Additionally, though not proposed, we are also including a one year credit carryforward. Under this provision, a refinery producing gasoline that is cleaner than required by its toxics anti-backsliding requirement may use the overcompliance to cover any deficit in the following year. Because we are also providing a TPR compliance margin,

overcompliance will be creditable for purposes of a credit carryforward only to the extent that it is overcompliance beyond the compliance margin. The overcompliance credits may not be traded to another company, and they expire at the end of the next calendar year.

We have provided refiners with compliance flexibility in several forms—deficit and credit carryforward, a compliance margin, and extended baseline time period. In the NPRM, we discussed the possibility of including another flexibility in the form of a credit trading program. Comments about this option were mixed. Some refiners supported such a program, and offered other suggestions to enhance or clarify the program. At least one refiner did not support such a program, saying it would provide an unfair competitive advantage. Other industry commenters were unsure of the actual implementation and feasibility of the program, given the unequal baselines among refiners. Because of these implementation, feasibility and anti-competitive concerns, and because of the many other compliance flexibilities provided in today's program, we are not including a credit program as part of this rulemaking.

9. Hardship Provisions

We are adopting a provision permitting a refiner to seek a temporary waiver from the toxics anti-backsliding requirements in certain circumstances. Such a waiver will be granted at EPA's discretion. Under this provision, a refiner may seek permission to exceed its toxics anti-backsliding requirements based on the refiner's inability to meet these requirements because of extreme and unusual circumstances outside of the refiner's control that could not have been avoided through the exercise of due diligence. This provision is similar to a provision in EPA's RFG and gasoline sulfur regulations. It is intended to provide refiners limited relief in unanticipated circumstances that cannot be reasonably foreseen at this time or in the near future. The conditions for obtaining such a waiver are similar to those in the RFG regulations. These conditions are necessary and appropriate to ensure that any waivers granted are limited in scope, and that a refiner does not gain an economic benefit from a waiver. Therefore, a refiner seeking a waiver must show that the waiver is in the public interest; that the refiner was not able to avoid the nonconformity; that it will make up, where practicable, the air quality detriment associated with the waiver, that it will pay back any

economic benefit from the waiver; and that it will meet its toxics anti-backsliding requirements as expeditiously as possible. The refiner must also show that it will be unable to meet its toxics anti-backsliding requirements even considering the deficit and credit carryforward flexibility provisions included in today's program.

10. California Gasoline

We are not requiring gasoline intended for and actually used²³ in California to be included in a refinery's or importer's compliance determination under today's rule. This action is consistent with other Agency actions on similar fuel issues. California gasoline is exempt from the recently promulgated federal gasoline sulfur requirements, and while subject to the RFG and anti-dumping provisions, California refineries have been exempted from several of the enforcement and compliance mechanisms of those programs.

Most of the gasoline used in California is produced by California refineries which are subject to the California Cleaner Burning Gasoline (CBG) requirements. The current (Phase 2) set of CBG requirements began in 1996 and runs through 2002; beginning in 2003, the California Phase 3 gasoline requirements take effect. In 1998, under the 0.8 vol% Phase 2 benzene standard, California refineries averaged 0.57 vol%. For almost every fuel parameter, including benzene and aromatics, the Phase 3 standards are more stringent than the Phase 2 standards. Given the benzene overcompliance in 1998, and the upcoming more stringent Phase 3 standards, it is likely that toxics emissions under Phase 3 will not be greater than toxics emissions under Phase 2. Thus, we do not expect California refineries, on average, to backslide relative to their 1998–2000 average toxic emission level. Additionally, given the compliance margin we are including in today's rule, it is highly unlikely that any backsliding would exceed the combination of the actual 1998–2000 baseline plus the compliance margin.

Given this exemption for California gasoline, gasoline intended for use in California must be segregated from all other gasoline.

²³ By limiting the exemption to California gasoline "actually used" in California, we generally mean to limit where the gasoline is dispensed. We do not intend to restrict the state in which the gasoline is actually combusted.

11. Territories

Though in the NPRM we did not discuss the applicability of this rule to the American territories of Guam, American Samoa and the Northern Mariana Islands, we have recently exempted gasoline for these areas from several requirements, including compliance with the anti-dumping program. These areas are a significant distance from any gasoline producers, and in the case of the anti-dumping requirements, could only be serviced with complying gasoline at a significant cost. Additionally, the air quality in these areas is pristine, and gasoline consumption is low, such that no human health or environmental detriment is expected from the exemption.

Likewise for today's rule, requiring gasoline destined for these areas to be included in a refinery's or importer's compliance determination would be of little value for several reasons. First, the same conventional gasoline cost and supply issues discussed above would apply. In addition to transportation costs, it is very expensive for a refinery to produce small batches of complying gasoline. Also, most of the refineries that produce gasoline for these areas are foreign refineries which have not chosen to pursue individual baselines in other rules (e.g., the anti-dumping or gasoline sulfur rules), and are not likely to pursue an individual baseline for today's rule. Thus, because of the Agency's precedent for exempting gasoline to these areas from certain fuel regulations, and because of the lack of environmental harm from exempting such gasoline, we are exempting the gasoline sent to these areas from the requirements of this rule.

12. Gasoline Excluded

In addition to California gasoline and gasoline that is used in the U.S. territories, we are also exempting certain other gasoline from the requirements of this rule. We proposed to exempt gasoline used in certain circumstances, including racing gasoline and gasoline used for research, development and testing. These categories are the same categories for which gasoline is exempt from the applicable regulations of other programs, including the RFG and anti-dumping programs and gasoline sulfur. We are finalizing these exempt gasoline categories as proposed.

D. Why Isn't EPA Adopting Other Fuel Controls To Control MSATs?

Section 202(l)(2) requires EPA to adopt regulations that contain standards

which reflect the greatest degree of emissions reductions achievable through the application of technology that will be available, taking into consideration existing motor vehicle standards, the availability and costs of the technology, and noise, energy and safety factors. Today's rule adopts an anti-backsliding requirement that EPA believes is appropriate under section 202(l)(2) as a near-term control, that is, a control that can be implemented and take effect within a year or two. We are not adopting long-term controls (i.e., controls that require longer lead time to implement) at this time because we lack the information necessary to assess appropriate long-term controls. We believe it will be important to address the appropriateness of MSAT controls in the context of compliance with other significant environmental regulations (discussed below).

Today's rule addresses toxics emissions from fuels in the near-term. The rule will cap the toxics performance levels of gasoline beginning in 2002. Adopting an anti-backsliding program is a reasonable control on toxics emissions from fuels. The technology to maintain the current toxics performance of gasoline produced at each refinery is already available and continued compliance will not be costly even with implementation of our recently adopted sulfur controls (see discussion in Section V, and in Chapter 7 of the Technical Support Document).

We do not believe, however, that we could reasonably adopt further controls to be implemented in this near-term time frame. First, the lead time is too short to allow for investments and upgrading of refinery equipment in any significant manner. Second, we have recently adopted, or proposed to adopt, two regulations that will achieve very significant emissions reductions by setting tight limits on the sulfur content of fuels used in on-highway vehicles. To comply with these new regulations, industry is already planning and investing in capital improvements and pursuing the necessary permitting to upgrade their refineries. While we lack the information to fully assess the costs and benefits of further controls in the 2002 time frame, we have serious concerns that further toxics controls in the 2002 time frame could interfere with refiners' planning and affect their ability to meet our recently promulgated, or proposed, sulfur standards.

Even though today's rule focuses on near-term options for controlling toxic emissions from fuels, we plan to evaluate in our future rulemaking whether additional controls will be needed or appropriate in the longer

term. We are not ready, however, to address these long-term controls in this rulemaking. We need to collect the information outlined in our Technical Analysis Plan (see Section V), so that we can assess the costs and benefits of potential fuel controls. This information will allow us to more accurately consider the impact of our recently promulgated, or proposed, fuel sulfur controls and assess how toxics controls can be incorporated. As part of the Technical Analysis Plan we will also collect information, which is currently lacking, on the availability and feasibility of further controls and the risk posed to public health and welfare by air toxic hot spots.

Based on our conclusion that the anti-backsliding controls are reasonable controls for the near-term, the fact that we lack information suggesting further controls are appropriate in near-term, and the fact that we are not ready to address long-term controls in this rulemaking, we conclude that today's anti-backsliding requirement satisfies the criteria of section 202(l)(2).

Section 202(l)(2) directs EPA to adopt toxics controls and from time to time review and revise those controls. Today's rule adopts near-term controls and puts EPA on a schedule to review, and if appropriate, revise those controls in accordance with the criteria in 202(l)(2). We note that the Agency has not prejudged the outcome of our 2003–2004 rulemaking, and will evaluate the sufficiency of the controls and whether there is a need for additional controls based on the information available at that time. We believe this two-step approach is the most reasonable means to address toxics in the near-term in the face of incomplete information and the significant changes underway at many refineries across the country.

As discussed in the NPRM, a number of other MSATs such as acrolein, styrene, dioxin/furans, xylene, toluene, ethylbenzene, naphthalene, and hexane are not controlled by the RFG or anti-dumping programs. We do not currently have sufficient information on how changes in fuel properties affect emissions of these compounds, and thus we cannot estimate the costs associated with controlling these compounds in fuels.

Motor vehicle emissions of metals are being addressed in other actions. Metals generally arise from contaminants in lube oils. The recent proposed rule on heavy-duty engines and vehicles beginning in model year 2007 also proposes controls on the use of used oil as a diesel fuel additive/extender.

We are not controlling MTBE emissions in this rulemaking. The

primary mechanism for controlling MTBE emissions would be to limit the use of MTBE in gasoline. The Agency is currently pursuing a separate rulemaking under the Toxic Substances Control Act (TSCA) to consider phasing down or eliminating the use of MTBE, and thus we have deferred consideration of MTBE controls to that rulemaking. Note that the EPA and the United States Department of Agriculture jointly announced, on March, 2000, the Administration's legislative principles for protecting drinking water supplies, preserving clean air benefit and promoting renewable fuels and urged Congress to take action consistent with these principles.

Finally, as discussed in Section V. B above, there is insufficient data at this time to allow us to quantify how changes in individual diesel fuel properties would affect emissions of compounds such as aldehydes, dioxins/furans, and POM. As a result, we cannot specify how refiners might change their operations or what capital equipment they might need to install in order to reformulate their diesel fuel, and thus we cannot estimate costs associated with this type of control.

VI. Nonroad Sources of MSAT Emissions

In this section, we will look at MSAT emissions from nonroad mobile sources.²⁴ First, we will briefly review the nonroad MSAT emission inventories that were presented in Section III. Next, we will discuss how the current nonroad emission control programs are expected to reduce these nonroad inventories, as well as briefly touch upon the expected benefits from our new actions targeting the control of emissions from currently unregulated nonroad categories.

We are looking at nonroad MSAT emissions separately from motor vehicle MSAT emissions primarily because our understanding of nonroad MSAT emissions is much more limited. This section ends with a discussion of the current gaps in our data that we will need to fill before we can comprehensively assess the need for, and appropriateness of, programs intended to further reduce nonroad MSAT emissions.

We received two general types of comments in response to our discussion

of nonroad sources in the proposal. First, several commenters stated that our emission projections for the nonroad category show that our current programs are effective at reducing toxics from nonroad sources. These commenters argued that we do not need to do anything further to reduce toxics emissions from nonroad mobile sources. A second group of commenters pointed out that the nonroad toxic inventories clearly argue for further controls on nonroad sources, and that we should include such controls in the final rule. We believe that we need to gather additional information on nonroad toxics emissions before we can make an informed decision regarding future actions, and are thus not including additional nonroad controls in today's action. Further, we are not required to set toxic emissions standards for nonroad sources under section 202(l)(2) of the Act.

A. Nonroad MSAT Baseline Inventories

We previously presented the 1996 baseline inventories for several key nonroad MSAT emissions in Table III-2. This nonroad MSAT data was taken from the 1996 National Toxics Inventory (NTI). In general, the data show that nonroad vehicles tend to be significant contributors of those same MSAT emissions for which motor vehicles are also significant contributors, such as benzene, formaldehyde, and acetaldehyde. For some MSAT emissions, the nonroad inventories are comparable to, or even higher than, those for on-highway vehicles. Nonroad vehicles contribute as much as 39 percent of the national inventory of some MSAT emissions, such as acetaldehyde and MTBE, and contribute significantly to the national inventories of several others, including 1,3-butadiene, acrolein, benzene, formaldehyde, lead compounds, n-hexane, toluene and xylene.

Comparing the 1996 estimates of on-highway vehicle VOC and diesel PM emissions in Table III-3 to the nonroad VOC and diesel PM numbers presented later in this section (Tables VI-3 and VI-4), we see that the nonroad VOC inventory in 1996 was almost 75 percent of the on-highway inventory and the nonroad diesel PM inventory for the same year was roughly twice that for on-highway diesel PM.

B. Impacts of Current Nonroad Mobile Source Emission Control Strategies

1. Description of the Emission Control Programs

Section 213 of the Clean Air Act Amendments of 1990 directed us to

study the contribution of nonroad engines to air pollution which may reasonably be anticipated to endanger public health or welfare, and to regulate them if warranted. The focus of the 1990 Amendments was on the criteria pollutants and their implications for meeting the national ambient air quality standards (NAAQS). Due to the variety of nonroad engine and equipment types and sizes, combustion processes, uses, and potential for emissions reductions, we placed nonroad engines into several categories. These categories include land-based diesel engines (e.g., farm and construction equipment), small land-based spark-ignition (SI) engines (e.g., lawn and garden equipment, string trimmers), large land-based SI engines (e.g., forklifts, airport ground service equipment), marine engines (including diesel and SI, propulsion and auxiliary, commercial and recreational), locomotives, aircraft, and recreational vehicles (large land-based spark ignition engines used in off-road motorcycles, "all terrain" vehicles and snowmobiles). Brief summaries of our current and anticipated programs for these nonroad categories follow. More detailed descriptions are contained in Chapter Eight of the TSD for this rule.

- *Land-based diesel engines.* Land-based nonroad diesel engines include engines used in agricultural and construction equipment, as well as many other applications (excluding locomotives, mining equipment, and marine engines). Under our Tier 1 standards phased in beginning in 1996, NO_x reductions of over 30 percent were required of new land-based nonroad diesel engines greater than 50 horsepower (hp).²⁵ Standards applicable to engines under 50 hp took effect for the first time in 1999. We have completed a second set of standards (Tier 2) which will be phased in from 2001 through 2006 and will require further NO_x reductions, as well as reductions in diesel PM emissions. Still more stringent NO_x standards for engines over 50 hp (Tier 3) have been adopted and will be phased in from 2006 through 2008. When fully phased in, these Tier 2 and Tier 3 regulations are projected to result in 50 percent reductions in VOC and 40 percent reductions in diesel PM beyond the Tier 1 regulations.²⁶ Finally, we intend to consider the control of sulfur in nonroad diesel fuel as part of our Tier 3 technology review. This would allow more effective diesel PM control technologies such as catalysts to be

²⁴ "Nonroad" is a term that covers a diverse collection of engines, vehicles and equipment, as described in detail later in this section. The terms "off-road" and "off-highway" are sometimes used interchangeably with nonroad. Section 202(l) instructs the Agency to address emissions from motor vehicles, which do not include nonroad vehicles or engines.

²⁵ 59 FR 31306, June 17, 1994.

²⁶ 63 FR 56968, October 23, 1998.

applied to nonroad engines and vehicles.

- *Small land-based SI engines.* Small land-based spark-ignition engines at or below 25 hp are used primarily in lawn and garden equipment such as lawn mowers, string trimmers, chain saws, lawn and garden tractors, and other similar equipment. Our Phase 1 emission controls for these engines took effect beginning in 1997 and are projected to result in a roughly 32 percent reduction in VOC emissions.²⁷ We recently completed Phase 2 regulations for these engines which, when fully phased in, are projected to result in additional reductions in combined HC and NO_x beyond the Phase 1 levels of 60 percent for nonhandheld engines and 70 percent for handheld engines.²⁸

- *Large land-based SI engines.* We do not currently have emission standards in place for SI engines above 25 hp used in commercial applications. Such engines are used in a variety of industrial equipment such as forklifts, airport ground service equipment, generators and compressors. We are currently developing an emission control program for these engines.²⁹

- *Marine engines.* Due to the wide variety of marine engine types and applications we have split these engines into three general categories for regulatory purposes. The first category consists of gasoline outboard and personal watercraft engines. Our standards for these engines took effect in 1998 and become increasingly stringent over a nine year phase-in period, they are ultimately projected to result in a 75-percent reduction in VOC.³⁰ The second category consists of commercial diesel marine engines. This includes diesel engines up to 30 liters per cylinder in size used in a variety of commercial marine applications. Our emission standards for these engines take effect in 2004 and are similar to our standards for land-based nonroad diesel engines.³¹ These regulations are projected to ultimately result in VOC reductions of 13 percent and diesel PM reductions of 26 percent for engines subject to the standards. The last category consists of both gasoline and diesel recreational sterndrive and inboard engines. We do not currently have emission regulations in place for

this category of marine engine, but have begun developing them.³²

- *Locomotives.* Our regulations for locomotives and locomotive engines consist of three tiers of standards, applicable depending on the date a locomotive is originally manufactured.³³ The first set of standards (Tier 0) applies to locomotives and locomotive engines originally manufactured from 1973 through 2001, any time they are manufactured or remanufactured.³⁴ The second set of standards (Tier 1) applies to locomotives and locomotive engines manufactured from 2002 through 2004. The third set of standards (Tier 2) applies to locomotives manufactured in 2005 and later. While the Tier 0 and Tier 1 regulations are primarily intended to reduce NO_x emissions, the Tier 2 regulations are projected to result in 50 percent reductions in VOC and diesel PM from unregulated levels, as well as additional NO_x reductions beyond the Tier 0 and Tier 1 regulations.

- *Aircraft.* A variety of emission regulations have been applied to commercial gas turbine aircraft engines, beginning with limits on smoke and fuel venting in 1974. In 1984, limits were placed on the amount of unburned HC that gas turbine engines can emit per landing and takeoff cycle. Most recently (1997), we adopted the existing International Civil Aviation Organization (ICAO) NO_x and CO emission regulations for gas turbine engines. None of these actions has resulted in significant emissions reductions, but rather have largely served to prevent increases in aircraft emissions. We continue to explore ways to reduce emissions from aircraft throughout the nation.

- *Recreational Vehicles.* Large land-based spark ignition engines used in recreational vehicles include snowmobiles, off-road motorcycles and "all terrain" vehicles, and are presently unregulated. We are currently developing emission regulations for recreational vehicles.³⁵

In addition to the above engine-based emission control programs, fuel controls will also reduce emissions of air toxics from nonroad engines. For example, restrictions on gasoline formulation (the removal of lead, limits on gasoline volatility and reformulated gasoline standards) are projected to reduce

nonroad MSAT emissions because most gasoline-fueled nonroad vehicles are fueled with the same gasoline used in on-highway vehicles. An exception to this is lead in aviation gasoline. Aviation gasoline is a high octane fuel used in a relatively small number of aircraft (those with piston engines). Such aircraft are generally used for personal transportation, sightseeing, crop dusting, and similar activities.

As just discussed, most of our fuel controls aimed at gasoline cover both on-highway and nonroad vehicle fuel. The same is not true for diesel fuel. We have regulations in place that will control the sulfur levels in on-highway diesel fuel and have proposed to reduce these levels further. These controls, however, do not apply to nonroad diesel fuel. Prior to the sulfur controls for on-highway diesel fuel, which took effect in October of 1993, there was no distinction between nonroad and on-highway diesel fuel.³⁶ We are evaluating the need for controlling sulfur in nonroad diesel fuel, in order to allow more effective diesel PM control technologies such as catalysts to be applied to nonroad engines and vehicles.

2. Emission Reductions From Current Programs

The nonroad mobile source control programs just summarized are expected to result in reductions of national inventories of MSAT emissions from nonroad engines. This section summarizes our estimates of nonroad MSAT inventories into the future, based on the nonroad emission control programs we currently have in place. Interested readers are encouraged to refer to our TSD for a more detailed discussion of these projections. The discussion in this section consists of three parts. First, we discuss the inventories of four gaseous MSAT emissions: benzene, formaldehyde, acetaldehyde and 1,3-butadiene. Second, we discuss nonroad VOC emissions inventories as a surrogate for the other nonroad gaseous MSAT emissions. Finally, we discuss the trend in nonroad diesel PM emissions.

We are not reporting inventory trends for the metals on our list of MSATs (arsenic compounds, chromium compounds, mercury compounds, nickel compounds, manganese compounds, and lead compounds) or for dioxin/furans. Metals in mobile source exhaust can come from fuel, fuel additives, engine oil, engine oil additives, or engine wear. Formation of dioxin and furans requires a source of

²⁷ 60 FR 34582, July 3, 1995.

²⁸ 64 FR 15208, March 30, 1999 and 65 FR 24267, April 25, 2000.

²⁹ 65 FR 76797, December 7, 2000.

³⁰ 61 FR 52088, October 4, 1996.

³¹ 64 FR 73300, December 29, 1999.

³² 65 FR 76797, December 7, 2000.

³³ 63 FR 18978, April 16, 1998.

³⁴ Locomotives are typically overhauled to "as new" condition every four to eight years in a process known as remanufacturing.

³⁵ 65 FR 76797, December 7, 2000.

³⁶ 55 FR 34120, August 21, 1990.

chlorine. Thus, while metal emissions and dioxins/furans emissions are associated with particles and it is possible that these compounds track PM emissions to some extent, there are a number of other factors that contribute to emission levels and we do not have good data on these relationships.

a. *Benzene, Acetaldehyde, Formaldehyde, and 1,3-Butadiene.* Table VI-1 shows our estimates of the nonroad emissions of these four gaseous MSATs. These estimates were based on the 1996 inventories contained in the

1996 NTI study.³⁷ The 1990 estimates were derived by applying a ratio of nationwide 1990 to 1996 VOC inventories from the draft NONROAD model to the 1996 NTI numbers.³⁸ Toxic fractions represent the fraction of total VOC that a given MSAT makes up. The toxic fractions were derived from speciated emissions data on different engines and come from a variety of studies which are discussed in Chapter 2 of the TSD. By knowing the total VOC inventory and the toxic fraction for a given MSAT, we can estimate the

inventory of that specific MSAT indirectly. The 2007 and 2020 MSAT estimates were derived from the draft NONROAD model, with the toxic fractions applied to the nationwide NONROAD VOC results. Toxic fractions were applied separately to the various sources of nonroad emissions (e.g., diesel, gasoline, two-stroke, four-stroke, exhaust, evaporative) in the NONROAD model. We then summed the toxic emissions from the various sources of nonroad emissions.

TABLE VI-1.—ANNUAL EMISSIONS FOR BENZENE, ACETALDEHYDE, FORMALDEHYDE, AND 1,3-BUTADIENE FROM NONROAD SOURCES^a

[Thousand short tons per year]

Compound	1990 Emissions	1996 Emissions	2007 Emissions	2020 Emissions
Benzene	100.2	98.7	75.4	69
Acetaldehyde	37.7	40.8	26.3	20
Formaldehyde	79.2	86.4	53.8	40.7
1,3-Butadiene	9.4	9.9	8.8	7.8

^a The draft NONROAD model is a model we are developing to project emissions inventories from nonroad mobile sources. Because this is a draft model and subject to future revisions, the inventories derived from the draft NONROAD model and presented here are subject to change.

Table VI-2 summarizes the percent reductions from 1990 and 1996 levels represented by the inventories in Table VI-1. This table shows that the

reductions expected from our existing nonroad control programs are significant, although not as substantial as the reductions of these pollutants for

on-highway vehicles presented in Section III.

TABLE VI-2.—PERCENT EMISSION REDUCTIONS FOR BENZENE, ACETALDEHYDE, FORMALDEHYDE, AND 1,3-BUTADIENE FROM NONROAD SOURCES

Compound	Reduction in 2007 (percent)		Reduction in 2020 (percent)	
	From 1990	From 1996	From 1990	From 1996
Benzene	25	24	31	30
Acetaldehyde	30	36	47	51
Formaldehyde	32	38	49	53
1,3-Butadiene	7	11	18	21

b. *VOCs.* With the exception of the four MSATs shown in Table VI-1, we cannot estimate emissions from nonroad mobile sources for the other gaseous MSAT emissions because we do not have toxic fraction information for the other gaseous MSAT emissions. Therefore, to estimate projected inventory impacts from our current nonroad mobile source emission control programs, we use VOC inventories. We believe this is appropriate because the gaseous MSAT emissions are constituents of total VOC emissions. By using VOC emissions as a surrogate, we are assuming that MSAT emissions

track VOC reductions. In reality, however, as can be seen from Table VI-2, some gaseous MSAT emissions may not decrease at the same rate as VOCs overall. Without having more detailed emission data for each of the MSAT emissions, however, we are unable to offer any insights on how those rates may differ.

Our VOC emission inventories were developed using the draft NONROAD model. Because the draft NONROAD model does not include locomotives, commercial marine diesel engines, or aircraft, we supplemented the draft NONROAD model inventories with the

locomotive and diesel marine inventories developed in support of our regulations for those categories, and with aircraft emission inventories from the National Air Pollutant Emissions Trends, 1900-1996 report. The results of this analysis, presented in Table VI-3, show that VOC inventories are projected to decrease approximately 44 percent between 1996 and 2020 due to existing nonroad mobile source emission control programs. Comparing the results of this analysis with Tables III-3 and III-4, we see that expected nonroad VOC reductions are not as dramatic as those projected for on-highway vehicles, with

³⁷ It should be noted that these estimates do not include locomotives, aircraft or commercial marine diesel engines. Thus, the 1996 estimates shown

here differ slightly from those shown in Table III-2.

³⁸ The draft NONROAD model is a model we are developing to project emissions inventories from

nonroad mobile sources. Because this is a draft model and subject to future revisions, the inventories derived from the draft NONROAD model and presented here are subject to change.

nonroad and on-highway VOC inventories expected to be very similar by 2020. This is not surprising because the technologies available to reduce nonroad emissions are not as

sophisticated as those used to control on-highway emissions. This analysis, however, shows that our existing nonroad emission control programs will nonetheless result in significant gaseous

MSAT reductions (assuming, as previously discussed, that gaseous MSAT emissions track VOC reductions).

TABLE VI-3.—ANNUAL VOC EMISSIONS FROM NONROAD SOURCES

Year	1996	2007	2020
Million short tons per year	3.6	2.2	2.0
Cumulative Percent Reduction from 1996	* * *	39%	44%

c. *Diesel PM.* We estimated the nonroad PM inventories using the draft NONROAD model. We are using diesel PM as a surrogate for diesel PM and diesel exhaust organic gases (DPM + DEOG). As explained earlier, because the draft NONROAD model does not include locomotives, commercial marine diesel engines, or aircraft we supplemented the draft NONROAD model inventories using other sources of information to cover these emissions. Table VI-4 shows our estimates of nonroad diesel PM emissions inventories. As can be seen, we expect nonroad diesel PM emissions to begin to drop with the implementation of some of our nonroad regulations. However, in the absence of additional controls, we

expect that nonroad diesel PM emission inventories will begin to increase due to expected growth in the populations of nonroad vehicles and equipment. Comparing Table VI-4 to Table III-3 we see that, while the nonroad diesel PM inventory is roughly twice that for on-highway vehicles in 1996, nonroad emissions of diesel PM are expected to be about 20 times as great as on-highway diesel PM emissions by 2020 due to the dramatic reductions in on-highway PM from the application of the newest technologies and the use of low sulfur fuels. These estimates assume projected reductions from the proposed standards for heavy-duty vehicles in 2007 and future model years, which are not yet finalized.

As was previously mentioned, we are considering Tier 3 diesel PM standards for land-based nonroad diesel engines. We believe that any specific new requirements for nonroad diesel PM we might propose would need to be carefully considered in the context of a proposal for nonroad diesel fuel standards. This is because of the close interrelationship between fuels and engines—the best emission control solutions may not come through either fuel changes or engine improvements alone, but perhaps through an appropriate balance between the two. Thus, we are working to formulate proposals covering both nonroad diesel fuel and engines.

TABLE VI-4.—DIESEL PM EMISSIONS FROM NONROAD SOURCES

Year	1996	2007	2020
Thousand short tons per year	345.8	282.8	310.8
Cumulative Percent Reduction from 1996	* * *	18%	10%

C. Gaps in Nonroad Mobile Source Data

There are significant gaps in our data on MSAT emissions from nonroad engines. As a result of these data gaps, our understanding of nonroad MSAT inventories is less developed than our understanding of on-highway vehicle MSAT emissions. The largest single data gap is in the area of emission factors. While we have basic emission factors for VOC and PM for most of the nonroad categories, we have very little VOC speciation data for most classes and categories of nonroad vehicles and engines which would allow us to use VOC as a surrogate to estimate emissions of specific MSAT emissions. Given the large variety of nonroad engine sizes, types and uses, as well as the likelihood that this variety are projected to result in some differences in VOC composition, it is important that we obtain or develop speciated VOC data specific to each nonroad category in order to more accurately project nonroad MSAT inventories. These gaps, too, must be filled in order to accurately

assess the need for, and the most appropriate direction of, any future MSAT control program targeted specifically at nonroad mobile sources. We intend to use the technical analysis plan, described in Section VII, to fill these data gaps.

VII. Technical Analysis Plan to Address Data Gaps and Commitment for Further Rulemaking

A. Technical Analysis Plan to Address Data Gaps

Because of the potential future health impacts of public exposure to air toxics from mobile sources we will continue our toxics-related research and activities. Therefore, in addition to today's controls, we will continue to evaluate and re-assess the need for, and level of controls for both on-highway and nonroad sources of air toxics. Among the 21 compounds that EPA has identified for inclusion on the list of MSATs, we believe that, considering single chemical inhalation health hazards and exposure to the MSAT

emissions from on-highway sources, diesel particulate matter and diesel exhaust organic gases (DPM + DEOG), benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein are likely to present the highest risks to public health and welfare.³⁹ The need to focus short-term work on these six MSATs has been highlighted in an Agency screening analysis⁴⁰ and the States have indicated these pollutants are major mobile source pollutants of concern. Information that is made available from the work that is now underway in the NATA National-Scale Analysis will also be used to determine priority toxics

³⁹ EPA may also focus on other MSATs in the next two years, if new information shows that is appropriate.

⁴⁰ Memo from Brodowicz, P. to Phil Lorang, Director Assessment and Modeling Division and Chet France, Director Engines Programs and Compliance Division. Screening/Ranking Analysis of the Air Toxic Emissions From Onroad Mobile Sources to Be Addressed Under Section 202(l)(2). August 17, 1999.

from mobile sources.⁴¹ In addition, priorities identified from the NATA National-Scale Analysis will be considered and incorporated as appropriate in the Air Toxics Research Strategy (ATRS) currently being developed by EPA's Office of Research and Development (ORD) in a coordinated effort with the OAR.

In conducting this Technical Analysis Plan, we will address four critical areas where there are data gaps. These areas are:

- Developing better air toxics emission factors for nonroad sources;
- Improving estimation of air toxics exposures in microenvironments;
- Improving consideration of the range of total public exposures to air toxics; and
- Increasing our understanding of the effectiveness and costs of vehicle, fuel, and nonroad controls for air toxics.

The Agency recognizes the need to conduct additional work and to focus on relevant scientific data to address the needs we outline in this Technical Analysis Plan. The issues outlined are complex and while the work conducted as part of the Technical Analysis Plan will begin to address the significant data gaps, resolution of some aspects of these issues will require a long-term effort. This effort will be coordinated across the Agency to maximize available resources.

Developing emission factors for nonroad sources. EPA's Office of Transportation and Air Quality (OTAQ) has initiated emissions testing of a comprehensive suite of hydrocarbons and inorganic compounds from nonroad diesel engines. These emissions will be characterized using steady-state as well as transient test cycles using typical nonroad fuel and low-sulfur nonroad fuel. OTAQ has also initiated an effort to characterize emissions (including speciated hydrocarbons) from in-use nonroad engines. EPA's Office of Research and Development (ORD) also has information available from testing programs which will be useful to characterize emissions of toxic compounds from certain classes of gasoline nonroad engines using various fuels (oxygenated gasoline, reformulated gasoline and conventional gasoline). The Agency will use these data, in

addition to other sources of nonroad test data to develop better air toxics emissions factors for nonroad sources.

Improving estimation of exposures in microenvironments. In the past, the Agency has used carbon monoxide (CO) measurements outdoors and indoors as a surrogate for estimating the on-highway mobile source contribution to air toxics levels from outdoor sources in different microenvironments (e.g., inside vehicles, homes, shopping malls, and office buildings). This approach has limitations. Estimates of the on-highway contribution to air toxics levels in different microenvironments are then used in conjunction with activity data to estimate average exposures. A new approach was needed that addressed some of the limitations of the CO surrogate approach and one that could be used to estimate exposures from all outdoor sources. Thus, the Agency developed the Hazardous Air Pollutant Exposure Model—Version 4 (HAPEM4), to estimate microenvironmental exposures in the National-Scale Assessment of NATA. HAPEM4 utilizes peer reviewed, pollutant specific microenvironmental factors to predict exposure levels in microenvironments. The application of these microenvironmental factors in the NATA National-Scale Assessment is currently awaiting peer review by the Agency's Science Advisory Board. After that review, EPA's OAQPS will incorporate applicable comments into HAPEM4 microenvironmental factors that are needed to provide improved exposure estimates.

In addition, EPA will use results of on-going studies at the Mickey Leland National Urban Air Toxics Research Center and in the EPA Office of Radiation and Indoor Air to evaluate indoor and outdoor concentrations of gaseous toxics as well as the penetration of toxics from outdoor sources into indoor spaces. EPA will also utilize data from new studies planned or underway (within and outside the Agency) that are designed to fill gaps in current data sets such as personal exposure in microenvironmental settings (e.g., houses with attached garages, residences and commercial buildings located near heavily-trafficked roadways, bus depots, and delivery terminals).

Another important aspect of considering microenvironmental exposures is the amount of time people spend in each microenvironment. To address this issue, HAPEM4 uses the EPA ORD Consolidated Human Activity Database (CHAD). CHAD contains information describing activities of various subgroups in the U.S.

population in different microenvironmental settings. CHAD is a more expansive human activity diary data set than others EPA has used in past exposure assessment, but the Agency recognizes that additional field research may be needed to expand human activity information for under-represented demographic groups, particularly in urban areas. EPA will update CHAD to take advantage of new data that becomes available through peer-reviewed studies. As CHAD is updated in the future, EPA will incorporate new data into HAPEM4 to provide the best reflection of each subgroup's activities and thereby enable subgroup analysis from which EPA would be likely to gain additional insights about the potential exposures for particular subgroups, including children. The Agency will review the data to see where special analysis is warranted to characterize the subgroups facing greater risks.

Improving consideration of the range of public exposures. EPA's analysis to date has primarily examined average levels of exposure (see Chapter 5 of the TSD and our 1999 Study⁴²). As part of its National Air Toxics Assessment (NATA) activities, EPA has also conducted a national-scale air toxics analysis to estimate ambient concentrations of 33 air toxics identified in the IUATS, plus diesel PM. The NATA National-Scale Analysis apportioned the contribution of air toxics to ambient concentrations between major, area, nonroad mobile, and on-highway sources. The NATA National Scale Analysis also reported distributions of concentrations across census tracts nationally and at the county level. While providing a significant and informative body of information, these studies do not address exposures to toxics in hot spot areas. As the Agency has stated in the Integrated Urban Air Toxics Strategy, we also want to consider the disproportionate impacts of air toxics in hot spot areas. Hot spots are generally thought of as areas with elevated pollutant levels that could be associated with elevated exposures and potentially serious health risks. At higher pollutant concentrations, the potential for risk increases, making it important to characterize the distribution of exposure in the population. For example, it would be important to know how many people are in the high-end distribution

⁴¹ EPA's Office of Transportation and Air Quality (OTAQ), which is responsible for the MSATs program, will be working in coordination with the Office of Air Quality Planning and Standards (OAQPS), which manages NATA, and the Office of Radiation and Indoor Air, which is examining issues related to a wide range of indoor air pollutants. OTAQ will also rely on health effects, exposure, and risk assessment efforts and guidelines of EPA's Office of Research and Development in conducting its program.

⁴² Analysis of the Impacts of Control Programs on Motor Vehicles Toxics Emissions and Exposure in Urban Areas and Nationwide (Volumes 1 and 2), November 1999, EPA420-R-99-029/030. This report can be accessed at <http://www.epa.gov/otaq/toxics.htm>.

of exposure and whether they have additional susceptibilities (e.g., the elderly, young, or those exposed to other chemicals beyond MSATs) and what factors place them at high risk (e.g., proximity to sources). States and local air pollution control agencies have raised the hot spots issue as a major concern that needs to be addressed in a comprehensive air toxics risk characterization.⁴³

To improve our ability to characterize MSAT exposures to highly exposed subpopulations requires better information regarding ambient concentrations of MSATs in hot spot areas and appropriate microenvironmental factor values for high-exposure microenvironments. EPA is developing local-scale emissions and dispersion models for mobile sources to better inform the Agency and the public about potential hot spots. In addition, EPA is conducting spatially refined urban area modeling (including mobile sources).

Field sampling studies funded by the Mickey Leland National Urban Air Toxics Research Center and ambient monitoring being conducted by States and local entities will provide information that will be used to support real-world characterizations of a few typical hot spot areas. These field measurements will also provide information regarding the distributions of microenvironmental concentrations and therefore, exposures. EPA will also work with the State and local air pollution control agencies to ensure that the results of air toxics monitoring data analyses and urban monitoring pilot projects underway omission year are considered in EPA's development of mobile source air toxics exposure and risk analyses.⁴⁴

Increasing our understanding of the effectiveness and costs of vehicle, fuel, and nonroad air toxics controls. The Agency intends to conduct additional analysis on additional controls for motor vehicles, fuels, and nonroad engines that could lower air toxics emissions cost-effectively in a reliable and predictable manner. For DPM + DEOG, benzene, 1,3-butadiene, formaldehyde, acetaldehyde, and acrolein, the Agency will analyze a variety of control options, and re-evaluate previously considered control options, for both on-highway and

nonroad sources. This additional analysis of control options will include the feasibility of requiring retrofit of both highway and nonroad heavy-duty diesel engines with emissions controls for air toxics.

In each of these four areas of investigation, EPA will work collaboratively with industry representatives, manufacturers of emissions control technology, State and local agencies, environmental groups, and other stakeholders. In keeping with this approach, the Agency plans to hold at least three technical workshops with all interested stakeholders to consider:

- Improvements EPA should make to existing models and integration of emission, concentration and exposure models to enable the Agency to better assess the risks from air toxics from all sources;
- Ways to address the significance of the hot spot issue;⁴⁵ and
- Future vehicle, fuel, and nonroad control technologies for reducing air toxics.

The results of the Technical Analysis Plan, workshops, and other efforts to improve our understanding of air toxics risks will provide the basis for any future rulemaking, as discussed below.

B. Commitment for Further Rulemaking

EPA is including a regulatory provision in section 80.825 that establishes a schedule for a future rulemaking to promulgate any additional vehicle and fuel controls that EPA determines are appropriate under section 202(l)(2). This rulemaking will reassess the standards in place at the time using the information collected through the Technical Analysis Plan described above and other activities related to mobile sources and air toxics. The standards that are being promulgated by EPA in today's final rule will remain in effect unless modified by this or other future rulemaking. EPA commits to issue a proposed rule by July 1, 2003, and to

take final action on the proposal by July 1, 2004. The regulation adopted today establishes a rulemaking schedule for exercise of EPA's discretionary authority under section 202(l)(2), which directs EPA to "from time to time revise" regulations under that provision.

We are also stating in section 80.825 that the Agency intends to evaluate emissions and potential strategies relating to HAPs from nonroad engines and vehicles. This is consistent with the commitment, expressed in the preamble of the NPRM, to address emissions from nonroad as well as on-highway vehicles. The preamble discussion in the NPRM explained that as part of the rulemaking envisioned under the proposed section 80.825, EPA would reexamine the controls available for reducing toxics emitted from on-highway and nonroad vehicles and equipment, and their fuels (see preamble, 65 FR at 48091). The review would consider whether controls that reduce emissions from nonroad sources were appropriate under the Act. EPA intends to review the regulations of various categories of nonroad engines and equipment, and to consider controls for those pollutants and categories of new nonroad engines that EPA determines are appropriate. Controls on all types of nonroad vehicles and equipment, or pollutants may not be warranted. In deciding what pollutants and categories of engines or equipment to include in any proposal, EPA intends to consider a variety of factors such as cost, risk to public health, available technology, as well as any other appropriate factors.

Several commenters urged EPA not to include a commitment to a future rulemaking in the regulations. These commenters argued that it was premature to commit to a rulemaking before EPA had completed the Technical Analysis Plan and that a future rulemaking could be a waste of resources if EPA determines no further controls are appropriate. Several commenters also questioned EPA's authority to commit future administrations to such a rulemaking. EPA continues to believe the regulatory commitment in section 80.825 is reasonable and entirely within EPA's authority.

Other commenters supported EPA's commitment to future rulemaking, but encouraged EPA to extend that commitment to include a periodic review of mobile source toxics controls. They believe that EPA should review the appropriateness of additional controls every three years. At this time, we do not believe it is necessary to make such a formal commitment. However, the Act allows us to review

⁴³ STAPPA/ALAPCO and NESCAUM raised this concern at an conference on mobile source air toxics that the Health Effects Institute managed for EPA in February 2000.

⁴⁴ EPA will characterize the exposure risks of air toxics in future analysis in the manner prescribed in the Agency's Guidance for Risk Characterization, February 1995.

⁴⁵ This workshop will include ways to characterize the geographic variability and exposure/risk impacts of mobile source emissions, considering both the ubiquitous ambient impact as well as potential hot spots. Geographic variability includes the observed elevated urban area ambient concentrations of mobile source air toxics, peak ambient concentrations adjacent to roadways in urban and rural areas, and the elevated, mobile source-dependent emissions impacts (for example, waste transfer station operations and bus, marine, aircraft, and locomotive terminal operations). Exposure variability includes recognition of factors that lead to different levels of human exposure, such as commuting, or living in a residence with an attached garage. While this workshop will focus on methods to understand the range of exposures to mobile source emissions, methods to characterize additional sources of toxics exposure will also be examined.

and from time to time revise air toxics standards for mobile sources. Therefore, in addition to today's controls, we will continue to evaluate and re-assess the need for, and level of controls for both on-highway and nonroad sources of air toxics as described above.

VIII. Public Participation

A wide variety of interested parties participated in the rulemaking process that culminated with this final rule. The formal comment period and a public hearing associated with the NPRM provided additional opportunities for public input. EPA also met with a variety of stakeholders, including environmental and public health organizations, oil company representatives, auto company representatives, and states at various points in the process.

We have prepared a detailed Response to Comments document that describes the comments received on the NPRM and presents our response to each of these comments. The Response to Comments document is available in the docket of this rule and on the Office of Transportation and Air Quality Internet toxics page (<http://www.epa.gov/otaq/toxics.htm>). Comments and our response are also included throughout this preamble for several key issues.

IX. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of this Executive Order. The Executive Order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues. Accordingly, this rule was submitted to OMB for review. Any written comments from OMB on today's action and any responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Regulatory Flexibility Analysis.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. Of the approximately 146 petroleum refiners that currently produce gasoline in the U.S., about 15 meet the Small Business Administration (SBA) definition of a small business. According to SBA guidelines, a petroleum refining company must have fewer than 1500 employees to qualify as an SBA small business.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. As a result of the toxics performance standard being finalized today, all refiners will be required to maintain current levels of overcompliance with RFG and anti-dumping toxic emission performance requirements. Because the standards finalized in this action are not technology-forcing, we believe that all refiners, including small refiners will not be required to adjust their current refining practices in any unique way to meet the toxics performance standard. Chapter 7 of the TSD supports this conclusion and we believe that any future costs that may be incurred by any refiner to comply with this program will be negligible.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. We have included a number of flexibilities in this program such as deficit and credit carryforward that are available to all refineries to meet the requirements finalized in today's action. We believe these flexibilities are sufficient to address any unforeseen burdens that any refiner, including a small refiner, may face, and therefore, no unique provisions or flexibilities need to be finalized for small refiners.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA and a copy may be obtained from Sandy Farmer, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 260-2740. The information requirements are not enforceable until OMB approves them.

Under this rulemaking, refiners and importers are required to determine and submit to EPA a toxics baseline based on the quality of the gasoline produced or imported between 1998 and 2000, inclusive. The toxics baseline is a one-time submission. Additionally, at the end of each calendar year beginning with 2002, refiners and importers are required to submit certain information to EPA under this rule. The types of information and other requirements associated with these submissions is presented below.

The data that is used in determining the toxics baseline is gasoline batch information which the refiner or importer already has, and has submitted (or will submit in the case of 2000 data) to EPA per the reformulated gasoline and anti-dumping programs' requirements. Thus, there is no requirement under this rule to collect additional information; refiners and importers use the information they already have (gasoline batch quality and volumes) to determine the baseline for this rule, a straightforward and uncomplicated calculation.

In addition to the one-time toxics baseline determination and submission, refiners and importers are required to calculate annually and submit to EPA the following, separately for reformulated and conventional gasoline:

(1) *The annual average toxics value.* This value is the average quality of all of the batches of gasoline produced or imported during the year and is based on the volume and toxics quality of each batch (volume weighted combination of each batch's toxic value).

(2) *The annual volume.* This is the sum of all of the batch volumes of gasoline produced or imported during the year.

(3) *The incremental volume.* This is the difference between a refiner's or importer's 1998–2000 baseline volume and the annual volume (see above). Only positive incremental volumes (that is, when the annual volume exceeds the

1998–2000 volume) are used in the compliance baseline calculation (see below).

(4) *The compliance baseline.* This annual calculation is the standard for this rule, and is the value to which the annual average toxics value (see above) is compared. Factors in this calculation are the baseline quality and volume (as determined in the one-time baseline submission, plus a compliance margin which has been set by EPA), and the incremental volume (see above).

The annual average toxics value for each type of gasoline (reformulated, conventional) is essentially the same determination refiners and importers must make for the reformulated gasoline and anti-dumping programs. The annual average toxics value determination is made using the toxics values calculated for each reformulated gasoline and conventional gasoline batch in accordance with the reformulated gasoline and anti-dumping program requirements. No new data is required to be collected for this rule. The annual volume is also part of the reporting requirements of those two programs. Only the incremental volume determination and the compliance baseline determination are new requirements due to this rule. These latter two determinations require minimal calculation time. Additionally, all information required to be submitted annually under this anti-backsliding program will be submitted at the same time and on the same forms as the annually required information under the reformulated gasoline and anti-dumping programs.

Refiners and importers are also required to annually submit attest engagements (independent comparison and calculation of reported values and related information submitted by refiners and importers in accordance with the reformulated gasoline and anti-dumping requirements). Attest engagements are also required for this anti-backsliding rule. The information the independent auditor must consider includes the refiner's or importer's baseline toxics value, annual average toxics value, baseline volume, incremental volume and compliance baseline. This addition (on top of the attest engagement requirements for the reformulated gasoline and anti-dumping program attest engagement requirements) is expected to require minimal additional resources.

In summary, we believe that the additional data required by this rulemaking will require minimum effort to prepare and submit, and can be submitted with the same data submission forms pursuant to the

recordkeeping and reporting requirements for the RFG and anti-dumping rules. While we believe that the minimal amount of additional data required by this rulemaking does not pose significant additional information collection burden on refiners,⁴⁶ we have submitted revisions to the RFG and anti-dumping Information Collection Requests (ICRs).

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The OMB control number(s) for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

D. Intergovernmental Relations

1. 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 action on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the

⁴⁶ Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a federal mandate that may result in expenditures of \$100 million or more for State, Local, or Tribal governments, in the aggregate, or for the private sector in any one year. The anti-backsliding standard that is being finalized in today's action, consisting of a “cannot exceed” toxics performance standard which is based in average annual production in 1998–2000, will not require refiners to install capital equipment or make substantial changes to their operations in order to comply. The rule imposes no enforceable duties on State, Local, or Tribal governmental entities and nothing in the rule would significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 202 and 205 of UMRA.

2. Executive Order 13132 (Federalism)

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

The proposed rule has no federalism implications, as specified in Executive Order 13132. The standards finalized in today's action do not change the existing form of the gasoline toxics standard and therefore do not change the states's rights with respect to gasoline air toxics controls. The

proposed standards will impose no direct compliance costs on states. Thus, Executive Order 13132 does not apply to this rule.

EPA consulted with state and local officials in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

3. 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 Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, 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 officials 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 create any mandates or impose any obligations on State, Local, or Tribal governments, and thus does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards (VCS) 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, 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 rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters. The measurement standards for gasoline fuel parameters referenced in today's rule are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry.

F. Executive Order 13045: Children's Health Protection

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

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, data that provide a direct insight into the question of greater susceptibility in children are lacking. Nevertheless, EPA believes that it is important to develop a better understanding of the effects on public health, including on children's health, of the MSATs identified in today's rule. Accordingly, EPA intends to address children's health issues as part of its Technical Analysis Plan.

G. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on May 29, 2001.

X. Statutory Provisions and Legal Authority

The statutory authority for the fuels controls in today's final rule can be found in sections 202 and 211(c) of the Clean Air Act (CAA), as amended. Additional support for the procedural and enforcement-related aspects of the fuel controls in today's rule, including the recordkeeping requirements, come from sections 114(a) and 301(a) of the CAA.

List of Subjects

40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Incorporation by reference, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 20, 2000.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, parts 80 and 86 of title 40 of the Code of Federal Regulations are amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is revised to read as follows:

Authority: 42 U.S.C. 7414, 7521(l), 7545 and 7601(a).

2. Section § 80.2 is amended by revising paragraph (d) to read as follows:

§ 80.2 Definitions.

* * * * *

(d) *Previously certified gasoline*, or PCG, means gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards in Subparts D, E, H, and J of this part, as appropriate.

* * * * *

3. Section § 80.46 is amended by revising paragraphs (e) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(e) *Benzene*. (1) Benzene content shall be determined using ASTM standard method D-3606-99, entitled "Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography"; except that

(2) Instrument parameters shall be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D-3606-99 when present.

* * * * *

(h) *Incorporations by reference*. ASTM standard methods D 2622-98 "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry," D 3246-96 "Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry," D 3606-99 "Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography," D 1319-99 "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption," D 4815-99 "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C₁ to C₄ Alcohols in Gasoline by Gas Chromatography," and D 86-90 "Standard Test Method for Distillation of Petroleum Products," with the exception of the degrees Fahrenheit figures in Table 9 of D 86-90, are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE-131), room M-1500, U.S. Environmental Protection Agency, Docket No. A-97-03, 401 M Street, SW, Washington, DC 20460, or at

the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

4. Section 80.81 is amended by revising paragraph (a) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

(a) The requirements of subparts D, E, F and J of this part are modified in accordance with the provisions contained in this section in the case of California gasoline.

* * * * *

5. Subpart J is added to part 80 to read as follows:

Subpart J—Gasoline Toxics**General Information**

Sec.

80.800-80.805 [Reserved]

80.810 Who shall register with EPA under the gasoline toxics program?

Gasoline Toxics Performance Requirements

80.815 What are the gasoline toxics performance requirements for refiners and importers?

80.820 What gasoline is subject to the toxics performance requirements of this subpart?

80.825 How is the refinery or importer annual average toxics value determined?

80.830 What requirements apply to oxygenate blenders?

80.835 What requirements apply to butane blenders?

80.840 [Reserved]

80.845 What requirements apply to California gasoline?

80.850 How is the compliance baseline determined?

80.855 What is the compliance baseline for refineries or importers with insufficient data?

80.860-80.905 [Reserved]

Baseline Determination

80.910 How does a refiner or importer apply for a toxics baseline?

80.915 How are the baseline toxics value and the baseline toxics volume determined?

80.920-80.980 [Reserved]

Recordkeeping and Reporting Requirements

80.985 What records shall be kept?

80.990 What are the toxics reporting requirements?

Exemptions

80.995 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?

80.1000 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

Violation Provisions

80.1005 What acts are prohibited under the gasoline toxics program?

80.1010 [Reserved]

80.1015 Who is liable for violations under the gasoline toxics program?

80.1020 [Reserved]

80.1025 What penalties apply under this subpart?

Provisions for Foreign Refiners With Individual Toxics Baselines

80.1030 What are the requirements for gasoline produced at foreign refineries having individual refiner toxics baselines?

Attest Engagements

80.1035 What are the attest engagement requirements for gasoline toxics compliance applicable to refiners and importers?

80.1040 [Reserved]

Additional Rulemaking

80.1045 What additional rulemaking will EPA conduct?

Subpart J—Gasoline Toxics**General Information**

§ 80.800-80.805 [Reserved]

§ 80.810 Who shall register with EPA under the gasoline toxics program?

(a) Refiners and importers who are registered by EPA under § 80.76 are deemed to be registered for purposes of this subpart.

(b) Refiners and importers subject to the standards in § 80.815 who are not registered by EPA under § 80.76 shall provide to EPA the information required by § 80.76 by October 1, 2001, or not later than three months in advance of the first date that such person produces or imports gasoline, whichever is later.

Gasoline Toxics Performance Requirements**§ 80.815 What are the gasoline toxics performance requirements for refiners and importers?**

(a)(1) The gasoline toxics performance requirements of this subpart require that the annual average toxics value of a refinery or importer be compared to that refinery's or importer's compliance baseline, where compliance has been achieved if—

(i) For conventional gasoline, the annual average toxics value is less than or equal to the compliance baseline;

(ii) For reformulated gasoline and RBOB, combined, the annual average toxics value is greater than or equal to the compliance baseline.

(A) Refineries that only produce RBOB and importers that only import RBOB shall treat RBOB as reformulated gasoline for the purposes of determining compliance with the requirements of this subpart.

(B) Refineries that produce both RFG and RBOB and importers that import both RFG and RBOB must combine any RFG and RBOB qualities and volumes

for the purposes of determining compliance with the requirements of this subpart.

(2) The requirements under this paragraph (a) shall be met by the importer for all imported gasoline, except gasoline imported as Certified Toxics-FRGAS under § 80.1030.

(b) The gasoline toxics requirements of this subpart apply separately for each of the following types of gasoline produced at a refinery or imported:

(1) Reformulated gasoline and RBOB, combined;

(2) Conventional gasoline.

(c) *Compliance baseline.* (1) The compliance baseline of a refinery or importer is determined in accordance with § 80.915 or § 80.855, as applicable.

(2) Refiners who have chosen, under subpart E of this part, to comply with the requirements of subpart E of this part on an aggregate basis, shall comply with the requirements of this subpart on the same aggregate basis.

(d) *Compliance determination.* (1) The gasoline toxics performance requirements of this subpart apply to gasoline produced at a refinery or imported by an importer during each calendar year starting January 1, 2002. The averaging period is January 1 through December 31 of each year.

(2) The annual average toxics value is calculated in accordance with § 80.825.

(e) *Deficit carryforward.* (1) A refinery or importer creates a toxics deficit, separately for reformulated gasoline and conventional gasoline, for a given averaging period, when—

(i) For conventional gasoline, its annual average toxics value is greater than the compliance baseline;

(ii) For reformulated gasoline and RBOB, combined, the annual average toxics value is less than the compliance baseline.

(2) In the calendar year following the year the toxics deficit is created, the refinery or importer shall:

(i) Achieve compliance with the refinery or importer toxics performance requirement specified in paragraph (a) of this section; and

(ii) Generate additional toxics credits sufficient to offset the toxics deficit of the previous year.

(f) *Credit carryforward.* (1) A refinery or importer generates toxics credits, separately for reformulated gasoline and conventional gasoline, for a given averaging period, when—

(i) For conventional gasoline, its annual average toxics value is less than the compliance baseline;

(ii) For reformulated gasoline and RBOB, combined, the annual average toxics value is greater than the compliance baseline.

(2) Toxics credits may be used to offset a toxics deficit in the calendar year following the year the credits are generated, provided the following criteria are met:

(i) Reformulated gasoline toxics credits are only to be used to offset a reformulated gasoline toxics deficit; conventional gasoline credits are only to be used to offset a conventional gasoline toxics deficit.

(ii) A refiner only offsets a toxics deficit at a refinery with toxics credits generated by that refinery.

(iii) Credits generated on an aggregate basis may only be used to offset a deficit calculated on an aggregate basis.

(iv) Credits used to offset a deficit from the previous year may not also be carried forward to the following year. Credits in excess of those used to offset a deficit from the previous year may be used to offset a deficit in the following year.

(v) Only toxics credits generated under this subpart may be used to offset a toxics deficit created under this subpart.

§ 80.820 What gasoline is subject to the toxics performance requirements of this subpart?

For the purpose of this subpart, all reformulated gasoline, conventional gasoline and RBOB, collectively called “gasoline” unless otherwise specified, is subject to the requirements under this subpart, as applicable, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(b) Gasoline that is exported for sale outside the U.S.

(c) Gasoline designated as California gasoline under § 80.845, and used in California.

(d) Gasoline used in American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

(e) Gasoline exempt per § 80.995.

(f) Gasoline exempt per § 80.1000.

§ 80.825 How is the refinery or importer annual average toxics value determined?

(a) The refinery or importer annual average toxics value is calculated as follows:

$$T_a = \frac{\sum_{i=1}^n (V_i \times T_i)}{\sum_{i=1}^n V_i}$$

Where:

T_a = The refinery or importer annual average toxics value, as applicable.

V_i = The volume of applicable gasoline produced or imported in batch i .

T_i = The toxics value of batch i .

n = The number of batches of gasoline produced or imported during the averaging period.

i = Individual batch of gasoline produced or imported during the averaging period.

(b) The calculation specified in paragraph (a) of this section shall be made separately for each type of gasoline specified at § 80.815(b).

(c) The toxics value, T_i , of each batch of gasoline is determined using the Phase II Complex Model specified at § 80.45.

(1) The toxics value, T_i , of each batch of reformulated gasoline or RBOB, and the annual average toxics value, T_a , for reformulated gasoline and RBOB, combined, under this subpart are in percent reduction from the statutory baseline described in § 80.45(b) and volumes are in gallons.

(2) The toxics value, T_i , of each batch of conventional gasoline, and the annual average toxics value, T_a , for conventional gasoline under this subpart are in milligrams per mile (mg/mile) and volumes are in gallons.

(d) All refinery or importer annual average toxics value calculations shall be conducted to two decimal places.

(e) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the toxics value, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer shall comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer shall comply with the requirements of § 80.69(a).

(f) *Gasoline excluded.* Refiners and importers shall exclude from compliance calculations all of the following:

(1) Gasoline that was not produced at the refinery;

(2) In the case of an importer, gasoline that was imported as Certified Toxics-FRGAS under § 80.1030;

(3) Blending stocks transferred to others;

(4) Gasoline that has been included in the compliance calculations for another refinery or importer; and

(5) Gasoline exempted from standards under § 80.820.

§ 80.830 What requirements apply to oxygenate blenders?

Oxygenate blenders who blend oxygenate into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported are not subject to the requirements of this subpart applicable to refiners for this gasoline.

§ 80.835 What requirements apply to butane blenders?

Butane blenders who blend butane into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported are not subject to the requirements of this subpart applicable to refiners for this gasoline.

§ 80.840 [Reserved]

§ 80.845 What requirements apply to California gasoline?

(a) *Definition.* For purposes of this subpart "California gasoline" means any gasoline designated by the refiner or importer as for use in California.

(b) *California gasoline exemption.* California gasoline that complies with all the requirements of this section is exempt from all other provisions of this subpart.

(c) *Requirements for California gasoline.* (1) Each batch of California gasoline shall be designated as such by its refiner or importer.

(2) [Reserved]

(3) Designated California gasoline must ultimately be used in the State of California and not used elsewhere.

(4) In the case of California gasoline produced outside the State of California, the transferors and transferees shall meet the product transfer document requirements under § 80.81(g).

(5) Gasoline that is ultimately used in any part of the United States outside of the State of California shall comply with the standards and requirements of this subpart, regardless of any designation as California gasoline.

§ 80.850 How is the compliance baseline determined?

(a) The compliance baseline to which annual average toxics values are compared according to § 80.815(a) is calculated according to the following equation:

$$T_{\text{CBase}} = \frac{T_{\text{Base}} \times V_{\text{Base}} + T_{\text{Exist}} \times V_{\text{inc}}}{V_{\text{Base}} + V_{\text{inc}}}$$

Where:

T_{CBase} = Compliance baseline toxics value.

T_{Base} = Baseline toxics value for the refinery or importer, calculated according to § 80.915(b)(1).

V_{Base} = Baseline volume for the refinery or importer, calculated according to § 80.915(b)(2).

T_{Exist} = Existing toxics standard, per paragraph (b) of this section.

V_{inc} = Volume of gasoline produced during the averaging period in excess of V_{Base} .

(b) The value of existing toxics standard, T_{Exist} , is equal to:

(1) 21.5 percent, for reformulated gasoline and RBOB, combined;

(2) The refinery's or importer's anti-dumping compliance baseline value for exhaust toxics, in mg/mi, per § 80.101(f), for conventional gasoline.

(c) If the refinery or importer produced less gasoline during the compliance period than its baseline volume V_{Base} , the value of V_{inc} will be zero.

§ 80.855 What is the compliance baseline for refineries or importers with insufficient data?

(a) A refinery or importer shall use the methodology specified in this section for determining a compliance baseline if it cannot determine an applicable toxics value for every batch of gasoline produced or imported for 12 or more consecutive months during January 1, 1998 through December 31, 2000.

(b)(1) A refinery or importer that cannot determine an applicable toxics value on every batch of gasoline produced or imported for 12 or more consecutive months during the period January 1, 1998 through December 31, 2000 or a refinery or importer that did not produce or import reformulated gasoline and/or RBOB (combined) or conventional gasoline or both during the period between January 1, 1998 and December 31, 2000, inclusive, shall have the following as its compliance baseline for the purposes of this subpart:

(i) For conventional gasoline, 94.64 mg/mile.

(ii) For reformulated gasoline, 26.71 percent reduction from statutory baseline.

(2) By October 31, 2001, EPA will revise by regulation the default baseline values specified in paragraph (b)(1) of this section to reflect the final 1998–2000 average toxics values.

§ 80.860–80.905 [Reserved]

Baseline Determination

§ 80.910 How does a refiner or importer apply for a toxics baseline?

(a) A refiner or importer shall submit an application to EPA which includes the information required under paragraph (c) of this section no later than June 30, 2001 or 3 months prior to the first introduction of gasoline into commerce from the refinery or by the importer, whichever is later.

(b) The toxics baseline request shall be sent to: U.S. EPA, Attn: Toxics Program (6406J), 401 M Street SW, Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Toxics Program, 501 3rd Street NW, Washington, DC 20001.

(c) The toxics baseline application shall include the following information:

(1) A listing of the names and addresses of all refineries owned by the company for which the refiner is applying for a toxics baseline, or the name and address of the importer applying for a toxics baseline.

(2) For each refinery and importer—
(i) The baseline toxics value for each type of gasoline, per § 80.815(b), calculated in accordance with § 80.915;

(ii) The baseline toxics volume for each type of gasoline, per § 80.815(b), calculated in accordance with § 80.915;

(iii) For those with insufficient data pursuant to § 80.855, a statement that the refinery's or importer's baseline toxics value is the default compliance baseline specified at § 80.855(b), and that its baseline toxics volume is zero.

(3) A letter signed by the president, chief operating or chief executive officer, of the company, or his/her delegate, stating that the information contained in the toxics baseline determination is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address of a company contact person.

(5) The following information for each batch of gasoline produced or imported during the period 1998–2000, separately for each type of gasoline listed at § 80.815(b):

(i) Batch number assigned to the batch under § 80.65(d) or § 80.101(i);

(ii) Volume; and

(iii) Applicable toxics value determined as specified at § 80.915(c).

(d) Foreign refiners shall follow the procedures specified in § 80.1030(b) to establish individual toxics baseline values for a foreign refinery.

(e) By October 31, 2001, or 4 months after the submission date, whichever is later, EPA will notify the submitter of approval of its toxics baseline.

(f) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, the corrected baseline applies ab initio and the annual average toxics requirements are deemed to be those applicable under the corrected information.

§ 80.915 How are the baseline toxics value and baseline toxics volume determined?

(a)(1) A refinery or importer shall use the methodology specified in this section for determining a baseline toxics value if it can determine an applicable toxics value for every batch of gasoline produced or imported for 12 or more consecutive months during January 1, 1998 through December 31, 2000.

(2) The determination in paragraph (a)(1) of this section is made separately for each type of gasoline listed at § 80.815(b) produced or imported between January 1, 1998 and December 31, 2000, inclusive.

(3) All consecutive and non-consecutive batch toxics measurements between January 1, 1998 and December 31, 2000, inclusive, are to be included in the baseline determination, unless the refinery or importer petitions EPA to exclude such data on the basis of data quality, per § 80.91(d)(6), and receives permission from EPA to exclude such data.

(b)(1) A refinery's or importer's baseline toxics value is calculated using the following equation:

$$T_{\text{Base}} = \frac{\sum_{i=1}^n (V_i \times T_i)}{\sum_{i=1}^n V_i} + M$$

Where:

T_{Base} = Baseline toxics value.

V_i = Volume of gasoline batch i produced or imported between January 1, 1998 and December 31, 2000, inclusive.

T_i = Toxics value of gasoline batch i produced or imported between January 1, 1998 and December 31, 2000, inclusive.

i = Individual batch of gasoline produced or imported between January 1, 1998 and December 31, 2000, inclusive.

n = Total number of batches of gasoline produced or imported between January 1, 1998 and December 31, 2000, inclusive.

M = Compliance margin.

(2) A refinery's or importer's baseline toxics volume is calculated using the following equation:

$$V_{\text{base}} = \frac{\sum_{i=1}^n V_i}{Y}$$

Where:

V_{base} = Baseline toxics volume.

V_i = Volume of gasoline batch i produced or imported between January 1, 1998 and December 31, 2000, inclusive.

i = Individual batch of gasoline produced or imported between January 1, 1998 and December 31, 2000, inclusive.

n = Total number of batches of gasoline produced or imported between January 1, 1998 and December 31, 2000, inclusive.

Y = Number of years between 1998 and 2000, inclusive, during some or all of which the refinery produced, or the importer imported, gasoline.

(c) The calculation specified in paragraph (b) of this section shall be made separately for each type of gasoline listed at § 80.815(b).

(d) The toxics value, T_i , of each batch of gasoline is determined using the Phase II Complex Model specified at § 80.45.

(1) The toxics value, T_i , of each batch of reformulated gasoline or RBOB, and the baseline toxics value, T_{Base} , for reformulated gasoline and RBOB, combined, under this subpart are in percent reduction from the statutory baseline defined in 40 CFR 80.45(b) and volumes are in gallons.

(2) The toxics value, T_i , of each batch of conventional gasoline, and the baseline toxics value, T_{Base} , for conventional gasoline under this subpart are in milligrams per mile (mg/mile) and volumes are in gallons.

(e) All refinery or importer baseline toxics value calculations shall be conducted to two decimal places.

(f) Any refinery for which oxygenate blended downstream was included in compliance calculations for 1998–2000, pursuant to § 80.65 or § 80.101(d)(4), shall include this oxygenate in the baseline calculations for toxics value under paragraph (a) of this section.

(g) *Baseline adjustment.* (1) A toxics baseline determined differently than described in paragraphs (a) through (e) of this section may be allowed upon petition by the refiner or importer and approval by the Administrator or designee. The petition must be included with the baseline submittal under § 80.910.

(2) A toxics baseline adjustment petition shall, at minimum, be accompanied by:

(i) Unadjusted and adjusted baseline fuel parameters, applicable toxics values, and volumes; and

(ii) A narrative describing how the circumstances during 1998–2000 materially affected the baseline toxics value calculated under paragraph (a) of this section. The narrative shall also describe and show the calculations, and the reasoning supporting the calculations, used to determine the adjusted values.

(h) The compliance margin, M , that will be added to the toxics baseline calculated according to paragraph (a) of this section shall be equal to:

(1) – 0.7% for reformulated gasoline or RBOB;

(2) 2.5 mg/mile for conventional gasoline.

§ 80.920–80.980 [Reserved]

Recordkeeping and Reporting Requirements

§ 80.985 What records shall be kept?

(a) The recordkeeping requirements specified under § 80.74 applicable to refiners and importers of reformulated gasoline, RBOB and/or conventional gasoline apply under this subpart, however, duplicate records are not required.

(b) *Additional records that refiners and importers shall keep.* Beginning January 1, 2002, any refiner for each of its refineries, and any importer for the gasoline it imports, shall keep records that include the following information:

(1) The calculations used to determine the applicable compliance baseline under § 80.915.

(2) The calculations used to determine compliance with the applicable toxics requirements per § 80.815.

(3) A copy of all reports submitted to EPA under § 80.990, however, duplicate records are not required.

(c) *Additional records importers shall keep.* Any importer shall keep records that identify and verify the source of each batch of Certified Toxics-FRGAS and Non-Certified Toxics-FRGAS imported and demonstrate compliance with the requirements for importers under § 80.1030(o).

(d) *Length of time records shall be kept.* The records required in this section shall be kept for five years from the date they were created.

(e) *Make records available to EPA.* On request by EPA the records required in paragraphs (a), (b) and (c) of this section shall be provided to the Administrator's authorized representative. For records that are electronically generated or maintained the equipment and software necessary to read the records shall be made available, or upon approval by EPA, electronic records shall be converted to paper documents which

shall be provided to the Administrator's authorized representative.

§ 80.990 What are the toxics reporting requirements?

Beginning with the 2002 averaging period, and continuing for each averaging period thereafter, any refiner or importer shall submit to EPA the information required in this section, and such other information as EPA may require.

(a) *Refiner and importer annual reports.* Any refiner, for each of its refineries and/or aggregate(s) of refineries, and any importer for the gasoline it imports, shall:

(1) Include in its reformulated gasoline toxics emissions performance averaging report per § 80.75(e) the compliance baseline and incremental volume, V_{inc} , for its reformulated gasoline and RBOB, combined, per § 80.850.

(2) Include in its conventional gasoline report per § 80.105 the compliance baseline and incremental volume, V_{inc} , for its conventional gasoline per § 80.850.

(3) Exclude Certified Toxics-FRGAS under § 80.1030, if an importer.

(b) *Additional reporting requirements for importers.* Any importer shall report the following information for Toxics-FRGAS imported during the averaging period:

(1) The EPA refiner and refinery registration numbers of each foreign refiner and refinery where the Certified Toxics-FRGAS was produced; and

(2) The total gallons of Certified Toxics-FRGAS and Non-Certified Toxics-FRGAS imported from each foreign refiner and refinery.

Exemptions

§ 80.995 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner or importer and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner or importer, for a brief period, to not meet the requirements of this subpart, separately for reformulated gasoline (and RBOB, combined) and conventional gasoline, provided the refiner or importer meets all the criteria, requirements and conditions contained in § 80.73 (a) through (e).

§ 80.1000 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

Gasoline used for research, development or testing purposes is exempt from the requirements of this subpart if it is exempted for these purposes under the reformulated and conventional gasoline programs, as applicable.

Violation Provisions

§ 80.1005 What acts are prohibited under the gasoline toxics program?

No person shall:

(a) *Averaging violation.* Produce or import gasoline subject to this subpart that does not comply with the applicable toxics requirement under § 80.815.

(b) *Causing an averaging use violation.* Cause another person to commit an act in violation of paragraph (a) of this section.

§ 80.1010 [Reserved]

§ 80.1015 Who is liable for violations under the gasoline toxics program?

(a) *Persons liable for violations of prohibited acts—*(1) *Averaging violation.* Any person who violates § 80.1005(a) is liable for the violation.

(2) *Causing an averaging violation.* Any person who causes another party to violate § 80.1005(a), is liable for a violation of § 80.1005(b).

(3) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(b) *Persons liable for failure to meet other provisions of this subpart.* (1) Any person who fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any person who causes another party to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

§ 80.1020 [Reserved]

§ 80.1025 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.1015 is subject to civil penalties as specified in sections 205 and 211(d) of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.1015(a) for a violation of the applicable toxics requirements or causing another party to violate the

requirements during any averaging period, is subject to a separate day of violation for each and every day in the averaging period.

(c) Any person liable under § 80.1015(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

Provisions for Foreign Refiners With Individual Toxics Baselines

§ 80.1030 What are the requirements for gasoline produced at foreign refineries having individual refiner toxics baselines?

(a) *Definitions.* (1) A *foreign refinery* is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as "the United States").

(2) A *foreign refiner* is a person who meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) *Toxics-FRGAS* means gasoline produced at a foreign refinery that has been assigned an individual refinery toxics baseline under § 80.915 and that is imported into the U.S.

(4) *Non-Toxics-FRGAS* means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery toxics baseline, gasoline produced at a foreign refinery with an individual refinery toxics baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual toxics baseline during a year when the foreign refiner has opted to not participate in the Toxics-FRGAS program under paragraph (c)(3) of this section.

(5) *Certified Toxics-FRGAS* means Toxics-FRGAS the foreign refiner intends to include in the foreign refinery's toxics compliance calculations under § 80.825, and does include in these compliance calculations when reported to EPA.

(6) *Non-Certified Toxics-FRGAS* means Toxics-FRGAS that is not Certified Toxics-FRGAS.

(b) *Baseline establishment.* Any foreign refiner may submit a petition to the Administrator for an individual refinery toxics baseline pursuant to § 80.915 for all gasoline that was produced at the foreign refinery and imported into the United States between January 1, 1998 and December 31, 2000.

(1) The refiner shall follow the procedures specified in §§ 80.91 through 80.93 to establish an anti-dumping baseline, if it does not already have such a baseline.

(2) In making determinations for foreign refinery baselines, EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such determinations.

(3)(i) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate toxics baseline, and the refiner fails to cure this defect after a request for more information, EPA will not assign an individual refinery toxics baseline.

(ii) If a foreign refiner does not already have an anti-dumping individual baseline per § 80.94, and if pursuant to § 80.94(b)(5) EPA does not assign an individual anti-dumping baseline, EPA will also not assign an individual refinery toxics baseline.

(c) *General requirements for foreign refiners with individual refinery toxics baselines.* A foreign refiner of a refinery that has been assigned an individual toxics baseline according to § 80.915 shall designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Toxics-FRGAS, the foreign refiner shall meet all provisions that apply to refiners under this subpart J.

(2) In the case of Non-Certified Toxics-FRGAS, the foreign refiner shall meet all the following provisions, except the foreign refiner shall use the name Non-Certified Toxics-FRGAS instead of the names "reformulated gasoline" or "RBOB" wherever they appear in the following provisions:

(i) The designation requirements in this section.

(ii) The recordkeeping requirements under § 80.985.

(iii) The reporting requirements in § 80.990 and this section.

(iv) The product transfer document requirements in this section.

(v) The prohibitions in this section and § 80.1005.

(vi) The independent audit requirements under § 80.1035, paragraph (h) of this section, §§ 80.125 through 80.127, § 80.128(a), (b), (c), (g) through (i), and § 80.130.

(3)(i) Any foreign refiner that has been assigned an individual toxics baseline for a foreign refinery under § 80.915 may elect to classify no gasoline imported into the United States as Toxics-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(ii) An election under paragraph (c)(3)(i) of this section shall:

(A) Apply to an entire calendar year averaging period, and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election shall take effect at the beginning of the next calendar year.

(4) In the case of information required under this section which would duplicate information submitted in accordance with § 80.94, the refiner may indicate that such information is also submitted in accordance with the requirements of this section. Duplicate submissions are not required.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been assigned an individual toxics baseline shall designate each batch of Toxics-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Toxics-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Toxics-FRGAS prior to its being imported into the United States, it shall include the following information as part of the product transfer document information in this section:

(i) Identification of the gasoline as Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Toxics-FRGAS was produced.

(3) On each occasion when Toxics-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a written verification for each batch of the Toxics-FRGAS that meets the following requirements:

(i) The verification shall include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Toxics-FRGAS;

(B) The identification of the gasoline as Certified Toxics-FRGAS or Non-Certified Toxics-FRGAS;

(C) The volume of Toxics-FRGAS being transported, in gallons;

(D) In the case of Certified Toxics-FRGAS:

(1) The toxics value as determined under paragraph (f) of this section; and

(2) A declaration that the Toxics-FRGAS is being included in the

compliance calculations under § 80.825 for the refinery that produced the Toxics-FRGAS.

(ii) The verification shall be made part of the product transfer documents for the Toxics-FRGAS.

(e) *Transfers of Toxics-FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as Toxics-FRGAS is imported into the United States. A foreign refiner may remove the Toxics-FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1)(i) The foreign refiner excludes:

(A) The volume of gasoline from the refinery's compliance calculations under § 80.825; and

(B) In the case of Certified Toxics-FRGAS, the volume and toxics value of the gasoline from the compliance calculations under § 80.825.

(ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the toxics value and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion Toxics-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of Toxics-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the Toxics-FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion Certified Toxics-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Collect a representative sample of the Certified Toxics-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine

the value for toxics using the methodology specified in § 80.730 by:

- (A) The third party analyzing the sample; or
- (B) The third party observing the foreign refiner analyze the sample;
- (iii) Review original documents that reflect movement and storage of the Certified Toxics-FRGAS from the refinery to the load port, and from this review determine:
 - (A) The refinery at which the Toxics-FRGAS was produced; and
 - (B) That the Toxics-FRGAS remained segregated from:
 - (1) Non-Toxics-FRGAS and Non-Certified Toxics-FRGAS; and
 - (2) Other Certified Toxics-FRGAS produced at a different refinery.
 - (3) The independent third party shall submit a report:
 - (i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and
 - (ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.
 - (4) The independent third party shall:
 - (i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);
 - (ii) Be independent under the criteria specified in § 80.65(e)(2)(iii); and
 - (iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).
 - (g) *Comparison of load port and port of entry testing.* (1)(i) Except as described in paragraph (g)(1)(ii) of this section, any foreign refiner and any United States importer of Certified Toxics-FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the toxics value.
 - (ii) Where a vessel transporting Certified Toxics-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of

paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner, that meets the requirements of paragraph (s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of this paragraph (g)(2) apply if:

(A) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(B) The toxics value determined at the port of entry is higher than the toxics value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM).

(ii) The United States importer and the foreign refiner shall treat the gasoline as Non-Certified Toxics-FRGAS, and the foreign refiner shall exclude the gasoline volume and properties from its gasoline toxics compliance calculations under § 80.825.

(h) *Attest requirements.* The following additional procedures shall be carried out by any foreign refiner of Toxics-FRGAS as part of the applicable attest engagement for each foreign refinery under § 80.1035:

(1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) shall include Non-Toxics-FRGAS in addition to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Toxics-FRGAS, and of Non-Certified Toxics-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Toxics-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Toxics-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under

paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Toxics-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Toxics-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Toxics-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Toxics-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the Certified Toxics-FRGAS was mixed with any Non-Certified Toxics-FRGAS, Non-Toxics-FRGAS, or any Certified Toxics-FRGAS produced at a different refinery.

(5) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified and Non-Certified Toxics-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel.

(ii) Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Toxics-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under this paragraph (h)(6) where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general

circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§ 80.125 through 80.130, § 80.1035 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery toxics baseline.

(1) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Toxics-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and toxics value, and transfers of title or custody, of any gasoline or blendstocks, whether Toxics-FRGAS or Non-toxics-FRGAS,

produced at the foreign refinery during the period January 1, 1998 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The volume and toxics value of Toxics-FRGAS;

(C) The proper classification of gasoline as being Toxics-FRGAS or as not being Toxics-FRGAS, or as Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS;

(D) Transfers of title or custody to Toxics-FRGAS;

(E) Sampling and testing of Toxics-FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.1035 including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia will be named, and service on this agent constitutes service on and personal and subject matter jurisdiction in the United States over the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart J.

(3) A foreign refiner shall be subject to civil liability for violations of this section, sections 114, 202(l), 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7521(l), 7545 and 7601(a)), and all other applicable laws or regulations and shall be subject to the provisions thereof. The Administrator may assess a penalty against a foreign refiner for any violation of this section by a foreign refiner, in the manner set forth in sections 205(c) of the CAA, 42 U.S.C. 7524(c) or commence a civil action against a foreign refiner to assess and recover a civil penalty in the manner set forth in section 205(b) of the CAA, 42 U.S.C. 7524(b). A FR shall be

subject to criminal liability for violations of this section, section 113(c)(2) of the CAA, 42 U.S.C. 7413(c)(2), 18 U.S.C. 1001 and all other applicable provisions and shall be subject to the provisions thereof.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery toxics baseline, producing and exporting gasoline under an individual refinery toxics baseline, and all other actions to comply with the requirements of this subpart J relating to the establishment and use of an individual refinery toxics baseline constitute actions or activities that satisfy the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart J, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(6) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where Toxics-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Toxics-FRGAS to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's baseline petition.

(j) *Sovereign immunity.* By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery toxics baseline under this section, the foreign refiner, its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with

respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart J, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(k) *Bond posting.* Any foreign refiner shall meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery toxics baseline.

(1) The foreign refiner shall annually post a bond of the amount calculated using the following equation:

$$\text{Bond} = G \times \$ 0.01 - \text{Bond}_{\text{CG}}$$

Where:

Bond = amount of the bond in U. S. dollars.

G = the largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the five preceding calendar years.

Bond_{CG} = amount of bond currently posted by the refinery pursuant to § 80.94.

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) shall:

(i) Be used to satisfy any judicial or administrative judgment, order, assessment or payment under a judicial or administrative settlement agreement that results from an administrative or judicial enforcement action for conduct in violation of this subpart J, including where such conduct violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2);

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds"; and

(iii) Include a commitment that the bond will remain in effect for at least five (5) years following the end of latest averaging period that the foreign refiner produces gasoline pursuant to the requirements of this subpart J.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment or other obligation, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

(6) The bond is used for payment of, not in lieu of, any obligation arising under any judgment, order, assessment or settlement agreement. Nothing herein is intended to waive any portion of any obligation except what portion is actually paid by use of funds from the bond.

(l) [Reserved]

(m) *English language reports.* Any report or other document submitted to EPA by a foreign refiner shall be in English language, or shall include an English language translation.

(n) *Prohibitions.* (1) No person may combine Certified Toxics-FRGAS with any Non-Certified Toxics-FRGAS or Non-Toxics-FRGAS, and no person may combine Certified Toxics-FRGAS with any Certified Toxics-FRGAS produced at a different refinery, until the importer has met all the requirements of paragraph (o) of this section, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer shall meet the following requirements:

(1) Each batch of imported gasoline shall be classified by the importer as being Toxics-FRGAS or as Non-Toxics-FRGAS, and each batch classified as Toxics-FRGAS shall be further classified as Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS.

(2) Gasoline shall be classified as Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Toxics-

FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Toxics-FRGAS, any United States importer shall perform the following procedures:

(i) In the case of both Certified and Non-Certified Toxics-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Toxics-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Toxics-FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the Toxics-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Toxics-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the toxics value using the methodologies specified in § 80.730, by:

(1) The third party analyzing the sample; or

(2) The third party observing the importer analyze the sample.

(4) Any importer shall submit reports within thirty days following the date any vessel transporting Toxics-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5) Any United States importer shall meet the requirements specified in § 80.815 for any imported gasoline that is not classified as Certified Toxics-FRGAS under paragraph (o)(2) of this section.

(p) *Truck Imports of Certified Toxics-FRGAS produced at a Refinery* (1) Any refiner whose Certified Toxics-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the following requirements:

(i) Certification under paragraph (d)(5) of this section;

(ii) Load port and port of entry sampling and testing under paragraphs (f) and (g) of this section;

(iii) Attest under paragraph (h) of this section; and

(iv) Importer testing under paragraph (o)(3) of this section.

(2) These alternative procedures shall ensure Certified Toxics-FRGAS remains segregated from Non-Certified Toxics-FRGAS and from Non-Toxics-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

(i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Toxics-FRGAS from that refinery from all other gasoline;

(ii) Contracts with any terminals and/or pipelines that receive and/or transport Certified Toxics-FRGAS, that prohibit the commingling of Certified Toxics-FRGAS with any of the following:

(A) Other Certified Toxics-FRGAS from other refineries.

(B) All Non-Certified Toxics-FRGAS.

(C) All Non-Toxics-FRGAS;

(iii) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Toxics-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States;

(iv) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Toxics-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(3) The petition required by this section shall be submitted to EPA along with the application for small refiner status and individual refinery toxics baseline and standards under § 80.240 and this section.

(q) *Withdrawal or suspension of a foreign refinery's baseline.* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart J; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) *Early use of a foreign refinery baseline.* (1) A foreign refiner may begin

using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, ab initio, using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting violation of the gasoline toxics requirements.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under § 80.915, any alternative procedures under paragraph (r) of this section, any report or other submission required by paragraph (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) of this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) That I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR Part 80, subpart J, and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken

reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand the provisions of 40 CFR Part 80, subpart J, including 40 CFR 80.1030 [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000, and/or imprisonment for up to five years.

Attest Engagements

§ 80.1035 What are the attest engagement requirements for gasoline toxics compliance applicable to refiners and importers?

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, and § 80.1030, the attest engagements for refiners and importers applicable to this subpart J shall include the following procedures and requirements each year, which should be applied separately to reformulated gasoline (and RBOB, combined) and conventional gasoline:

(a) Obtain the EPA toxics baseline approval letter for the refinery to determine the refinery's applicable baseline toxics value and baseline toxics volume under § 80.915.

(b) Obtain a written representation from the company representative stating the toxics value(s) that the company used as its baseline(s) and agree that number to paragraph (a) of this section.

(c) Obtain and read a copy of the refinery's or importer's annual toxics reports per §§ 1A80.75(e) and 80.105 filed with EPA for the year to determine the compliance baseline and incremental volume.

(d) Agree the yearly volume of gasoline reported to EPA in the toxics reports with the inventory reconciliation analysis under § 80.128.

(e) Calculate the annual average toxics value level for each type of gasoline specified at § 80.815(b) and agree the applicable values with the values reported to EPA.

(f) Calculate the difference between the yearly volume of gasoline reported to EPA and the baseline volume, if applicable, to determine the yearly incremental volume and agree that value with the value reported to EPA.

(g) Calculate the compliance baseline per § 80.850, and agree that value with the value reported to EPA.

§ 80.1040 [Reserved]

Additional Rulemaking

§ 80.1045 What additional rulemaking will EPA conduct?

No later than July 1, 2003, the Administrator shall propose any

requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels that the Administrator determines are appropriate pursuant to section 202(l)(2) of the Act. The Administrator will take final action on such proposal no later than July 1, 2004. During this rulemaking, EPA also intends to evaluate emissions and potential

strategies relating to hazardous air pollutants from nonroad engines and vehicles.

**PART 86—CONTROL OF EMISSIONS
FROM NEW AND IN-USE HIGHWAY
VEHICLES AND ENGINES**

1. The authority citation for part 86 is revised to read as follows:

Authority: 42 U.S.C. 7401–7521(l) and 7521(m)–7671q.

[FR Doc. 01–37 Filed 3–28–01; 8:45 am]

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Federal Register

**Thursday,
March 29, 2001**

Part III

Department of Housing and Urban Development

24 CFR Part 990

**Allocation of Operating Subsidies Under
the Operating Fund Formula; Final Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**
24 CFR Part 990
[Docket No. FR-4425-I-12]
RIN 2577-AB88
**Allocation of Operating Subsidies
Under the Operating Fund Formula**

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements an interim Operating Fund Formula for determining the payment of operating subsidies to public housing agencies (PHAs). The interim rule follows publication of a July 10, 2000 proposed rule, and takes into consideration the public comments received on the proposed rule. As required by statute, the July 10, 2000 proposed rule was developed through negotiated rulemaking procedures. The policies and procedures described in the interim rule will govern the determination of funding distributions to PHAs under the Operating Fund until a final rule, reflecting the results of a Congressionally requested public housing cost study, is developed and published.

DATES: *Effective Date:* April 30, 2001.
Comments Due Date: May 29, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Room 10276, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Steve Sprague, Funding and Financial Management Division, Office of Public and Indian Housing, Room 4216, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708-1872 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:
**I. Background—The July 10, 2000
Proposed Rule**

On July 10, 2000 (65 FR 42488), HUD published for public comment a proposed rule to implement an Operating Fund Formula for determining the payment of operating subsidies to public housing agencies (PHAs). As required by statute, the July 10, 2000 proposed rule was developed through negotiated rulemaking procedures. The proposed rule was the first stage in the rulemaking process that will establish a final Operating Fund Formula.

HUD currently uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to PHAs. HUD's regulations implementing the PFS can be found at 24 CFR part 990. On October 21, 1998, the Congress enacted the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276) (QHWRA). Section 519 of QHWRA establishes an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. Further, section 519 requires that the assistance to be made available from that fund be determined using a formula developed through negotiated rulemaking procedures as set forth in subchapter III of chapter 5 of title 5, United States Code, commonly referred to as the Negotiated Rulemaking Act of 1990.

On March 16, 1999 (64 FR 12920), HUD published a notice announcing the establishment of its Negotiated Rulemaking Committee on Operating Fund Allocation (the "Committee"). The Committee membership included representatives of PHAs; the three national organizations representing PHAs—PHADA, CLPHA, and NAHRO; resident organizations; low-income housing groups; and HUD. Additionally, two representatives from the Federal Mediation and Conciliation Service served as facilitators.

The July 10, 2000 proposed rule was the product of the Committee's successful negotiations, and reflected the consensus decisions reached over nearly a year's worth of deliberations. The proposed rule thus represented a partnership among HUD, the PHAs, public housing residents, and advocates of public housing.

The July 10, 2000 proposed rule set forth several important modifications to the existing PFS regulations. These modifications were designed to address, to the extent feasible under data available to the public, several specific proposals considered important by

members of the Committee. The proposed rule also contained several clarifying and technical changes to the PFS regulations and to remove several obsolete provisions.

The most significant changes to the current PFS regulations that were contained in the July 10, 2000 proposed rule are described below. The July 10, 2000 rule proposed to:

1. Modify the method by which "small PHAs" are funded in order to assure an adequate minimum level funding, based on nationally averaged operating costs for multifamily housing projects insured by the Federal Housing Administration (FHA), adjusted for unit size differences and locational cost differences;

2. Implement statutory changes permitting PHAs to retain certain rental and non-rental income without offset against operating subsidy;

3. Retain the current method of estimating utility expenses, require that the comparison of actual and estimated utility costs be reported to HUD within 45 days after the end of the fiscal year, but then have the PHA incorporate the adjustment into the operating subsidy calculation for the second, rather than the first PHA fiscal year following the year being adjusted;

4. In order to encourage energy efficiency, replace the current 50-50 split of savings or increase in cost due to changes in utilities consumption to a 75-25 split between PHAs and HUD, respectively;

5. Require each PHA to include in its operating subsidy calculation, \$25 per occupied unit per year for resident participation activities as an add on expense component for subsidy eligibility; and

6. Include flood insurance costs in the computation of the Allowable Expense Level (AEL) by permitting a one-time permanent adjustment to reflect this cost.

The preamble to the July 10, 2000 proposed rule provides additional details regarding the proposed amendments to 24 CFR part 990.

**II. This Interim Rule; Development of
Final Rule**

This interim rule makes effective the policies and procedures contained in the July 10, 2000 proposed rule, and takes into consideration the public comments received on the proposed rule. This interim rule will govern the determination of funding distributions to PHAs under the Operating Fund until a final rule, reflecting the results of a Congressionally requested public housing cost study, is developed and published.

Following and based upon the findings and recommendations of the completed cost study and QHWRA, HUD will develop the final rule implementing the Operating Fund Formula, using the procedures of the Negotiated Rulemaking Act of 1990, subject to compliance with applicable legal requirements prerequisite to the establishment of a negotiated rulemaking committee for such purpose.

III. The Operating Cost Study

The Conference Report to the FY 2000 HUD Appropriations Act (Public Law 106-74, approved October 20, 1999) states, in part, that “* * * before a proposed rule is published in the **Federal Register**, the conferees direct HUD to contract with the Harvard University Graduate School of Design to conduct a study of the cost incurred in operating well-run public housing and provide the results to the negotiated rulemaking committee and the appropriate congressional committees * * *.” (Congressional Record of October 13, 1999, H10007).

HUD has entered into a cooperative agreement with Harvard University. The research design for the study is under development. HUD has directed Harvard University, as the cost study contractor, to provide public opportunities (such as periodic forums, status reports, and other means) for interested persons and organizations to be informed of the study's research design, methodologies, and progress, and to provide input and feedback for consideration in the development of the study. Harvard University will also consult with interested individuals and organizations in developing the cost study findings and recommendations. In addition, Harvard University will receive and consider the public comments on the July 10, 2000 proposed rule as part of its work on the cost study.

IV. Differences Between This Interim Rule and the July 10, 2000 Proposed Rule

The differences between this interim rule and the July 10, 2000 proposed rule are described below. HUD has made three non-substantive changes to the proposed rule for purposes of clarity and to remove an obsolete reference. The proposed rule represented the consensus decisions reached by the members of the Negotiated Rulemaking Committee, including current residents of public housing, individual PHAs, national PHA associations, and a number of public interest groups. Further, this interim rule is a temporary regulatory measure until completion of

the Congressionally mandated cost study and subsequent publication of the final rule. Accordingly, HUD believes it would not be appropriate to make substantive revisions to the proposed rule at this interim rule stage.

HUD is deferring consideration of major modifications to the policies and procedures contained in the proposed rule until completion of the cost study. Harvard University will receive and consider the public comments on the proposed rule during development of the public housing operating cost study. The cost study will form the basis of HUD's final rule implementing the Operating Fund. The suggestions made by the commenters will be reevaluated at the final rule stage (along with the public comments submitted on this interim rule), and may be reflected in the substance of the final rule.

The changes made by this interim rule are as follows:

1. *Removal of obsolete reference to the Turnkey IV program (§ 990.103(c)).* The interim rule revises § 990.103(c) (which lists several HUD programs to which the Operating Fund does not apply) to remove an obsolete reference to the Turnkey IV program.

2. *Clarification of applicability of Operating Fund Formula to non-PFS PHAs (§ 990.103(d)(2)).* This interim rule revises § 990.103(d)(2) to clarify the applicability of the Operating Fund Formula to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska (the “non-PFS PHAs”). Section 990.103(d)(1) lists the provisions of the 24 CFR part 990 that apply to these PHAs. Section 990.103(d)(2) states that, otherwise, the Operating Fund Formula is not applicable to the non-PFS PHAs. This interim rule clarifies that the provisions of 24 CFR part 990 apply to the non-PFS PHAs, to the extent required to give full effect to the provisions identified in § 990.103(d)(1).

3. *Correction of typographical error regarding PHA retention of increased rental revenue (§ 990.109(b)(1)(iii)).* In response to public comment, this interim rule corrects a typographical error at § 990.109(b)(1)(iii), which states the method for calculating increases in rental revenue. The correction is necessary to clarify that PHAs may retain 50 percent of increased rental revenue.

V. Discussion of the Public Comments Received on the July 10, 2000 Proposed Rule

The public comment period for the July 10, 2000 proposed rule closed on August 9, 2000. By close of business on this date, HUD had received 19 public

comments. Comments were submitted by PHAs; the three main organizations representing PHAs—PHADA, CLPHA, and NAHRO; resident organizations, advocates for low-income housing, other housing experts; and other organizations and individuals.

This section of the preamble presents a summary of the significant issues raised by the public commenters, and HUD's responses to the comments. The summary of comments that follows presents the major issues and questions raised by the commenters. The underlined headings present the issue or question, and are followed by a brief description of the commenter's reasoning and HUD's response to the comments.

A. Comments Regarding the FHA-Based AEL (FHAEL) Adjustments for Small PHAs (§ 990.105(e))

The July 10, 2000 proposed rule would modify the method by which “small PHAs” are funded in order to assure an adequate minimum level funding based on nationally averaged operating costs for multifamily housing projects insured by the Federal Housing Administration (FHA), adjusted for unit size differences and locational cost differences. Small PHAs with under 250 units would use the higher of their current Allowable Expense level (AEL) or 85% of the FHA-Based AEL (referred to as the FHAEL). AELs for small PHAs with 250–500 units would be set at the higher of the small PHA's current AEL or 70% of the FHAEL. The cost of these increases would be achieved by reducing the AELs of PHAs with more than 500 units. The July 10, 2000 proposed rule would provide an exception to this determination for small PHAs with AELs that are greater than 120% of the FHAEL, in which case the small PHAs would use an AEL equivalent to 120% of the FHAEL.

Comment: Support for FHAEL adjustments. One commenter supported the proposed FHAEL adjustment for small PHAs. The commenter wrote that these adjustments will help small PHAs to make up for backlogged maintenance, deal with the need for improvements in computer automation, and perhaps hire more staff to administer to the needs of their residents. The commenter, however, also wrote that many PHAs—small and large alike—will not receive adequate funding under the proposed rule. “This is another reason why the rule must be temporary; housing authorities should not be expected to perform their mission with a level of funding that no other housing provider (such as FHA insured providers) would expect or accept.”

HUD Response. The rule is being published as an interim rule in recognition that a study of public housing operating costs is needed before a final operating subsidy formula can be developed. HUD entered into a Cooperative Agreement with Harvard University in May 2000 for such a study.

Comment: FHAEL adjustment factor is inadequate. One commenter wrote that the proposed calculation of the FHAEL is "fair and reasonable." However, the commenter wrote that proposed FHAEL adjustments would continue the perceived inequities in funding for small PHAs. Accordingly, the commenter recommended that small PHAs with 250–500 units be permitted to use 80% of the FHAEL (rather than the proposed 70%). The commenter also suggested that all PHAs (small and large) who use less than 70% of the FHAEL should receive an additional one-time funding bonus in fiscal year 2001.

HUD Response. The commenter remarks that using FHA multifamily operating costs appears to be fair and reasonable. While the Committee agreed to use the data as a reference point for having PHAs raise or lower their AELs, however, there was no consensus that the FHA data should be treated as a standard. As noted above, this interim rule is a temporary regulatory measure until completion of a Congressionally mandated cost study and subsequent publication of a final rule. The question of what are appropriate operating costs for public housing is the subject of the cost study, which is being undertaken by Harvard University's Graduate School of Design under a Cooperative Agreement with HUD. HUD has decided to defer consideration of major revisions to the policies and procedures contained in the proposed rule until completion of the cost study. Harvard University will review the public comments on the July 10, 2000 proposed rule during the development of the cost study. The suggestions made by the commenters will be reevaluated at the final rule stage (along with the public comments received on this interim rule), and may be reflected in the substance of the final rule.

Comment: FHAEL adjustments should be made for all PHAs. One commenter recommended that, rather than limit FHAEL adjustment to small PHAs, HUD should make a one-time adjustment for all PHAs to raise their AELs to the FHAEL level.

HUD Response. HUD has not adopted the suggestion made by the commenter. As noted above, this interim rule is a temporary regulatory measure until

completion of the Congressionally mandated cost study and subsequent publication of the final rule. HUD believes it would not be appropriate to make substantive revisions to the proposed rule at this interim rule stage. Accordingly, HUD is deferring consideration of major changes to the policies and procedures contained in the proposed rule until completion of the cost study. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The suggestions made by the commenters will be reevaluated at the final rule stage (along with the public comments submitted on this interim rule), and may be reflected in the substance of the final rule.

Comment: Large PHAs should not be required to subsidize FHAEL adjustment for small PHAs. Two commenters wrote that addressing funding deficiencies for small PHAs should not result in reduced AEL levels for large PHAs. The commenters wrote that there is "incontrovertible evidence that large and medium-sized PHAs are also woefully underfunded."

HUD Response. The decision to make a one-time, permanent adjustment of 1.36% to the AELs of PHAs with 500 or more units was achieved through consensus among Committee members. When all the changes contained in the interim rule are taken into account, however, including changes in the treatment of investment, dwelling rental, and non-rental income, all but a relatively small number of medium and large PHAs are expected to receive increased subsidy support. Whether PHAs are under- or over-funded is a question that will be addressed in the public housing operating cost study being undertaken by Harvard University.

Comment: Proposed FHAEL adjustments are based on inadequate data. One commenter wrote that "FHA data have clear limitations that should be noted in any discussion of how the new AELs are calculated." According to the commenter, the FHA data used by the Committee was insufficient for the urban markets where most large PHAs operate. "These discrepancies in data speak loudly to the need to conduct a fresh study of public housing costs."

HUD Response. The Committee did recognize that there were limitations on the use of the FHA multifamily operating cost data and agreed that the data would be used as a reference point and not as a standard.

Comment: HUD should publish FHAEL data and formulas for each PHA. Three commenters suggested that

HUD should publish the data and formulas used to calculate the FHAEL for each PHA. The commenters wrote that publication of this information is necessary so that PHAs can assess the impact of the proposed FHAEL adjustments on their operations.

HUD Response. Data was presented to the Committee and later made available to the public housing community that modeled what the impact would be on individual PHAs if the changes agreed to by the Committee, including FHAEL adjustments, had been implemented in 1998. HUD will publish FHAEL factors for review and use by individual PHAs before they submit their subsidy calculations for their respective fiscal years beginning in 2001.

Comment: How can the FHAEL be made applicable in FY 2001 using FY 2000 data, when the year 2000 has not yet been completed or the necessary data compiled? One commenter posed this question.

HUD Response. AELs for a particular year are established at the start of a PHA's fiscal year and normally remain unchanged for the entire year. For calendar year 2000, the factors needed by PHAs to determine their AELs for their fiscal years beginning in 2000 (i.e., January 1, 2000, April 1, 2000, July 1, 2000, and October 1, 2000), have been available since February 2000. Under this interim rule, a PHA will compare its current HUD-approved AEL for 2000 with its FHAEL for a possible adjustment upwards or downwards depending on its size. That adjusted AEL will then become the starting AEL for its 2001 fiscal year and will be further adjusted for a local inflation factor and a factor reflecting the aging of its housing stock.

B. Comments Regarding the Treatment of Non-Rental Income—Exclusion of Investment Income and Revised Definition of Other Income (§§ 990.102, 990.109, and 990.110)

The amount of operating subsidy received by a PHA is generally calculated by determining the difference between projected expenses and projected income. Projected income is categorized as being either dwelling rental income, investment income, or "other income." The July 10, 2000 proposed rule would revise the definition of other income (for purposes of calculating subsidy) to only include income from: (1) Rents billed for dwelling units rented for non-dwelling purposes; and (2) charges to residents for excess utility consumption of PHA supplied utilities. Under the proposed definition, investment income would

not be used to determine operating subsidy eligibility.

Comment: Support for revised definition of "other income". Three commenters expressed support for these provisions. The commenters wrote that these changes begin to remove the disincentives faced by PHAs and reward activities that will ultimately benefit public housing residents and their communities.

HUD Response. The changes in the treatment of investment and other income represent the Committee's response to QHWRA's requirement that a PHA that receives income from nonrental sources be able to retain and use such amounts without any decrease in the amounts received from the Operating Fund.

Comment: Success of this provision depends on full funding for the Operating Fund Formula. One commenter cautioned that "this provision is only beneficial to the extent that HUD requests—and Congress provides—sufficient funding for the" Operating Fund Formula. The commenters urged HUD not to reduce its operating subsidy requests on the grounds that PHAs may now keep more of their investment and other income. According to the commenter, such an action would "undermine the incentives envisioned in both the rule and the underlying statute."

HUD Response. HUD recognizes the importance of adequate funding levels for operating subsidies.

C. Comments Regarding the Computation of Projected Monthly Dwelling Rental Income (§ 990.109)

The July 10, 2000 proposed rule would amend § 990.109 to revise the method for calculating projected monthly dwelling rental income. Under the proposed rule, a PHA would determine its average monthly dwelling charge for the month that is six months before the start of its budget year (the "current year average") as well as the average monthly charge for the comparable month of its two previous years. An average would be computed for these three amounts (the "three year average") and compared with the current year average. If the current year average is not higher than the three-year average, rental income has not increased and the current year average will be used to calculate projected rental income.

If the current year average is higher than the three year average, the PHA shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased revenue for the provision of resident-

related improvements and services as described in new § 990.116. The retained income will not be recognized in the PHA's calculation under the Interim Operating Fund Formula. The projected dwelling rental income for PHAs with increased rental income will be based on the three-year average plus 50% of the increase.

A change factor of 3% will then be applied. HUD intends to revise the 3% adjustment factor, for the duration of the interim rule, beginning in FY 2002, to more accurately reflect the inflationary pressure on the projection of monthly dwelling rental income. In determining such a factor for FY 2002, HUD will also take into consideration any negative impacts on incentives for PHAs to increase resident earned income, relevant and available indices of rental income inflation, historical trends in rental income changes, and the proportion and amount of increased income retained by PHAs using the rolling base method. There will be consultation with the appropriate stakeholders regarding the methodology for determining change factors to be used by HUD followed by publication of written notice and an opportunity for public comment.

Comment: Support for revised computation of projected monthly dwelling rental income. Four commenters supported the proposed changes to the computation of projected monthly dwelling rental income. The commenters wrote that the proposed revisions would prevent unusually high or low rental income years from drastically impacting projections of rental income. One of the commenters wrote that this "incentive based approach is in the spirit of [QHWRA] and supports entrepreneurial initiatives that will ultimately improve the lives of residents."

HUD Response. HUD agrees with the commenters that the dwelling rental income approach adopted by the Committee is responsive to the QHWRA provision that the formula contain an incentive to encourage a PHA to facilitate increases in earned income by families in occupancy.

Comment: This provision will not succeed unless the Operating Fund is fully funded. One commenter wrote, "this approach will not succeed unless the Operating Fund is fully funded." The commenter wrote that HUD "must accurately estimate 100% of the Operating Fund need and HUD must request an appropriation for full funding of operating subsidies." According to the commenter, HUD has consistently underestimated operating subsidy need. The commenter urged "HUD to consult

with its public housing partners in advance of the appropriations request to discuss and revise these estimates."

HUD Response. Budget forecasting is not an exact science and HUD continually tries to improve the data sources and techniques used for its projections. For example, HUD has agreed to review the current rental change factor for a possible change in FY 2002. Any changes to this factor will be done in consultation with HUD's public housing partners and will be followed by written notice and an opportunity for public comment.

Comment: PHAs should be required to certify that they have complied with the statutory earned income disregard under 42 U.S.C. 1437a(d) and HUD's implementing regulation at 24 CFR 960.255. Two commenters wrote that the proposed provision allowing PHAs to retain 50% of increased rental revenues may unintentionally create a disincentive for PHAs to implement the statutory earned income disregard. PHAs that comply with the required disregard will have lower dwelling rental income than if they count all resident earnings in determining rental income. The commenters suggested that PHAs should be required to certify that they have fully implemented the mandatory earned income disregard. One of the commenters suggested that this certification should accompany the PHA's operating budget submission to HUD. This commenter also recommended that the PHA's policy regarding the mandatory earned income disregard and the rent certification forms used by the PHA to implement the mandatory disregard should be attached to the certification. The second commenter wrote that if HUD does not have a simple administrative means to verify the validity of the PHA's certification (through MTCS data or otherwise), the PHA should be required to submit data concerning the number of families receiving the benefit of the mandatory disregard.

HUD Response. HUD does not believe that the treatment of dwelling rental income adopted by this interim rule may unintentionally create a disincentive for PHAs to implement the statutory earned income disregard. With regard to the commenters' suggestion that PHAs be required to certify that they have fully implemented the mandatory earned income disregard, HUD already requires that a PHA separately certify when submitting its Operating Budget and/or subsidy calculation that "all regulatory and statutory requirements have been met" and that "all proposed rental charges and expenditures will be consistent

with the provisions of law.” These certifications clearly encompass the requirement on a PHA to fully implement the earned income disregard. HUD has a broad range of enforcement actions from which it can draw, including withholding of assistance or ordering corrective action, in the event the certifications are violated.

Comment: The proposed retention of increased rental revenues should be designed to reward PHAs that encourage and support increased earnings for existing public housing residents—and not to encourage the recruiting of new residents with higher incomes. Five commenters wrote that the proposed rule inappropriately fails to distinguish between increased rents due to admission of higher income families and higher rent charges resulting from the increased earnings of current residents. Two of the commenters wrote that section 519(e)(2)(B) of QHWRA (entitled “Incentives to Increase Certain Rental Income”) requires the Operating Fund Formula to create an incentive for PHAs to increase the earnings of “families in occupancy” (emphasis added). According to the commenters, the proposed rule creates an inappropriate financial incentive to admit the highest income applicants. “Moreover, the formula places the incentive to increase the income of current tenants on a par with the incentive to seek out new tenants with higher income. Congress did not intend such a result.”

HUD Response. HUD believes that the dwelling rental income methodology developed by the Committee is both appropriate and responsive to the Congressional directive that the formula contain an incentive to PHAs that would facilitate increases in earned income by families in occupancy. It is appropriate because the proposal was developed using negotiated rulemaking, as required by QHWRA, and the approach represented a consensus among a broad range of interests that included current residents of public housing, individual public housing agencies, national PHA associations, and a number of public interest groups. It is responsive because the Committee decided that the benefits resulting from increased income would not be used for general low-income purposes, as permitted by the incentive, but rather would be used for the provision of resident-related improvements and services, including the funding of optional earned income exclusions. The uses must be developed with front-end resident participation and be made part of the PHA plan submission.

HUD supported and helped shape this compromise because of its relative administrative simplicity and its ability to provide resources that PHAs can use to help residents already in occupancy increase their earned incomes. Because the statute speaks specifically of an incentive to facilitate increases in earned income by families in occupancy, HUD will reexamine at the final rule stage whether there is a way to provide this incentive that is just as effective and not administratively burdensome.

Comment: Earnings of newly admitted residents should be excluded from the determination of the “current year” and “three year” averages. Related to the preceding comment, one commenter wrote that it would not be administratively difficult to narrow the retained revenue incentive to apply only to the increased earnings of existing residents. The commenter suggested that the rent paid by households admitted to the PHA’s public housing program in the “current year” should be excluded from the determination of the “current year average dwelling rental charge” under proposed § 990.109(b)(1). For a fair comparison, rents paid by newly admitted families in each year used to determine the “three year average” would also be excluded. After the initial year of admission, all rents (and therefore incomes) would be included in the PHA’s average rental charge calculations. In this way, increases in families’ income beginning in the year after they are admitted to public housing would be captured to determine whether a PHA’s average rental revenue has increased and the amount of revenue the PHA is permitted to retain.

HUD Response. HUD has not adopted the suggestion made by the commenter. As noted above, this interim rule is a temporary regulatory measure until completion of the Congressionally mandated cost study and publication of the final rule. HUD has decided to defer consideration of major changes to the policies and procedures contained in the proposed rule until completion of the cost study. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The suggestion made by the commenter will be reevaluated at the final rule stage, and may be reflected in the substance of the final rule.

Comment: The interim rule should establish a base amount of income for every tenant and only allow the PHA to retain increases in income if the tenant’s income increases above the base. One commenter made this suggestion to

narrow the scope of the retained rental revenue incentive. The commenter wrote that PHAs must already calculate every tenant’s income and report that income to HUD as part of the MTCS. The commenter suggested that the base for all current residents should be established on the effective date of the interim rule. The base for all new tenants would be determined on their date of admission to public housing. If a tenant’s income increases above the base, PHAs would be allowed to retain 50% of the increased rental revenue. The commenter also suggested that a family’s base be adjusted due to changes in family composition.

HUD Response. HUD has not adopted the suggestion made by the commenter. As noted, HUD does not believe it would be appropriate to make substantive revisions to the proposed rule at this interim rule stage. HUD is deferring consideration of major changes to the policies and procedures contained in the proposed rule until completion of the operating cost study. The study will form the basis for HUD’s final rule implementing the Operating Fund Formula. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The suggestion made by the commenter will be reevaluated at the final rule stage, and may be reflected in the substance of the final rule.

Comment: Suggested correction of typographical error. Paragraph (b)(1)(iii) of § 990.109 prescribes the method for calculating the amount of increased rental revenue that may be retained. This paragraph provides that the “annual amount of increased revenue retained by the PHA is calculated by subtracting the three year average from the current year average and multiplying the result by the projected occupancy percentage * * * and the unit months available * * *.” One commenter suggested that the phrase “50 percent of” should be inserted following the word “multiplied” in order to clarify that PHAs may retain 50 percent of increased rental revenue.

HUD Response. HUD agrees with the commenter that the suggested change would improve the clarity of the rule. This interim rule contains the corrected language.

Comment: Opposition to 3% adjustment factor. Four commenters questioned the continued use of the 3% adjustment factor. One of the commenters wrote that HUD should not assume that rental income would increase in the new budget year. According to the commenter, this is a false assumption that simply lowers the

amount of operating subsidy provided to a PHA. The commenters were appreciative of HUD's agreement to revise the factor to more accurately reflect the projection of monthly dwelling rental income in FY 2002 and beyond.

HUD Response. As noted above, HUD has agreed to review the current rental change factor for a possible change in FY 2002. Any changes to this factor will be done in consultation with HUD's public housing partners and will be followed by written notice and an opportunity for public comment.

D. Comments Regarding the Use of Increases in Dwelling Rental Income (§ 990.116)

The July 10, 2000 proposed rule would replace the current § 990.116 (which concerns three year incentive adjustments) with a new section concerning the eligible uses of increases in dwelling rental income, as calculated under § 990.109. A PHA would be required to describe the uses of the retained income in the PHA's Plan submissions under 24 CFR part 903. PHAs would also be required to develop the uses for the retained income with front-end resident participation and ongoing input. The July 10, 2000 proposed rule provides several examples of eligible uses for the retained income, including, but not limited to: physical and management improvements that benefit residents; resident self-sufficiency services; maintenance operations; resident employment and training services; resident safety and security improvements and services; and optional earned income exclusions.

Comment: PHAs should be required to use at least 20% of retained rental income for resident services and resident councils. One commenter made this suggestion.

HUD Response. HUD has not adopted the suggestion made by this commenter. HUD has decided to defer consideration of major changes to the proposed rule until completion of the operating cost study and development of the final rule. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The commenter's suggestion will be reevaluated at the final rule stage, and may be reflected in the substance of the final rule.

Comment: Retained income provisions will impose an undue administrative burden. One commenter supported the use of retained rental revenues for resident-related improvements and services. However, the commenter was concerned about the monitoring and tracking of expenditures

from the retained income. The commenter wrote that both HUD funding and retained income are currently placed in the PHA's general operating fund, and funds are used for approved budget items. The commenter wrote that separating retained income from the general operating fund would create excessive account handling and recordkeeping burdens.

HUD Response. HUD agrees that separating, tracking, and monitoring the expenditures of the retained dwelling income would create excessive accounting and recordkeeping burdens. Neither the July 10, 2000 proposed rule, nor this interim rule, would require the PHA to separately account for, monitor, track, or report on the retained income beyond the requirement to identify the proposed uses of the estimated amount of retained income in the Annual Plan.

E. Comments Regarding Utility Adjustments (§§ 990.107 and 990.110)

The July 10, 2000 proposed rule would retain the current method of estimating utility expenses. In addition, the proposed rule would also continue to require that the comparison of actual and estimated utility costs be reported to HUD within 45 days after the end of the fiscal year, but would then have the PHA incorporate the adjustment into the operating subsidy calculation for the second (rather than the first PHA fiscal year following the year being adjusted). Further, in order to encourage energy efficiency, the July 10, 2000 proposed rule would replace the current 50–50 split of savings or increases in cost due to changes in utilities consumption to a 75–25 split between PHAs and HUD, respectively.

Comment: Support for changes in utility calculations. Two commenters expressed support for the proposed changes to the utility calculations. The commenters wrote that the proposed rule would encourage PHAs to conserve energy. One of the commenters also wrote that the proposed rule is “balanced in its approach in that risks associated with increased utility costs will continue to be absorbed by HUD while, in return, any savings will accrue to HUD.”

HUD Response. HUD agrees the changes will encourage PHAs to conserve energy.

Comment: Required conforming change to utility rate provisions of § 990.107. Two commenters noted that § 990.107(b)(2) continues to provide that if a PHA takes certain actions to reduce utility rates, it “may be permitted to retain one-half the annual cost savings” (emphasis added). The commenters suggested that the word “may” should be revised to

“shall,” in order to conform to the utility adjustment provisions of § 990.110.

HUD Response. HUD has not adopted the suggested change. As noted, HUD has decided to defer consideration of major changes to the proposed rule until completion of the cost study and development of the final rule. The recommendation made by the commenter will be reevaluated at the final rule stage.

Comment: Interim rule should provide clarification and/or examples of allowable energy conservation strategies. One commenter agreed that energy cost reduction and energy conservation efforts should be included in the Annual and Five-Year Plans, but would like clarification and/or examples of allowable energy conservation strategies.

HUD Response. One source of the guidance requested by the commenter is provided in HUD's 1998 publication, “Energy Conservation for Housing—A Workbook,” which is available by calling the HUD Public and Indian Housing (PIH) Information and Resource Center at 1–800–955–2232. Another source is the 1992 joint HUD/U.S. Department of Energy publication, “Energy Performance Contracting for Public and Indian Housing: A Guide for Participants” available from the HUD user web site at <http://huduser.org:80/publications/hsgfin/energy.html>.

Comment: A percentage of any utility savings realized by the PHA should be used for the provision of resident services. Two commenters made this suggestion.

HUD Response. HUD has not adopted the changes recommended by the commenters. As noted, HUD has decided to defer consideration of major changes to the proposed rule until completion of the cost study and development of the final rule. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The suggested changes will be reevaluated at the final rule stage, and may be reflected in the substance of the final rule.

Comment: “Conversion to a less costly utility source” should be added to the examples of utility rate reductions eligible for the utility rate reduction incentive at § 990.110(b)(1). One commenter made this suggestion.

HUD Response. HUD has not adopted the change recommended by the commenter. As noted, HUD has decided to defer consideration of major changes to the proposed rule until completion of the cost study and development of the

final rule. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The suggestion made by the commenter will be reevaluated at the final rule stage.

F. Comments Regarding Resident Participation (§ 990.108(e))

The July 10, 2000 proposed rule would make several amendments designed to promote resident participation in the operation of public housing. Specifically, the proposed rule would require each PHA to include, in its operating subsidy eligibility calculation, \$25 per occupied unit per year for resident participation activities. These activities include (but are not limited to) those described in 24 CFR part 964. The proposed rule would also authorize HUD to approve the use of vacant rental units for resident participation purposes and allow PHAs to receive subsidy support for those units.

Comment: Support for proposed annual \$25 allocation for occupied units. Four commenters supported the proposed annual \$25 allocation for occupied units. According to the commenters, this provision sends a strong message that HUD and PHAs are committed to meaningful resident participation. The commenters wrote that the proposed allocation would remove uncertainty about funding and enable resident organizations to fully participate in PHA policy decision affecting their homes.

HUD Response. HUD agrees that this change, along with other changes brought about by QHwRA (such as requiring that PHAs, with certain exceptions, include a resident on their governing board), underscores the importance of resident participation to the success of public housing.

Comment: The proposed \$25 allocation may be inadequate. One commenter expressed concern that the proposed allocation “will not adequately fund those initiatives that are most important to * * * residents.” According to the commenter, PHAs “may have to choose between income exclusions and maintenance or economic development programs.”

HUD Response. The \$25 is for funding of resident participation activities and not for income exclusions and maintenance or economic development programs. Income retained by PHAs as a result of increases in dwelling rental income may be a source of funds for income exclusions and maintenance or economic development programs.

Comment: The interim rule should clarify that the \$25 allocation for

occupied unit is an “add-on” cost to the AEL. Five commenters wrote that the interim rule should clarify that the \$25 allocation is calculated as an “add-on” cost to the PHA’s AEL.

HUD Response. This interim rule (as did the July 10, 2000 proposed rule) includes the \$25 per occupied unit as one of several “other costs” for which the PHA may receive additional subsidy eligibility. HUD believes that the interim rule language makes clear that the \$25 allocation is a calculation separate from the AEL and that the total subsidy eligibility for a PHA is the sum of all the component parts of the interim formula.

Comment: The interim rule should provide that the annual \$25 allocation is meant to supplement any resources currently being invested by the PHA in resident participation activities, and is not meant to be in lieu of such resources. Three commenters made this suggestion.

HUD Response. HUD has not adopted the changes suggested by the commenters. HUD has decided to defer consideration of substantive changes to the proposed rule until completion of the operating cost study and development of the final rule. However, HUD urges PHAs not to reduce any support now being made for resident participation activities. Furthermore, Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The suggested change will be reevaluated at the final rule stage, and may be reflected in the substance of the final rule.

Comment: The interim rule should clarify that the annual \$25 allocation must be used for resident participation activities and not resident services. Two commenters wrote that while proposed § 990.108(e) specifies that the \$25 allocation is for resident participation activities, it also indicates that these activities would include those identified in 24 CFR part 964. The commenters wrote that part 964 uses the terms “resident participation” and “resident services” interchangeably. The commenters suggested that the interim rule should clarify that the funds must be used for resident participation activities and not for resident services.

HUD Response. The language of the July 10, 2000 proposed rule and this interim rule make clear that the \$25 is for funding of resident participation activities.

Comment: Interim rule should describe the formula for pro-rating funding for resident participation activities. Proposed § 990.108(e) provides that if “in any fiscal year

appropriations are not sufficient to meet all funding requirements under (part 990), the \$25 will be subject to pro-ration.” One commenter wrote that the interim rule should clarify that funding for resident participation activities will be prorated in proportion to the percentage of funding PHAs receive to meet their AEL. The commenter also suggested that the interim rule provide an example illustrating the operation of the pro-ration formula.

HUD Response. The pro-rating will be of the PHA’s total subsidy eligibility. HUD will provide examples of how pro-rating will impact the amount of subsidy support received for resident participation activities in separate guidance material that will be issued to PHAs.

Comment: The interim rule should require PHAs to reflect both the calculation and allocation of the \$25 requirement as a separate line item in all relevant budget documents. The commenter also suggested that the calculation and allocation should be reflected on a development-by-development level.

HUD Response. The forms to be used by PHAs to reflect the calculation of subsidy eligibility will include a separate calculation of the resident participation funding. The commenter’s suggestion that the documents also reflect the allocation of the \$25 is outside the scope of this interim rule. The Committee reached a consensus that this interim rule itself would not specify what constitutes eligible resident participation activities or how the funds received by a PHA should be allocated to the PHA and/or the resident organizations. Instead, the Committee agreed that such issues should more appropriately be considered as part of future revisions to HUD’s resident participation regulations at 24 CFR part 964.

Comment: The interim rule should provide greater specificity regarding the eligible uses and apportionment of the \$25 allocation. Several commenters recommended that the interim rule should establish regulatory procedures governing the eligible uses and apportionment of the \$25 resident participation allocation. For example, three commenters suggested that the interim rule should specify that the \$25 allocation must be provided to the duly elected resident council or the jurisdiction-wide resident council (if one exists). Other commenters suggested that PHAs should be required to describe in their Annual Plan the method they will use to transfer the funding to the resident organization.

HUD Response. As noted above, suggested revisions regarding the eligible uses and apportionment of the \$25 resident participation allocation are outside the scope of this rulemaking. The Committee agreed that such issues should more appropriately be considered as part of future revisions to HUD's resident participation regulations (24 CFR part 964).

G. Comments Regarding the Use of Vacant Units for Resident Participation Purposes (§ 990.108(E)(2))

Comment: Support for proposed use of vacant rental units. Two commenters supported the policy of providing operating subsidies for vacant units used for resident participation purposes. The commenters wrote that this policy would enhance the ability of residents to plan and implement programs that improve the quality of life in their communities.

HUD Response. HUD agrees that the use of vacant rental units for resident participation activities will help promote resident involvement.

Comment: Operating subsidies should also be provided to vacant units that are used for non-dwelling purposes to promote economic self-sufficiency and anti-drug activities. One commenter wrote that providing operating subsidies for these purposes is appropriately limited to uses that are directed toward the benefit of residents.

HUD Response. The interim rule makes no change to the existing policy that permits continued subsidy support, under certain circumstances, for units that are used for non-dwelling purposes to promote economic self-sufficiency and anti-drug activities.

H. Comments Regarding the Flood Insurance Adjustment to AEL (§ 990.105(f))

Comment: Support for proposed adjustment. One commenter supported the inclusion of flood insurance costs in the calculation of the AEL under a one-time and permanent adjustment.

HUD Response. HUD agrees that this change will simplify the subsidy calculation.

I. Comments Regarding the Treatment of Utility and Waste Management Savings

The preamble to the July 10, 2000 proposed rule noted that section 519 of QHWA requires that "the treatment of utility and waste management costs under the (Operating Fund) formula shall provide that a public housing agency shall receive the full financial benefit from any reduction in the cost of utilities or waste management resulting from any contract with a third party to

undertake energy conservation improvements in one or more of its public housing projects" (42 U.S.C. 1437g(e)(2)(C)). The preamble explained that the proposed rule would address this statutory requirement by retaining the current PFS provisions at § 990.107(f), which describes PHA incentives for non-HUD financed energy conservation improvements. With regard to waste management, these costs are treated as a maintenance expense (not a utilities expense) under the PFS and the July 10, 2000 proposed rule. Accordingly, should a PHA be able to reduce its waste management costs below the amount assumed in its AEL, the PHA would retain all of the savings. (The preamble discussion is located at 65 FR 42492, first and middle columns.)

Comment: Interim rule should specify that energy incentives apply to tenant-supplied utilities. Two commenters suggested that the interim rule should permit PHAs with "tenant-supplied" utilities to take advantage of the energy conservation incentives described in § 990.107. The first commenter wrote that HUD had been addressing this issue through the issuance of regulatory waivers. The commenter wrote that the waiver process in long and arduous, and is "necessary only because the regulations do not provide for the inclusion of such PHAs." The second commenter wrote that residential utility customers are generally at an economic disadvantage compared with larger commercial accounts serviced by a utility provider. The commenter was concerned that ongoing Federal and State utility deregulation efforts would only increase these cost differences. Accordingly, the commenter urged that HUD address this issue by extending the incentives provided under § 990.107 to tenant-supplied utilities.

HUD Response. As the first commenter wrote, HUD has been addressing this concern through the issuance of regulatory waivers. While the suggestion of the commenter that the policy be codified in the new interim rule is appreciated, HUD recognizes that this issue was not addressed by the Committee. HUD has decided to defer consideration of substantive changes to the proposed rule until completion of the operating cost study and development of the final rule. Accordingly, HUD has not adopted the requested change. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The requested change will be reevaluated at the final rule stage, and may be reflected in the substance of the final rule.

J. Comment Regarding "Moving to Work" PHAs

Comment: The proposed rule provisions regarding Moving to Work (MTW) PHAs has the potential to undermine the effectiveness of the Operating Fund formula. Proposed § 990.104(d) provides that the calculation of operating subsidy for a PHA in the MTW demonstration program shall be made in accordance with the applicable Moving to Work Agreement, and any amendments to such agreements, as may be approved by HUD. One commenter wrote that if HUD "begins hand-tailoring the operating subsidies received by individual PHAs * * * the proposed rule * * * will become meaningless, since any increases for individual PHAs will simply come out of the pot available for other PHAs, potentially distorting the process and making obsolete any rule for allocating the available funds on a systemic basis."

HUD Response. HUD does not agree with the commenter's premise that the MTW demonstration program has the potential to distort and make this interim rule obsolete. The demonstration is limited in scope and duration, and subsidy eligibility for these PHAs is roughly what would have been determined regardless of MTW participation. If Congressional appropriations are not sufficient to meet program requirements, MTW agencies are subject to the same subsidy proration as other PHAs.

K. Comments Regarding Vacant Units

Comment: The interim rule should discourage the maintenance of vacant units. One commenter wrote that the proposed definition of "unit months available" at § 990.102 allows the payment of operating subsidies for units vacant up to one year. The commenter wrote that the interim rule should discourage the maintenance of vacancies that are within the control of the PHA and should encourage PHAs to reduce the time that it takes to rent a unit. The commenter wrote that the time required to rent a unit vacant due to circumstances within a PHA's control should be less than one month. However, to accommodate unforeseen circumstances, the commenter suggested that the interim rule allow for operating subsidies to continue for a period not to exceed three months. The commenter wrote that reducing the time that vacant units are eligible for operating subsidies will encourage effective maintenance and management practices to minimize the number of units off-line, reduce turn overtime for

vacant units, and reduce the time to renovate units.

HUD Response. HUD has not adopted the requested change. HUD has decided to defer consideration of major changes to the proposed rule until completion of the operating cost study and development of the final rule. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The suggestion made by the commenter will be reevaluated at the final rule stage.

Comment: Required documentation of occupancy status should be expanded. One commenter wrote that § 990.117(c) requires PHAs to maintain documentation on the occupancy status of all units, including various categories of vacant units, such as long term vacancies, vacant units undergoing modernization and units vacant due to circumstances beyond the PHA's control. The commenter suggested that the information PHAs are required to document should be expanded. The commenter recommended that the interim rule should require PHAs to document the size of a unit by bedroom size, dates of vacancy, and the plan to return the unit to occupancy (including the source of any required funds and the planned date for re-occupancy). The commenter wrote that such information should be made available to the Resident Advisory Board and the public through the PHA Plan process.

HUD Response. HUD has not adopted the suggested change. HUD has decided to defer consideration of substantive changes to the proposed rule until completion of the public housing operating cost study and development of the final rule. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The change requested by the commenter will be reevaluated at the final rule stage.

L. Comments Regarding Flat Rents/Ceiling Rents

Comment: The proposed rule fails to clarify that the difference between flat rents and costs will be subsidized by HUD. One commenter wrote that PHAs are statutorily required to adopt flat rents. According to the commenter, these flat rents should be based upon the rental value of the units and designed not to discourage employed tenants from staying in public housing. The commenter wrote that to achieve these dual objectives, it is possible that flat rents will not cover the operating expenses for the unit. The commenter suggested that the proposed rule be revised to provide that if there is a

shortfall, PHAs will be held harmless and not be required to subsidize the difference between the flat rents and operating cost.

HUD Response. The rent charged for a unit and the allowable expense level (AEL), which generally represents the non-utility operating expenses for a unit, are two distinct and separate factors in determining operating subsidy eligibility. If a flat rent is established appropriately and is less than the AEL, the PHA will be eligible for operating subsidy in an amount that represents the difference between the flat rent and the AEL.

Comment: Proposed rule fails to acknowledge that ceiling rents will be subsidized for the next three years. One commenter wrote that QHWA provides that PHAs may use ceiling rents to attract and keep public housing residents who are employed. The commenter wrote that § 960.253(d) of HUD's Admission and Occupancy final rule (65 FR 16727, March 29, 2000) provides that a PHA may use the ceiling rent as the flat rent for the next three years. According to the commenter, the July 10, 2000 proposed rule is deficient because it does not specify how ceiling rents will be handled in the next three years. "Will the difference between ceiling rents and the cost of the unit be set off by operating subsidies?" The commenter wrote that operating subsidy should be provided to cover any shortfall resulting from implementation of the ceiling rents. "If operating subsidies do not cover the shortfall, PHAs will be subject to immense pressure to do away with ceiling rents immediately. This pressure will be even more substantial because PHAs may now retain 50% of all increases in rents."

HUD Response. HUD does not believe that the proposed rule was deficient in its treatment of ceiling rents. The definition of dwelling rent in § 990.102 makes reference to § 960.253, *Choice of Rents*. These choices include ceiling rents that were authorized and established before October 1, 1999. Those ceiling rents may be used for a period of three years from October 1, 1999.

M. Comments Regarding Optional Income Exclusions

Comment: The definition of "dwelling rent" should reflect decreases resulting from PHA implementation of optional income exclusions. Two commenters made this recommendation. The proposed definition of "dwelling rent" does not reflect decreases resulting from the PHA's implementation of any optional earned income exclusions.

According to the commenters, this will discourage PHAs from implementing such optional exclusions. The commenters suggested that the interim rule should provide that, for purposes of determining subsidy eligibility, the total dwelling rental income of the PHA will not be decreased more than 5% resulting from the PHA's implementation of any optional earned income exclusion. Further, the commenters suggested that HUD provide increased operating funds accordingly.

HUD Response. HUD has not adopted the recommended change. As noted above, HUD has decided to defer consideration of major changes to the proposed rule until completion of the cost study and development of the final rule. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The suggested change will be reevaluated at the final rule stage.

Comment: The interim rule should minimize administrative burden in order to encourage PHAs to adopt optional income exclusions. Proposed § 990.109(b)(2)(iii) provides that the Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the PHA's implementation of an optional earned income exclusion. One commenter wrote that HUD should make implementation of this requirement as simple as possible. "PHAs should be encouraged in every way to adopt optional [earned income exclusions]. That encouragement should not be diminished by cumbersome administrative requirements."

HUD Response. HUD believes that the new formula will encourage the adoption of optional earned income exclusions by giving PHAs a new source of funds that can be used for the provision of resident-related services and improvements. The new source of funds is the retention of 50% of increases in dwelling rental income.

N. Comments Regarding Family Self-Sufficiency Program

Comment: The interim rule should treat the administrative costs of implementing a Family Self-Sufficiency (FSS) program as costs of operating public housing. One commenter wrote that the FSS statute (at 42 U.S.C. 1437u(h)(2)) and HUD's implementing regulations (at 24 CFR part 984) require that the reasonable and eligible administrative costs incurred by PHAs in carrying out public housing FSS programs—both mandatory and voluntary—be included in the

calculation of Federal operating subsidies. Accordingly, the commenter suggested that proposed § 990.108 (which lists the "other costs" of operating public housing") should be revised to authorize PHAs that operate a FSS program to add the reasonable administrative costs of one or more FSS case managers, depending on program size.

HUD Response. The interim rule makes no change to the existing policy that permits continued subsidy support, under certain circumstances, for FSS programs involving public housing residents. That policy is currently contained in Notice PIH 2000-4 (HA), issued February 3, 2000. While the suggestion of the commenter that the policy be codified in the new interim rule is appreciated, HUD recognizes that this issue was not addressed by the Committee. As noted above, HUD has decided to defer consideration of substantive changes to the proposed rule until completion of the operating cost study and development of the final rule. Accordingly, HUD has not adopted the suggestion made by the commenter. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The commenter's suggestion will be reevaluated at the final rule stage.

Comment: *The interim rule should specify how PHAs will be reimbursed for allowable expenses and contributions to tenant escrow accounts under the FSS program.* One commenter wrote that under the current PFS regulations PHAs can, in effect, be reimbursed for their contributions to tenant FSS escrow accounts. According to the commenter, the PHA can accomplish this by including the rent charges based on the tenants' incomes at the start of FSS participation in the determination of the projected operating income level—without consideration of the amounts deposited in the FSS escrow accounts. According to the commenter, this method will not be adequate under the proposed Operating Fund rule. The commenter wrote that if only the reduced rent charges are considered in determining dwelling rental income, PHAs would not receive credit for the increased earnings of FSS families. Absent such credit, PHAs with FSS programs would be deprived of the right to retain 50% of the revenue due to the increased earnings of such families. Accordingly, the commenter suggested that the proposed rule be modified as follows:

1. HUD should revise the calculation of dwelling rental income at § 990.109 to include the "total tenant payment"

for families enrolled in FSS. According to the commenter, this amount should include any increase in rent attributable to increased earnings while in FSS. Such increased rent is the amount defined as the "FSS credit" under 24 CFR 984.305(b).

2. The interim rule should include PHA contributions of families' credits to FSS escrow accounts as an "other cost" under § 990.108.

HUD Response. HUD has not adopted the suggested changes. As noted, HUD has decided to defer consideration of major changes to the proposed rule until completion of the operating cost study and development of the final rule. Harvard University will receive and consider the public comments on the proposed rule during development of the cost study. The requested changes will be reevaluated at the final rule stage.

O. Comments Regarding Rulemaking Procedures

Comment: *HUD should also consider public comments on prior interim rule amending PFS to which HUD has not yet responded.* One commenter suggested that HUD take the opportunity afforded by the July 10, 2000 proposed rule to also consider the public comments received on HUD's September 30, 1996 (61 FR 51178) interim rule, which made several amendments to the PFS regulations. The commenter was particularly concerned by the interim rule amendments to § 990.114, regarding the phase-down of subsidy for units approved for demolition. The commenter suggested that "consideration be given not only to the comments received on the [September 30, 1996] interim rule but to more recent experience in the context not fully anticipated at the time of the interim rule of extensive demolition in anticipation not of agency downsizing but of HOPE VI or other mixed-finance redevelopment." The commenter wrote that HUD "is well aware of the difficulties caused by the implementation of the current rule in this context, and particularly of the disproportionate and harsh impact of removing units from phasedown subsidy because of the issuance of relocation and replacement certificates or vouchers."

HUD Response. The suggestion made by the commenter is outside the scope of this rulemaking, which is exclusively concerned with implementation of the new Operating Fund Formula.

Comment: *Reduced 30-day public comment period was insufficient.* One commenter wrote that PHAs that did not participate at the negotiated rulemaking

sessions deserved adequate time to fully evaluate the proposed rule. The commenter wrote that the proposed changes would greatly affect the operation of public housing and, therefore, merited the customary full 60-day public comment period.

HUD Response. HUD agrees that public comment is vital to the successful development of its regulations. It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, given the extensive involvement of affected parties in the development of the July 10, 2000 proposed rule, HUD believes that good cause existed for the provision of a reduced 30-day comment period.

The membership of the Negotiated Rulemaking Committee was selected by HUD to represent a wide range of affected interests and parties. As required by the Negotiated Rulemaking Act, the public was afforded an opportunity to comment on the proposed Committee membership, and to submit nominations for membership. The final membership of the Committee included representatives of small, medium and large PHAs; public housing residents; the three main national organizations representing PHAs; advocates for low-income housing; and other housing experts. The proposed rule was the result of the Committee's successful negotiations, and represents the consensus decisions reached by over a year's worth of substantive deliberations.

In addition to the participation of the Committee members, the proposed rule reflected the input of many other affected parties not directly involved in the negotiated rulemaking process. Many of the Committee members (such as the national PHA organizations, the resident groups and others) served as representatives of larger constituencies. These organizations routinely consulted with their membership regarding the status of the negotiations and the substance of the proposed regulatory text. Moreover, all of the Committee meetings were announced through prior **Federal Register** notice and were open to the public. Members of the public were provided with the opportunity to make statements during the meetings, and to file written comments for the Committee's consideration.

For the above reasons, HUD believes that this interim rule has been developed with substantive public participation, and that the reduced 30-day period did not restrict the ability of the public to comment on the proposed rule. The Department also notes that public participation in the development

of the Operating Fund regulations is a continuing process. This rule provides the public with an additional 60-days to submit written comments on the interim regulatory requirements. All public comments will be considered in the development of the final rule. As noted, HUD will issue the final rule following the completion of a Congressionally mandated public housing cost study. HUD has directed the cost-study contractor to consult with interested individuals and organizations in the development of the study. HUD also intends to develop the final rule with the active participation of affected parties and using the procedures of the Negotiated Rulemaking Act.

Comment: Any procedural changes required under § 990.108(c) or § 990.109(d) should be subject to notice and comment rulemaking procedures. Section 990.108(c) provides that:

In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, HUD may in HUD's sole discretion decide to prescribe a procedure under which the PHA may apply for or may receive an increase in operating subsidy.

In addition, § 990.109(d) provides that:

After implementation of the provisions of any legislation enacted or any HUD administrative action taken subsequent to the effective date of these regulations, which affects rents paid by residents of Projects, HUD may adjust the projected average monthly dwelling rental charge per unit to reflect such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the PHA current fiscal year in an amount equivalent to the change in the rental income.

One commenter wrote that any such changes "should be made through reasonable procedures spelled out in regulation and with input from experts, from PHAs and from public housing residents." The commenter wrote that this process should not be left to HUD's sole discretion. "It must go through normal rulemaking procedures."

HUD Response. The regulatory language cited by the commenter was agreed upon through the consensus decisionmaking of the Committee. As noted, HUD has decided to defer consideration of major changes to the proposed rule until the completion of the cost study and development of the final rule. Accordingly, HUD has not adopted the suggestion made by the commenter. The requested change will be reevaluated at the final rule stage.

P. Miscellaneous Comments

Comment: When was the implicit deflator for the purchase of goods and services removed from the computation of the local inflation factor in § 990.105(c)(2)? One commenter posed this question.

HUD Response. Section 990.105(c)(2) defines the Local Government Wage Rate Index and was added to the PFS regulation as one of five factors in the Revised AEL Formula published in the **Federal Register** on February 4, 1992. The definition of Local Government Wage Rate Index has not changed.

Comment: Is the differential added onto the top of the range in § 990.105(d)(2)(ii)? One commenter posed this question.

HUD Response. The regulation clearly states in § 990.105(d)(2) that the amounts calculated under (d)(2)(i) and (d)(2)(ii) are added to the top of the range.

Comment: Paragraphs (c)(2) and (d) of § 990.107 should be removed. One commenter made this suggestion. These paragraphs concern the determination of the utilities consumption and expense levels where the necessary data is not available. The commenter asked whether these provisions were needed. "It would seem impossible that any PHA would have failed to accumulate the required utility data after twenty years of having been required to do so."

HUD Response. There are some new PHAs which come in for subsidy each year. It is possible that they would not have the required data available.

VI. Findings and Certifications

Information Collection Requirements

The information collection requirements contained in 24 CFR part 990 have been approved by the Office of Management (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). While this interim rule makes several modifications to the existing regulatory requirements, the rule does not increase the total reporting and recordkeeping burden related to the payment of operating subsidies to PHAs. The information collection requirements contained in §§ 990.104, 990.105, 990.107, 990.108, 990.110, 990.111, and 990.117 of this interim rule correspond to information collections contained in HUD's current part 990 regulations. These information collection requirements have been assigned OMB control numbers 2577–0029 (expiration date May 31, 2001), 2577–0026 (expiration date June 30, 2001), and 2577–0066 (expiration date September 30, 2002). In accordance with the Paperwork Reduction Act, an agency

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

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding of No Significant Impact remains applicable to this interim rule and is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has reviewed this interim rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this interim rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Flexibility Act

The Secretary has reviewed this interim rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this interim rule will not have a significant economic impact on a substantial number of small entities. The interim rule implements a new system for formula allocation of funds to PHAs for their operating needs. The new system is established to provide minimum impact on all PHAs, small and large. Accordingly, the formula will not have a significant economic impact on any PHA. Notwithstanding HUD's determination that this interim rule will not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this interim rule that would meet HUD's objectives as described in this preamble.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim rule will not have federalism implications and will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This interim rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this program is 14.850.

List of Subjects in 24 CFR Part 990

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR part 990 as follows:

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

1. Revise the heading of part 990 to read as set forth above.
2. The authority citation for part 990 is revised to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

3. Subpart A is revised to read as follows:

Subpart A—The Operating Fund Formula

Sec.

- 990.101 Purpose.
- 990.102 Definitions.
- 990.103 Applicability of the Operating Fund Formula.
- 990.104 Determination of amount of operating subsidy under the Operating Fund Formula.
- 990.105 Computation of allowable expense level.

- 990.106 Transition funding for excessively high-cost PHAs.
- 990.107 Computation of utilities expense level.
- 990.108 Other costs.
- 990.109 Projected operating income level.
- 990.110 Adjustments.
- 990.111 Submission and approval of operating subsidy calculations and budgets.
- 990.112 Payments procedure for operating subsidy under the Operating Fund Formula.
- 990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.
- 990.114 Phase-down of subsidy for units approved for demolition.
- 990.116 Increases in dwelling rental income.
- 990.117 Determining actual and requested budget year occupancy percentages.
- 990.120 Audits.
- 990.121 Effect of rescission.

§ 990.101 Purpose.

This subpart implements section 9(f) of the United States Housing Act of 1937 (42 U.S.C. 1437g) (referred to as "the 1937 Act"). Section 9(f) establishes an Operating Fund for the purposes of making assistance available to public housing agencies (PHAs) for the operation and management of public housing. The assistance made available from the Operating Fund is determined using a formula developed through negotiated rulemaking procedures. This subpart describes the policies and procedures for operating subsidy calculations under the Operating Fund Formula.

§ 990.102 Definitions.

Allowable Expense Level (AEL). The per unit per month dollar amount of expenses (excluding Utilities and expenses allowed under § 990.108) computed in accordance with § 990.105, which is used to compute the amount of operating subsidy.

Allowable Utilities Consumption Level (AUCL). The amount of Utilities expected to be consumed per unit per month by the PHA during the Requested Budget Year, which is equal to the average amount consumed per unit per month during the Rolling Base Period.

Base Year. The PHA's fiscal year immediately preceding its first fiscal year of receipt of operating subsidy under this part (either under the Operating Fund Formula or its predecessor, the Performance Funding System (PFS)).

Base Year Expense Level. The expense level (excluding Utilities, audits and certain other items) for the Base Year, computed as provided in § 990.105.

Current Budget Year. The fiscal year in which the PHA is currently operating.

Dwelling rent. The amount charged monthly for a dwelling unit occupied by a resident or family eligible for public housing as determined in § 960.253 of this title. For purposes of determining subsidy eligibility, the dwelling rent will not reflect decreases resulting from the PHA's implementation of any optional earned income exclusions.

Formula. The revised formula derived from the actual expenses of the sample group of PHAs receiving assistance under the Operating Fund Formula, which is used to determine the Formula Expense Level and the Range of each PHA (see § 990.105(c)).

FHA-based operating expense level (FHAEL). The per unit per month dollar amount of expenses (excluding utilities and expenses allowed under § 990.108) computed in accordance with § 990.105(e), which is used on a one-time basis to adjust the AEL for selected PHAs.

Formula Expense Level. The per unit per month dollar amount of expenses (excluding Utilities and audits) computed under the Formula, in accordance with § 990.105.

HUD Field Office. The HUD Field Office that has been delegated authority under the U.S. Housing Act of 1937 to perform functions pertaining to this subpart for the area in which the PHA is located.

Local Inflation Factor. The HUD-supplied weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses.

Long-term vacancy. This term means the same as it is used in the definition of "Unit Months Available" in this section.

Nondwelling rent. The amount charged monthly, including utility and equipment charges, to a lessee for a dwelling unit that is being used for nondwelling purposes. For purposes of determining operating subsidy:

- (1) If the nondwelling unit has been approved for subsidy (e.g., the unit is being used for economic self-sufficiency services or anti-drug activities) at the rate of the PHA's AEL, the PHA will include all charges as nondwelling rent;
- (2) If the nondwelling unit has not been approved for subsidy, a PHA will include as nondwelling rent only that portion of the charge that exceeds the rate of the PHA's AEL.

Operating budget. The PHA's operating budget and all related documents, as required by HUD, approved by the PHA Board of Commissioners.

Other income. Income from rent billed to lessees of dwelling units rented for nondwelling purposes, and from charges to residents for excess utility consumption for PHA supplied utilities.

Project. Each project under an Annual Contributions Contract to which the Operating Fund Formula is applicable, as provided in § 990.103.

Project Units. All dwelling units of a PHA's Projects.

Projected Operating Income Level. The per unit per month dollar amount of dwelling rental income plus other income, computed as provided in § 990.109.

Requested Budget Year. The budget year (fiscal year) of a PHA following the Current Budget Year.

Rolling Base Period. The 36-month period that ends 12 months before the beginning of the PHA Requested Budget Year, which is used to determine the Allowable Utilities Consumption Level used to compute the Utilities Expense Level.

Top of Range. Formula Expense Level multiplied by 1.15.

Transition funding. Funding for excessively high-cost PHAs, as provided in § 990.106.

Unit Approved for Deprogramming.

(1) A dwelling unit for which HUD has approved the PHA's formal request to remove the dwelling unit from the PHA's inventory and the Annual Contributions Contract but for which removal, i.e., deprogramming, has not yet been completed; or

(2) A nondwelling structure or a dwelling unit used for nondwelling purposes which the PHA has determined will no longer be used for PHA purposes and which HUD has approved for removal from the PHA's inventory and Annual Contributions Contract.

Unit months available. Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. For purposes of this part, a unit is considered available for occupancy from the date established as the End of the Initial Operating Period for the Project until the time the unit is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. In the case of a PHA development involving the acquisition of scattered site housing, see also § 990.104(b). A unit will be considered a long-term vacancy and will not be considered available for occupancy in any given PHA Requested Budget Year if the PHA determines that:

(1) The unit has been vacant for more than 12 months at the time the PHA

determines its Actual Occupancy Percentage;

(2) The unit is not either:

(i) A vacant unit undergoing modernization; or

(ii) A unit vacant for circumstances and actions beyond the PHA's control, as these terms are defined in this section; and

(3) The PHA determines that it will have a vacancy percentage of more than 3% and will have more than five vacant units, for its Requested Budget Year, even after adjusting for vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control, as defined in this section. (Reference in this part to "more than five units" or "fewer than five units" shall refer to a circumstance in which five units equals or exceeds 3% of the number of units to which the 3% threshold is applicable.)

Units vacant due to circumstances and actions beyond the PHA's control. Dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing vacant units and are beyond the PHA's control. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) *Litigation.* The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are being held vacant as part of a court-ordered or HUD-approved desegregation plan.

(2) *Laws.* Federal or State laws of general applicability, or their implementing regulations. Units vacant only because they do not meet minimum standards pertaining to construction or habitability under Federal, State, or local laws or regulations will not be considered vacant due to circumstances and actions beyond the PHA's control.

(3) *Changing market conditions.* For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after the PHA has taken aggressive marketing and outreach measures.

(4) *Natural disasters.*

(5) *RMC Funding.* The failure of a PHA to fund an otherwise approvable RMC request for Federal modernization funding.

(6) *Casualty Losses.* Delays in repairing damage to vacant units due to the time needed for settlement of insurance claims.

Utilities. Electricity, gas, heating fuel, water and sewerage service.

Utilities expense level. The per unit per month dollar amount of utilities expense, computed as provided in § 990.107.

Vacant unit undergoing modernization. A vacant unit in a project not considered to be obsolete (as determined using the indicia in § 970.6 of this chapter), when the project is undergoing modernization that includes work that is necessary to reoccupy the vacant unit, and in which one of the following conditions is met:

(1) The unit is under construction (i.e., the construction contract has been awarded or force account work has started); or

(2) The treatment of the vacant unit is included in a HUD-approved modernization budget (or its successor under the public housing Capital Fund program), but the time period for placing the vacant unit under construction has not yet expired. The PHA must place the vacant unit under construction within two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved.

§ 990.103 Applicability of the Operating Fund Formula.

(a) *General.* The Operating Fund Formula will be used in determining the amounts of operating subsidy payable to PHAs.

(b) *Applicability of the Operating Fund Formula.* The Operating Fund Formula is applicable to all PHA rental units under Annual Contributions Contracts. The Operating Fund Formula applies to PHAs that have not received operating subsidy payments previously, but are eligible for such payments under the Operating Fund Formula.

(c) *Inapplicability of the Operating Fund Formula.* The Operating Fund Formula, as described in this part, is not applicable to Indian Housing, the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual Help Program, or the Turnkey III Homeownership Opportunity Programs.

(d) *Applicability of the Operating Fund Formula to the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska.*

(1) The following provisions of this subpart A are applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska:

(i) The definition of "other income" at § 990.102;

(ii) Section 990.105 (Computation of allowable expense level). However, § 990.105(e) (Computation of FHA-based

operating expense level for application in FY 2001) does not apply to these PHAs;

(iii) Section 990.105(f) (Flood insurance adjustment for FY 2001);

(iv) Section 990.108(e) (Funding for resident participation activities);

(v) Section 990.109(b) (Computation of projected average monthly dwelling rental income);

(vi) Section 990.110(b) (Adjustments to utilities expense level); and

(vii) Section 990.116 (Increases in dwelling rental income).

(2) With the exception of the provisions listed in paragraph (d)(1) of this section, and other provisions of this part necessary to give full effect to the provisions listed in paragraph (d)(1) of this section, the Operating Fund Formula is not applicable to the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska. Operating subsidy payments to these PHAs are made in accordance with subpart B of this part.

(e) *Financial management, monitoring and reporting.* The financial management system, monitoring and reporting on program performance and financial reporting will be in compliance with 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures which are determined by HUD to be necessary for the proper management of the program in accordance with the requirements of the U.S. Housing Act of 1937 and the Annual Contributions Contracts between the PHAs and HUD.

§ 990.104 Determination of amount of operating subsidy under the Operating Fund Formula.

(a) The amount of operating subsidy for which each PHA is eligible shall be determined as follows: The Projected Operating Income Level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per unit per month dollar amounts, and must be multiplied by the Unit Months Available. Transition Funding, if applicable, and other costs as specified in § 990.108 are then added to this total in order to determine the total amount of operating subsidy for the Requested Budget Year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, a PHA may receive operating subsidy in an amount, approved by HUD, equal to the actual cost of an independent audit to be prorated to operations of the PHA-owned rental housing. See § 990.110 regarding adjustments.

(b) In the case of a PHA development involving the acquisition of scattered site housing, the PHA may submit, and HUD shall review and approve, a revised Development Cost Budget (or its successor under the public housing Capital Fund program) reflecting the number of units that were occupied during the previous six months, and the Unit Months Available used in the calculation of operating subsidy eligibility shall be revised to include the number of months the new/acquired units are actually occupied.

(c) A special phase-down of subsidy to PHAs is applicable when demolition of units is approved by HUD. See § 990.114.

(d) The calculation of operating subsidy for a PHA in the Moving to Work demonstration program shall be made in accordance with the applicable Moving to Work Agreement, and any amendments to such agreements, as may be approved by HUD.

§ 990.105 Computation of allowable expense level.

The PHA shall compute its Allowable Expense Level using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes Payments in Lieu of Taxes (PILOT) required by a Cooperation Agreement even if PILOT is not included in the Operating Budget for the Base Year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the PHA's Operating Budget for the Base Year except the following:

(1) Utilities expense;

(2) Cost of an independent audit;

(3) Adjustments applicable to budget years before the Base Year;

(4) Expenditures supported by supplemental subsidy payments applicable to budget years before the Base Year;

(5) All other expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures which were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the above six exclusions, the PHA shall adjust the AEL by excluding any of these items from the Base Year Expense Level if this has not already been accomplished. If such adjustment is made in the second or some subsequent fiscal year of receipt of operating subsidy under this part, the AEL shall be adjusted in the year in which the adjustment is made, but the adjustment

shall not be applied retroactively. If the PHA does not make these adjustments, the HUD Field Office shall compute the adjustments.

(c) *Computation of Formula Expense Level.* The PHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular PHA's inventory. It uses weights and a Local Inflation Factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The formula is the sum of the following six numbers and the weights of the formula and the formula are subject to updating by HUD:

(1) The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954. This census-based statistic applies to the county of the PHA, except that, if the PHA has 80% or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(2) The Local Government Wage Rate multiplied by a weight of 116.496. The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA standard of 1.0. For multi-county PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85% or more than 115% of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85% or more than 115% of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Construction Cost Index.

(3) The lesser of the current number of the PHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.

(4) The current ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy multiplied by a weight of 37.294. For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more

units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(5) The current ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of all the PHA's units available for occupancy multiplied by a weight of 22.303.

(6) An equation calibration constant of $-.2344$.

(d) *Computation of Allowable Expense Level (AEL)*. The PHA shall compute its Allowable Expense Level as follows:

(1) *AEL for first budget year of operating subsidy under this part where Base Year Expense Level does not exceed the top of the range*. Every PHA whose Base Year Expense Level is less than the top of the range shall compute its AEL for the first budget year of operating subsidy under this part by adding the following to its Base Year Expense Level (before adjustments under § 990.110):

(i) Any increase approved by HUD in accordance with § 990.110;

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year of operating subsidy under this part; and

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1)(i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *AEL for first budget year of operating subsidy under this part where Base Year Expense Level exceeds the top of the range*. Every PHA whose Base Year Expense Level exceeds the top of the range shall compute its AEL for the first budget year of operating subsidy under this part by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

(i) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year of operating subsidy under this part;

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the AEL, computed as provided above, the PHA may be eligible for Transition Funding under § 990.106.)

(3) *AEL for first budget year of operating subsidy under this part for a new project*. A new project of a new PHA or a new project of an existing PHA that the PHA decides to place

under a separate ACC, which did not have a sufficient number of units available for occupancy in the Base Year to have a level of operations representative of a full fiscal year of operation is considered to be a "new project." The AEL for the first budget year of operating subsidy under this part for a "new project" will be based on the AEL for a comparable project, as determined by the HUD Field Office. The PHA may suggest a project or projects it believes to be comparable. In determining what constitutes a "new project" under this paragraph, HUD will be guided by its public housing development regulations at 24 CFR part 941.

(4) *Adjustment of AEL for budget years after the first budget year of operating subsidy under this part*. HUD may adjust the AEL of budget years after the first year of operating subsidy under this part, in accordance with the provisions of § 990.105(b) or § 990.108(c).

(5) *Allowable Expense Level for budget years after the first budget year of operating subsidy under this part*. For each budget year after the first budget year of operating subsidy under this part, the AEL shall be computed as follows:

(i) The AEL shall be increased by any increase to the AEL approved by HUD under § 990.108(c).

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5%); and

(B) If the PHA has experienced a change in the number of units in excess of 5% or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph, it shall use the increase (decrease) between the Formula Expense Level calculated using the PHA's characteristics that applied to the Requested Year when the last adjustment to the AEL was made based on this paragraph and the Formula Expense Level calculated using the PHA's characteristics for the Requested Budget Year.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Adjustment of AEL for budget years after the first budget year of operating subsidy under this part*. HUD may adjust the AEL of budget years after the first year of operating subsidy under this part, in accordance with the provisions of § 990.105(b) or § 990.108(c).

(e) *Computation of FHA-based operating expense level (FHAEL) for application in FY 2001.—(1) HUD*

calculation of FHAEL. For every PHA that is eligible to receive operating subsidy under the Operating Fund Formula, HUD will calculate an FHAEL (based upon FY 2000 data and for application in FY 2001) as follows:

(i) *Step 1: Calculation of average national operating cost*. HUD will calculate an FHA-based national average cost of operating a two-bedroom public housing unit, exclusive of utility costs and property taxes. The average national cost will be calculated using privately managed (FHA multifamily insured and/or assisted) rental housing financial data available to HUD for the most recent year of full reporting and adjusted to reflect a two-bedroom size by using Section 8 Fair Market Rent (FMR) relationships (i.e., increase or decrease the national average cost depending on whether the average cost-weighted bedroom size is greater or less than 2.0 bedrooms per unit). (See 24 CFR part 888 for additional information regarding FMRs.)

(ii) *Step 2: Adjustment of average national two-bedroom operating cost for local cost differences*. HUD will adjust the average national two-bedroom operating cost for local cost differences using the location adjustment factors provided in the R.S. Means Residential Construction Costs Index.

(iii) *Step 3: Adjustment of average national operating cost for PHA-specific bedroom-size distribution*. For each PHA, HUD will further adjust the average national operating cost for the bedroom size distribution of the PHA using Section 8 FMR cost relationships (i.e., increase or decrease the average national cost depending on whether the average cost-weighted bedroom size for the PHA's inventory is greater or less than 2.0 bedrooms per unit).

(iv) *Step 4: Update of PHA-specific average operating cost to reflect FY 2000 costs*. HUD will update this PHA-specific operating cost to reflect increased FY 2000 operating costs by using the Public Housing AEL inflation factor.

(2) *Availability of FHAEL to PHA*.

HUD will make the following information available to each PHA:

(i) *FHAEL*. The FHAEL for the PHA;

(ii) *PHA bedroom distribution*. The PHA bedroom distribution used to make the PHA-specific bedroom adjustment under paragraph (e)(1)(iii) of this section; and

(iii) *Base average national cost*. The two-bedroom base average national cost calculated under paragraph (e)(1)(i) of this section.

(3) *Use of FHAEL for FY 2000 for PHAs with less than 500 units under contract*. Each PHA with less than 500

units shall review the FHAEL and bedroom distribution provided by HUD, and do the following:

(i) *The PHA will determine if the bedroom size distribution used by HUD was appropriate.*—(A) *Mandatory recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by *more than .02* from the weighted average used by HUD, the PHA *shall* recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(B) *Discretionary recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by *less than .02* from the weighted average used by HUD, the PHA *may* recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(ii) *Comparison of FHAEL to AEL.* The PHA shall compare its FHAEL with its approved FY 2000 AEL.

(iii) *If the PHA has less than 250 units.* PHAs with less than 250 units shall use the higher of their current AEL or 85% of the FHAEL. However, in no case will the PHA use an amount that exceeds 120% of its FHAEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula (see paragraph (e)(3)(v) of this section).

(iv) *If the PHA has 250–499 units.* PHAs with 250–499 units shall use the higher of their current AEL, or 70% of FHAEL. However, in no case will the PHA use an amount that exceeds 120% of its FHAEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula (see paragraph (e)(3)(v) of this section).

(v) *If the PHA with less than 500 units has an AEL greater than 120% of its FHAEL.* If a PHA with less than 500 units has an FY 2000 AEL that is greater than 120% of its FHAEL, the PHA shall use 120% of its FHAEL in place of its actual FY 2000 AEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula.

(4) *Use of FHAEL for FY 2000 for PHAs with more than 500 units under contract.* Each PHA with more than 500 units shall review the FHAEL and bedroom distribution provided by HUD and do the following:

(i) *The PHA shall determine if the bedroom size distribution used by HUD was appropriate.*—(A) *Mandatory recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by *more than .02* from the weighted average used by HUD, the

PHA *shall* recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(B) *Discretionary recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by less than .02 from the weighted average used by HUD, the PHA *may* recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(ii) *Comparison of FHAEL to AEL.* The PHA shall compare its FHAEL with its approved FY 2000 AEL.

(iii) *If the PHA's FY 2000 AEL is less than or equal to 85% of its FHAEL.* If the PHA's FY 2000 AEL is less than or equal to 85% of its FHAEL, the PHA shall use its FY 2000 AEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula.

(iv) *If the PHA's FY 2000 AEL is greater than 85% of its FHAEL.* If the PHA's FY 2000 AEL is greater than 85% of its FHAEL, the PHA shall use 98.64% of its FY 2000 AEL for purposes of calculating its FY 2001 subsidy determinations under the Operating Fund Formula.

(v) *Inapplicability of AEL reduction to certain PHAs.* The AEL reduction described in paragraph (e)(4)(iv) of this section does not apply to the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska. These PHAs will use their FY 2000 AELs for purposes of FY 2001 subsidy determinations, regardless of whether the PHA's AEL is greater than 85% of its FHAEL.

(vi) *Cap on AEL value reduction.* In no instance shall a PHA subject to an AEL reduction, reduce the FY 2000 AEL value used in calculating its FY 2001 AEL for purposes of operating subsidy determinations to a value less than 85% of its FHAEL.

(f) *Flood insurance adjustment for FY 2001.* To simplify the calculation of operating subsidy, the AEL computation for the PHA's fiscal year beginning in 2001 will include an additional step following the determination made in accordance with paragraphs (a) through (e) of this section: the AEL per unit month derived in accordance with those paragraphs is to be adjusted by adding the flood insurance charge per unit month, as reflected in the last HUD approved subsidy calculation for FY 2000. This adjustment is a one-time permanent adjustment made only in FY 2001. However, if the flood map is revised at a future date, HUD will adjust the AEL for the affected PHAs in accordance with this paragraph.

§ 990.106 Transition funding for excessively high-cost PHAs.

(a) *Eligibility.* If a PHA's Base Year Expense Level exceeds its AEL for any budget year under the Operating Fund Formula, the PHA may be eligible for Transition Funding.

(b) *Amounts.* Transition Funding shall be an amount not to exceed the difference between the Base Year Expense Level and the AEL for the Requested Budget Year, multiplied by the number of Unit Months Available.

(c) *Reduction in transition funding.* HUD shall have the right to discontinue payment of all or part of the Transition Funding in the event HUD at any time determines that the PHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 990.107 Computation of utilities expense level.

(a) *Computation of the utilities expense level.* The PHA's Utilities Expense Level for the requested Budget Year shall be computed by multiplying the Allowable Utilities Consumption Level (AUCL) per unit per month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* (1) The current applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the Operating Budget is submitted to HUD will be used as the utilities rates for the Requested Budget Year, except that, when the appropriate utility commission has, prior to the date of submission of the Operating Budget to HUD, approved and published rate changes to be applicable during the Requested Budget Year, the future approved rates may be used as the utilities rates for the entire Requested Budget Year.

(2) If a PHA takes action, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the PHA will be permitted to retain one-half of the cost savings during the first 12 months attributable to its actions. Upon determination that the action was cost-effective in the first year, the PHA may be permitted to retain one-half the annual cost savings, if the actions continue to be cost-effective. See also paragraph (e) of this section and § 990.110(b).

(c) *Computation of Allowable Utilities Consumption Level.* The Allowable Utilities Consumption Level used to compute the Utilities Expense Level of PHAs for the Requested Budget Year generally will be based on the availability of consumption data. For project utilities where consumption data are available for the entire Rolling Base Period, the computation will be in accordance with paragraph (c)(1) of this section. Where data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a

new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project where the PHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (f)(1) of this section, the computation of the Allowable Utilities Consumption Level may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of a PHA's projects is the sum of the amounts determined using all of these subparagraphs, as appropriate.

(1) *Rolling Base Period System.* (i) For project utilities with consumption data for the entire Rolling Base Period, the AUCL is the average amount consumed per unit per month during the Rolling Base Period adjusted in accordance with paragraph (d) of this section. The PHA shall determine the average amount of each of the utilities consumed during the Rolling Base period (i.e., the 36-month period ending 12 months prior to the first day of the Requested Budget Year).

(ii) An example of a rolling base is as follows:

PHA fiscal year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1-1-01	12-31-01 (1st year)	1-1-97	12-31-99
1-1-02	12-31-02 (2nd year)	1-1-98	12-31-00

(2) *Alternative method where data is not available for the entire Rolling Base Period.* (i) If the PHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole Rolling Base Period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its Rolling Base Period to the HUD Field Office for approval. If this is not possible, it shall submit consumption data for the last 12 months of its Rolling Base Period. The PHA also shall submit a written explanation of the reasons that data for the whole Rolling Base Period is unavailable.

(ii) In those cases where a PHA has not maintained or cannot recapture consumption data for a utility for the entire Rolling Base Period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the Rolling Base Period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each PHA, other than those PHAs defined as New Projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month Rolling Base Period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all PHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If a PHA cannot develop the consumption data for the Rolling Base Period or for 12 or 24 months of the Rolling Base Period, either from its own project(s) data, or by using comparable consumption data the actual per unit per month (PUM) utility expenses stated in paragraph (d) of this section shall be used as the Utilities Expense Level.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A New Project, for the purpose of establishing the Rolling Base Period and the Utilities Expense Level, is defined as either:

(A) A project which had not been in operation during at least 12 months of the Rolling Base Period, or a project which enters management after the Rolling Base Period and prior to the end of the Requested Budget Year; or

(B) A project which during or after the Rolling Base Period, has experienced conversion from one energy source to another; interruptable service; deprogrammed units; a switch from resident-purchased to PHA-supplied utilities; or a switch from PHA-supplied to resident-purchased utilities.

(ii) The actual consumption for New Projects shall be determined so as not to distort the Rolling Base Period in accordance with a method prescribed by HUD.

(4) *Freezing the Allowable Utilities Consumption Level.* (i) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if a PHA undertakes energy conservation measures that are approved by HUD under paragraph (f) of this section, the Allowable Utilities Consumption Level for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it

must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (f) of this section.

(ii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

(d) *Utilities expense level where consumption data for the full Rolling Base Period is unavailable.* If a PHA does not obtain the consumption data for the entire Rolling Base Period, or for 12 or 24 months of the Rolling Base Period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this

section, it shall request HUD Field Office approval to use actual PUM utility expenses. These expenses shall exclude Utilities Labor and Other Utilities Expenses. The actual PUM utility expenses shall be taken from the year-end Statement of Operating Receipts and Expenditures, Form HUD-52599, (Office of Management and Budget approval number 2577-0067) prepared for the PHA fiscal year which ended 12 months prior to the beginning of the PHA Requested Budget Year (e.g., for a PHA fiscal year beginning January 1, 2001, the PHA would use data from the fiscal year ended December 31, 1999). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual PUM utility expenses.

(e) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with § 990.110(b), which requires an adjustment based upon a comparison between actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If a PHA undertakes energy conservation measures (including those covering water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the PHA may qualify for one of the two possible incentives under this part. For a PHA to qualify for these incentives, HUD approval must be obtained. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the PHA's payments to be dependent on the cost savings it realizes, the PHA must use at least 50% of the cost savings to pay the contractor. With this type of contract, the PHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 990.110(b)(2)(ii).

(2) If the contract does not allow the PHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the PHA will be able to retain part of the cost savings, in accordance with § 990.110(b)(2)(i); and the PHA will qualify for additional

operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the cost of the energy conservation measures during the term of the contract, in accordance with § 990.110(c).

§ 990.108 Other costs.

(a) *Cost of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the Operating Fund Formula. However, the PHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has already been funded by subsidy in a prior year.

(2) A PHA that is required by the Single Audit Act (31 U.S.C. 7501-7507) (see 24 CFR part 85) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The actual cost of an independent audit, applicable to the operations of PHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 990.104, above.

(3) A PHA that is exempt from the audit requirements under the Single Audit Act (24 CFR part 85) may receive operating subsidy to offset the actual cost of an independent audit chargeable to operations (after the End of the Initial Operating Period) if the PHA chooses to have an audit.

(b)(1) Costs attributable to units that are approved for deprogramming and vacant may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because the units are utilized for PHA-related activities are not eligible for inclusion. In determining operating subsidy calculations under the Operating Fund Formula, these units shall not be included in the calculation of Unit Months Available. Units approved for deprogramming shall be listed by the PHA, and supporting documentation regarding direct costs attributable to such units shall be included as a part of the Operating Fund Formula calculation in which the PHA requests operating subsidy for these units. If the PHA requires assistance in this matter, the PHA should contact the HUD Field Office.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug

activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to these units are to be included in the operating budget. If a unit satisfies the conditions stated in paragraphs (b)(2)(i) through (v) of this section, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than 3 years. HUD may renew the approval to allow payments after that period only if the PHA can demonstrate that no other sources for paying the non-utility operating costs of the unit are available. The conditions the unit must satisfy are:

(i) The unit must be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities must be directed toward and for the benefit of residents of the development.

(ii) The PHA must demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that the resources are committed to make the space safe and suitable.

(iii) The PHA must demonstrate satisfactorily that other funding is not available to pay for the non-utility operating costs. All rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per public housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The PHA must submit a certification with its Operating Fund Formula Calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The PHA must maintain specific documentation of the units covered. Such documentation should include a listing of the units, the street addresses, and project/management control numbers.

(3) Long-term vacant units that are not included in the calculation of Unit Months Available are eligible for operating subsidy in the Requested

Budget Year at the rate of 20% of the AEL. Allowable utility costs for long term vacant units will continue to be funded in accordance with § 990.107.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, HUD may in HUD's sole discretion decide to prescribe a procedure under which the PHA may apply for or may receive an increase in operating subsidy.

(d)(1) *Costs resulting from combination of two or more units.* When a PHA redesigns or rehabilitates a project and combines two or more units into one larger unit and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula $((2 \times \text{No. of Bedrooms}) \text{ minus } 1)$, which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

(2) An exception to paragraph (d)(1) of this section is made when a PHA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year.

(e) *Funding for resident participation activities.*—(1) *Funding amount.* Each PHA shall include in the operating subsidy eligibility calculation, \$25 per occupied unit per year for resident participation activities, including (but not limited to) those described in part 964 of this title. For purposes of this section, a unit may be occupied by a public housing resident, a PHA employee, or a police officer. If, in any fiscal year, appropriations are not sufficient to meet all funding requirements under this part, then the \$25 will be subject to pro-ration.

(2) *Use of vacant rental units.* If there is no community or rental space available for providing resident participation activities, HUD may approve, at the request of the PHA, the use of one or more vacant rental units

for resident participation purposes. A unit that satisfies the following conditions will be eligible for operating subsidy at the rate of the AEL for the number of months the unit is devoted to such use:

(i) The PHA must demonstrate that safe and suitable space for the resident participation activities is not otherwise readily available;

(ii) One or more contiguous units may be used for resident participation activities. However, the units must be located on a single site per public housing development. Further, the number of units involved must be the minimum necessary to support the resident participation activities;

(iii) The PHA must submit a certification with its Operating Fund Formula calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation; and

(iv) The PHA must maintain specific documentation of the units covered. Such documentation must include a listing of the units, the street addresses, and project/management control numbers.

§ 990.109 Projected operating income level.

(a) *Policy.* The Operating Fund Formula determines the amount of operating subsidy for a particular PHA based in part upon a projection of the actual dwelling rental income and other income for the particular PHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the PHA, and applying an upward trend factor (subject to updating). This amount is then multiplied by the Projected Occupancy Percentage for the Requested Budget Year. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.*—(1) *General.* The projected average monthly dwelling rental income per unit for the PHA is calculated as follows:

(i) *Step 1: Calculation of the current year and three year averages.* The PHA calculates:

(A) The average monthly dwelling rental charge per unit for the current budget year (the "current year average" calculated in accordance with paragraph (b)(2) of this section); and

(B) The average monthly dwelling rental charge per unit for the current budget year and the immediate past two budget years (the "three year average"

calculated in accordance with paragraph (b)(3) of this section).

(ii) *Step 2: Adjustment for any increase in dwelling rental income.* If the current year average is greater than the three year average, the PHA has increased dwelling rental income. If a PHA has increased dwelling rental income, it shall perform the following calculation. The PHA shall:

(A) Subtract the three year average from the current year average;

(B) Divide the result by 2; and

(C) Add this sum to the three year average.

(iii) *Step 3: Calculating the amount of increased rental revenue that may be retained.* PHAs shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased revenue for the provision of resident-related improvements and services as described in § 990.116. The retained income will not be recognized in the PHA's calculation under the Operating Fund Formula. The annual amount of increased revenue retained by the PHA is calculated by subtracting the three year average from the current year average, dividing the result by two, and multiplying the result by the projected occupancy percentage (see § 990.109(b)(6)), and the unit months available (see § 990.102).

(iv) *Step 4: Applying the rental income adjustment factor.* The lower of the amount calculated under paragraph (b)(i)(A) or (b)(ii) of this section is then adjusted by the dwelling rental income adjustment factor described in paragraph (b)(5) of this section.

(2) *Average monthly dwelling rental charge per unit.* (i) The average monthly dwelling rental charge per unit shall be computed using the total dwelling rental charges for all Project Units, as shown on the Tenant Rent Rolls which the PHA is required to maintain, for the first day of the month which is six months before the first day of the Requested Budget Year. However, if a change in the total of the Rent Rolls has occurred in a subsequent month which is before the beginning of the Requested Budget Year, and before the submission of the Requested Budget Year calculation of operating subsidy eligibility, the PHA may use the latest changed Rent Roll for the purpose of the computation.

(ii) This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(iii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the PHA's implementation of an optional earned income exclusion

authorized by the explanation of "annual income" in 24 CFR 5.609.

(3) *Three year average monthly dwelling rental charge per unit.* The three year average monthly dwelling rental charge shall be computed by averaging the amounts calculated under paragraph (b)(2) of this section for the current budget year and the immediate past two budget years.

(4) *Changes in supply of utilities.* The PHA must adjust the rent rolls used for purposes of the calculations described in paragraphs (b)(2) and (b)(3) of this section to reflect any change from PHA-paid utilities to resident-paid utilities, or vice versa, between the rent roll date and the projected budget year.

(5) *Dwelling rental income adjustment factor.* An adjustment factor will be applied to the calculations described in paragraphs (b)(2) and (b)(3) of this section. In FY 2001, the inflation factor will be 3%. In subsequent years, the average monthly dwelling rental charge per unit will be increased for inflation using a HUD supplied adjustment factor for the requested budget year to obtain the projected average monthly dwelling rental charge per unit of the PHA for the Requested Budget Year.

(6) *Projected occupancy percentage.* The PHA shall determine its projected percentage of occupancy for all Project Units (Projected Occupancy Percentage), as follows:

(i) *General.* Using actual occupancy data collected before the start of the budget year as a beginning point, the PHA will develop estimates for its Requested Budget Year (RBY) of: How many units the PHA will have available for occupancy; how many of the available units will be occupied and how many will be vacant, and what the average occupancy percentage will be for the RBY. The conditions under which the RBY occupancy percentage will be used as the projected occupancy percentage for purposes of determining operating subsidy eligibility are described below.

(ii) *High Occupancy PHA—No adjustments necessary.* If the PHA's RBY Occupancy Percentage, calculated in accordance with § 990.117, is equal to or greater than 97%, the PHA's Projected Occupancy Percentage is 97%. If the PHA's RBY Occupancy Percentage is less than 97%, but the PHA demonstrates that it will have an average of five or fewer vacant units in the requested budget year, the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(iii) *Adjustments in determining occupancy.* If the PHA's RBY Occupancy Percentage is less than 97% and the PHA has more than 5 vacant

units, the PHA will adjust its estimate of vacant units to exclude vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. After making this adjustment, the PHA will recalculate its estimated vacancy percentage for the RBY.

(A) *High Occupancy PHA after adjustment.* If the recalculated vacancy percentage is 3% or less (or the PHA would have five or fewer vacant units), the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(B) *Low Occupancy PHA—adjustment for long-term vacancies.* If the recalculated vacancy percentage is greater than 3% (or the PHA would have more than 5 vacant units), the PHA will then further adjust its RBY Occupancy Percentage by excluding from its calculation of Unit Months Available (UMAs), those unit months attributable to units that have been vacant for longer than 12 months that are not vacant units undergoing modernization or are not units vacant due to circumstances and actions beyond the PHA's control.

(iv) *Low Occupancy PHA after all adjustments.* A PHA that has determined its RBY Occupancy Percentage in accordance with paragraph (b)(6)(iii)(B) of this section will be eligible for operating subsidy as follows:

(A) Long-term vacancies removed from the calculation of UMAs will be eligible to receive a reduced operating subsidy calculated at 20% of the PHA's AEL.

(B) If the recalculated RBY Occupancy Percentage is 97% or higher, the PHA will use 97%.

(C) If the recalculated RBY Occupancy Percentage is less than 97%, but the vacancy rate after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control is 3% or less (or the PHA has five or fewer vacant units), the PHA may use its recalculated RBY Occupancy Percentage as its projected occupancy percentage.

(D) If the recalculated RBY Occupancy Percentage is less than 97% and the vacancy percentage is greater than 3% (or the PHA has more than five vacant units) after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control, the PHA will use 97% as its projected occupancy percentage, but will be allowed to adjust the 97% by the number of vacant units undergoing modernization and units that are vacant due to circumstances and actions

beyond the PHA's control. For a small PHA using five vacant units as its occupancy objective for the RBY, the PHA will determine what percentage five units represents as a portion of its units available for occupancy and subtract that percentage from 100%. The result will be used as the PHA's projected occupancy percentage, but the PHA will be allowed to adjust the projected occupancy percentage by vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control.

(c) *Projected average monthly dwelling rental charge per unit for new Projects.* The projected average monthly dwelling rental charge for new Projects which were not available for occupancy during the budget year prior to the Requested Budget Year and which will reach the End of the Initial Operating Period (EIOP) within the first nine months of the Requested Budget Year, shall be calculated as follows:

(1) If the PHA has another Project or Projects under management which are comparable in terms of elderly and nonelderly resident composition, the PHA shall use the projected average monthly dwelling rental charge for such Project or Projects.

(2) If the PHA has no other Projects which are comparable in terms of elderly and nonelderly resident composition, the HUD Field Office will provide the projected average monthly dwelling rental charge for such Project or Projects, based on comparable Projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken subsequent to the effective date of these regulations, which affects rents paid by residents of Projects, HUD may adjust the projected average monthly dwelling rental charge per unit to reflect such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the PHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *PHA's estimate of other income.* All PHAs shall estimate Other Income based on past experience and a reasonable projection for the Requested Budget Year, which estimate shall be subject to HUD approval. The estimated total amount of Other Income, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount.

(f) *Projected operating income level.* The projected average dwelling rental income per unit (calculated under

paragraphs (b), (c), and (d) of this section) shall be added to the estimated Other Income (calculated under paragraph (e) of this section) to obtain the Projected Operating Income Level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

§ 990.110 Adjustments.

Adjustment information submitted to HUD under this section must be accompanied by an original or revised calculation of operating subsidy eligibility.

(a) *Adjustment of base year expense level.*—(1) *Eligibility.* A PHA with projects that have been in management for at least one full fiscal year, for which operating subsidy is being requested under the Operating Fund Formula for the first time, may, during its first budget year under the Operating Fund Formula, request HUD to increase its Base Year Expense Level. Included in this category are existing PHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC, for which operating subsidy has never been paid, except for independent audit costs. This request may be granted by HUD, in its discretion, only where the PHA establishes to HUD's satisfaction that the Base Year Expense Level computed under § 990.105(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the lesser of the per unit per month amount by which the top of the Range exceeds the Base Year Expense Level.

(2) *Procedure.* A PHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the calculation of operating subsidy eligibility for the first budget year under the Operating Fund Formula. Such request shall be submitted to the HUD Field Office, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph must include a calculation of the amount per unit per month of requested increase in the Base Year Expense Level, and must show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to Utilities Expense Level.* A PHA receiving operating subsidy under § 990.104, excluding those PHAs that receive operating subsidy solely for independent audit (§ 990.108(a)), must submit an adjustment regarding the Utility Expense Level approved for operating

subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the PHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This adjustment, applicable to PHA fiscal years beginning on or after January 1, 1999, shall be submitted to the HUD Field Office within 45 days after the close of the PHA fiscal year that is being adjusted. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies and/or a delay in the recognition of the adjustment. Adjustments under this section normally will be made in the operating subsidy calculation for the second PHA fiscal year following the year being adjusted, unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) *Rates.* A change in the Utilities Expense Level because of changes in utility rates—to the extent funded by the operating subsidy—will result in an adjustment of future operating subsidy payments. However, where the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the PHA, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings, then the PHA will be permitted to retain one-half of the cost savings attributable to its actions for the first year and, upon determination that the action was cost-effective in the first year, for as long as the actions continue to be cost-effective, and the other one-half of the cost savings will be deducted from operating subsidy otherwise payable.

(2) *Consumption.* (i) Generally, 75% of any decrease in the Utilities Expense Level attributable to decreased consumption after adjustment for any utility rate change, will be retained by the PHA; 25% will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of a PHA whose energy conservation measures have been approved by HUD as satisfying the requirements of § 990.107(f)(1) (regarding non-HUD financed incentives for energy conservation improvements), the PHA operating fund eligibility shall reflect the retention of 100% of the savings from decreased consumption after payment of the amount due the contractor until the term of the financing agreement is completed. The

decreased consumption is to be determined by adjusting for any utility rate changes and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities. The savings realized must be applied in the following order:

(A) Retention of up to 50% of the total savings from decreased consumption to cover training of PHA employees, counseling of residents, PHA management of the cost reduction program and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) 25% of an increase in the Utilities Expense Level attributable to increased consumption, after adjustment for any utility rate change, will be reflected in the operating subsidy eligibility for the second PHA fiscal year following the year being adjusted, in accordance with § 990.111.

(iv) PHAs are encouraged to:

(A) Provide conservation incentives and training to residents in order to realize increased utility savings;

(B) Share information with residents regarding changes in utility costs related to rate changes and to changes in consumption; and

(C) Explain to residents conservation benefits and impacts of excess consumption on the operating budget.

(3) *Documentation.* Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

(c) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 990.107(f)(2), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year and a maximum contract period of 12 years.

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for any change in utility rate and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities;

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (b)(2)(i) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (c) to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

(d) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the PHA's operating subsidy as a result of data subsequently available to HUD which alters projections upon which the approved operating subsidy was based. If a downward adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

§ 990.111 Submission and approval of operating subsidy calculations and budgets.

(a) *Required documentation.* (1) Prior to the beginning of its fiscal year, the PHA shall prepare an operating budget in a manner prescribed by HUD. The Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit to the HUD Field Office, in a time and manner prescribed by HUD, the approved board resolution and the required operating subsidy eligibility calculation forms. The PHA shall submit revised calculations in support of any adjustments based on procedures prescribed by HUD.

(2) HUD may direct the PHA to submit its complete operating budget if the PHA has failed to achieve certain specified operating standards, or for other reasons which in HUD's determination threaten the PHA's future serviceability, efficiency, economy, or stability.

(b) *HUD operating budget review.* (1) The HUD Field Office will perform a detailed review on operating budgets that are subject to HUD review and approval. If the HUD Field Office finds

that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Field Office may at any time require the submission by the PHA of further information regarding an operating budget or operating budget revision.

(2) When the PHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing it operates, HUD will notify the PHA that it no longer is required to submit a complete operating budget to HUD for review and approval.

(c) *Compliance with environmental review requirements.*—(1) *General.* Operating subsidy funds made available to a PHA to support the operation and management of public housing are generally for activities that are not subject to environmental review requirements. A PHA, however, may use public housing program resources (including operating subsidy funds, rental and nonrental income, and operating reserves) to carry out non-routine maintenance and capital expenditure activities that may require an environmental review, as those activities are defined in HUD's prescribed Chart of Accounts.

(2) *Initial operating budget.* The ACC requires that operating expenditures may not be incurred except pursuant to an approved operating budget. Before the funding of non-routine maintenance and capital expenditure activities may be incorporated into the PHA's initial operating budget, and before the PHA may commit any funds to such activities, the PHA must obtain either:

(i) An environmental review from the Responsible Entity and submit and receive HUD approval of a Request for Release of Funds under part 58 of this title, or, in cases where HUD has determined to do an environmental review under part 50 of this title, the PHA must obtain an environmental approval from HUD; or

(ii) A determination from the Responsible Entity under part 58 of this title that the PHA's proposed non-routine maintenance and capital expenditure activities are exempt from environmental review in accordance with § 58.34(a)(12) of this title.

(3) *Revisions to operating budget.* If subsequent to adoption of its initial operating budget, a PHA determines to undertake a new non-routine maintenance or capital expenditure activity, the PHA must obtain an environmental review and release of funds, HUD environmental approval, or

an exemption from such review, as described in paragraph (c)(2) of this section, before the funding of the activity may be incorporated into a revised operating budget and before the PHA may commit any funds to such activities.

(4) *Determination of exempt activities.* If the Responsible Entity documents that a proposed non-routine maintenance or capital expenditure activity is an exempt activity, as described in paragraph (c)(2)(ii) of this section, no further action is required from the PHA and the activity may be incorporated into the PHA's initial or revised operating budget, as appropriate.

§ 990.112 Payments procedure for operating subsidy under the Operating Fund Formula.

(a) *General.* Subject to the availability of funds, payments of operating subsidy under the Operating Fund Formula shall be made generally by electronic funds transfers, based on a schedule submitted by the PHA and approved by HUD. The schedule may provide for several payments per month. If a PHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make an informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of a PHA's budget year under this part, annual or monthly or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the PHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under the Operating Fund Formula for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to PHAs.

§ 990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income of each family must be reexamined at least annually. PHAs must be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *PHAs in compliance with requirements.* Each submission of the original calculation of operating subsidy

eligibility for a fiscal year shall be accompanied by a certification by the PHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with current HUD requirements.

(c) *PHAs not in compliance with requirements.* Any PHA not in compliance with annual income reexamination requirement at the time of the submission of the calculation of operating subsidy eligibility shall furnish to the HUD Field Office a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the date of the Operating Budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Field Office Director determines that the PHA is not substantially in compliance with the annual income reexamination requirement, he or she shall withhold payments to which the PHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the PHA resulting from its failure to comply with those requirements.

§ 990.114 Phase-down of subsidy for units approved for demolition.

(a) *General.* Units that have both been approved by HUD for demolition and been vacated in FY 1995 and after will be excluded from a PHA's determination of Unit Months Available when vacated, but they will remain eligible for subsidy in the following way:

(1) For the first twelve months beginning with the month that a unit meets both conditions of being approved for demolition and vacant, the full AEL will be allowed for the unit.

(2) During the second twelve-month period after meeting both conditions, 66% of the AEL will be allowed for the unit.

(3) During the third twelve-month period after meeting both conditions, 33% of the AEL will be allowed for the unit.

(b) *Special case for long-term vacant units.* Units that have been vacant for longer than 12 months when they are approved for demolition are eligible for funding equal to 20% of the AEL for a 12-month period.

(c) *Treatment of units replaced with Section 8 Certificates or Vouchers.* Units that are replaced with Section 8 Certificates or Vouchers are not subject to the provisions of this section.

(d) *Treatment of units replaced with public housing units.* When replacement

conventional public housing units become eligible for operating subsidy, the demolished unit is no longer eligible for any funding under this section.

(e) *Determination of what units are "replaced."* For purposes of this section, replacements are applied first against units that otherwise would fall in paragraph (a) of this section; any remaining replacements should be used to reduce the number of units qualifying under paragraph (b) of this section.

(f) *Treatment of units combined with other units.* Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

§ 990.116 Increases in dwelling rental income.

(a) *General.* As described in § 990.109(b)(1), PHAs shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased income for the provision of resident-related improvements and services. The retained income will not be recognized in the PHA's calculation under the Operating Fund Formula.

(b) *Eligible uses for increased rental revenue.* The uses for the retained income must be developed with front end resident participation and ongoing input and shall be made part of the PHA plan submission. (See 24 CFR part 903). Examples of eligible uses for the retained income include, but are not limited to:

- (1) Physical and management improvements that benefit residents;
- (2) Resident self-sufficiency services;
- (3) Maintenance operations;
- (4) Resident employment and training services;
- (5) Resident safety and security improvements and services; and
- (6) Optional earned income exclusions.

§ 990.117 Determining actual and requested budget year occupancy percentages.

(a) *Actual occupancy percentage.* When submitting Operating Fund Formula calculations for Requested Budget Years, the PHA shall determine an Actual Occupancy Percentage for all Project Units included in the Unit Months Available. The PHA shall have the option of basing this option on either:

- (1) The number of units occupied on the last day of the month that ends 6 months before the beginning of the Requested Budget Year; or
- (2) The average occupancy during the month ending 6 months before the

beginning of the Requested Budget Year. If the PHA elects to use an average occupancy under this paragraph (a)(2), the PHA shall maintain a record of its computation of its Actual Occupancy Percentage.

(b) *Requested budget year occupancy percentage.* The PHA will develop a Requested Budget Year Occupancy Percentage by taking the Actual Occupancy Percentage and adjusting it to reflect changes up or down in occupancy during the Requested Budget Year due to HUD-approved activities such as units undergoing modernization, new development, demolition, or disposition. If after the submission and approval of the Operating Fund Formula calculations for the Requested Budget Year, there are changes up or down in occupancy because of modernization, new development, demolition or disposition that are not reflected in the Requested Budget Year Occupancy Percentage, the PHA may submit a revision to reflect the actual change in occupancy due to these activities.

(c) *Documentation required to be maintained.* The PHA must maintain and, upon HUD's request, make available to HUD specific documentation of the occupancy status of all units, including long-term vacancies, vacant units undergoing modernization, and units vacant due to circumstances and actions beyond the PHA's control. This documentation shall include a listing of the units, street addresses, and project/management control numbers.

§ 990.120 Audit.

PHAs that receive financial assistance under this part shall comply with the audit requirements in 24 CFR part 85.26. If a PHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the PHA under this part, amounts sufficient to pay for the reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the PHA's books and records into auditable condition. The costs to place the PHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

§ 990.121 Effect of rescission.

If there is a rescission of appropriated funds that reduces the level of funding under the Public Housing Capital Fund

program, to the extent that the PHA can document that it is not possible to complete all the vacant unit rehabilitation in the PHA's approved Annual Statement, the PHA may seek and HUD may grant a waiver for 1 fiscal

year to permit full eligibility under the Operating Fund Formula for those units approved but not funded. (See part 905 of this title for additional information regarding the Capital Fund program.)

Dated: March 7, 2001.

Mel Martinez,

Secretary.

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Federal Register

**Thursday,
March 29, 2001**

Part IV

The President

**Memorandum of March 28, 2001—
Restoration of the Mexico City Policy**

Presidential Documents

Title 3—**Memorandum of March 28, 2001****The President****Restoration of the Mexico City Policy****Memorandum for the Administrator of the United States Agency for International Development**

The Mexico City Policy announced by President Reagan in 1984 required foreign nongovernmental organizations to agree as a condition of their receipt of Federal funds for family planning activities that such organizations would neither perform nor actively promote abortion as a method of family planning in other nations. This policy was in effect until it was rescinded on January 22, 1993.

It is my conviction that taxpayer funds appropriated pursuant to the Foreign Assistance Act should not be given to foreign nongovernmental organizations that perform abortions or actively promote abortion as a method of family planning in other nations. Accordingly, I direct that, except as otherwise provided below in section III, the paragraphs set forth below be included, as specified, in the Standard Provision that was issued in Contract Information Bulletin 99-06 entitled “Voluntary Population Activities (March 1999)” for use in all new grants and cooperative agreements awarded by the United States Agency for International Development (USAID) that provide assistance for family planning activities.

In addition, except as otherwise provided below, these paragraphs are to be included in the Standard Provision when any existing grant or cooperative agreement for family planning activities is amended to add new funding. The FY 2000 population certification requirements issued in Contract Information Bulletin 00-04 remain in effect until September 30, 2001.

The foregoing directive accomplishes the objective of my January 22, 2001, Memorandum to the USAID Administrator—to reinstate in full all of the requirements of the Mexico City Policy in effect on January 19, 1993—and is issued pursuant to the authority vested in me by the Constitution and the laws of the United States of America, including section 104 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151b).

I. Grants and Cooperative Agreements with U.S. Nongovernmental Organizations

Paragraph (e) is replaced by the following paragraphs (e) and (f), which are to be included in the Standard Provision for use in assistance agreements with United States nongovernmental organizations:

“(e) Ineligibility of Foreign Nongovernmental Organizations that Perform or Actively Promote Abortion as a Method of Family Planning.

- (1) The recipient agrees that it will not furnish assistance for family planning under this award to any foreign nongovernmental organization that performs or actively promotes abortion as a method of family planning in USAID-recipient countries or that provides financial support to any other foreign nongovernmental organization that conducts such activities. For purposes of this paragraph (e), a foreign nongovernmental organization is a nongovernmental organization that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

- (2) Prior to furnishing funds provided under this award to another nongovernmental organization organized under the laws of any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, the recipient shall obtain the written agreement of such organization that the organization shall not furnish assistance for family planning under this award to any foreign nongovernmental organization except under the conditions and requirements that are applicable to the recipient as set forth in this paragraph (e).
- (3) The recipient may not furnish assistance for family planning under this award to a foreign nongovernmental organization (the subrecipient) unless:
 - (i) The subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in USAID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities; and
 - (ii) The recipient obtains the written agreement of the subrecipient containing the undertakings described in subparagraph (4) below.
- (4) Prior to furnishing assistance for family planning under this award to a subrecipient, the subrecipient must agree in writing that:
 - (i) The subrecipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in USAID-recipient countries or provide financial support to other foreign nongovernmental organizations that conduct such activities;
 - (ii) The recipient and authorized representatives of USAID may, at any reasonable time: (A) inspect the documents and materials maintained or prepared by the subrecipient in the usual course of its operations that describe the family planning activities of the subrecipient, including reports, brochures and service statistics; (B) observe the family planning activity conducted by the subrecipient; (C) consult with family planning personnel of the subrecipient; and (D) obtain a copy of the audited financial statement or report of the subrecipient, if there is one;
- (iii) In the event that the recipient or USAID has reasonable cause to believe that a subrecipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient shall review the family planning program of the subrecipient to determine whether a violation of the undertaking has occurred. The subrecipient shall make available to the recipient such books and records and other information as may be reasonably requested in order to conduct the review. USAID may also review the family planning program of the subrecipient under these circumstances, and USAID shall have access to such books and records and information for inspection upon request;
- (iv) The subrecipient shall refund to the recipient the entire amount of assistance for family planning furnished to the subrecipient under this award in the event it is determined that the certification provided by the subrecipient under subparagraph (3), above, is false;

- (v) Assistance for family planning provided to the subrecipient under this award shall be terminated if the subrecipient violates any undertaking in the agreement required by subparagraphs (3) and (4), and the subrecipient shall refund to the recipient the value of any assistance furnished under this award that is used to perform or actively promote abortion as a method of family planning; and
 - (vi) The subrecipient may furnish assistance for family planning under this award to another foreign nongovernmental organization (the sub-subrecipient) only if: (A) the sub-subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in USAID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities; and (B) the subrecipient obtains the written agreement of the sub-subrecipient that contains the same undertakings and obligations to the subrecipient as those provided by the subrecipient to the recipient as described in subparagraphs (4)(i)–(v) above.
- (5) Agreements with subrecipients and sub-subrecipients required under subparagraphs (3) and (4) shall contain the definitions set forth in subparagraph (10) of this paragraph (e).
- (6) The recipient shall be liable to USAID for a refund for a violation of any requirement of this paragraph (e) only if: (i) the recipient knowingly furnishes assistance for family planning to a subrecipient who performs or actively promotes abortion as a method of family planning; or (ii) the certification provided by a subrecipient is false and the recipient failed to make reasonable efforts to verify the validity of the certification prior to furnishing assistance to the subrecipient; or (iii) the recipient knows or has reason to know, by virtue of the monitoring which the recipient is required to perform under the terms of this award, that a subrecipient has violated any of the undertakings required under subparagraph (4) and the recipient fails to terminate assistance for family planning to the subrecipient, or fails to require the subrecipient to terminate assistance to a sub-subrecipient that violates any undertaking of the agreement required under subparagraph 4(vi), above. If the recipient finds, in exercising its monitoring responsibility under this award, that a subrecipient or sub-subrecipient receives frequent requests for the information described in subparagraph (10)(iii)(A)(II), below, the recipient shall verify that this information is being provided properly in accordance with subparagraph (10)(iii)(A)(II) and shall describe to USAID the reasons for reaching its conclusion.
- (7) In submitting a request to USAID for approval of a recipient's decision to furnish assistance for family planning to a subrecipient, the recipient shall include a description of the efforts made by the recipient to verify the validity of the certification provided by the subrecipient. USAID may request the recipient to make additional efforts to verify the validity of the certification. USAID will inform the recipient in writing when USAID is satisfied that reasonable efforts have been made. If USAID concludes that these efforts are reasonable within the meaning of subparagraph (6) above, the recipient shall not be liable to USAID for a refund in the event the subrecipient's certification is false unless the recipient knew the certification to be false or misrepresented to USAID the efforts made by the recipient to verify the validity of the certification.

- (8) It is understood that USAID may make independent inquiries, in the community served by a subrecipient or sub-subrecipient, regarding whether it performs or actively promotes abortion as a method of family planning.
- (9) A subrecipient must provide the certification required under subparagraph (3) and a sub-subrecipient must provide the certification required under subparagraph (4)(vi) each time a new agreement is executed with the subrecipient or sub-subrecipient in furnishing assistance for family planning under the award.
- (10) The following definitions apply for purposes of this paragraph (e):
 - (i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act).
 - (ii) To perform abortions means to operate a facility where abortions are performed as a method of family planning. Excluded from this definition are clinics or hospitals that do not include abortion in their family planning programs. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.
 - (iii) To actively promote abortion means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.
- (A) This includes, but is not limited to, the following:
 - (I) Operating a family planning counseling service that includes, as part of the regular program, providing advice and information regarding the benefits and availability of abortion as a method of family planning;
 - (II) Providing advice that abortion is an available option in the event other methods of family planning are not used or are not successful or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if the question is specifically asked by a woman who is already pregnant, the woman clearly states that she has already decided to have a legal abortion, and the family planning counselor reasonably believes that the ethics of the medical profession in the country requires a response regarding where it may be obtained safely);
- (III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and
- (IV) Conducting a public information campaign in USAID-recipient countries regarding the benefits and/or availability of abortion as a method of family planning.
- (B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest, or if the life of the mother would be endangered if the fetus were carried to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

- (C) Action by an individual acting in the individual's capacity shall not be attributed to an organization with which the individual is associated, provided that the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that the individual is acting on behalf of the organization.
- (iv) To furnish assistance for family planning to a foreign nongovernmental organization means to provide financial support under this award to the family planning program of the organization, and includes the transfer of funds made available under this award or goods or services financed with such funds, but does not include the purchase of goods or services from an organization or the participation of an individual in the general training programs of the recipient, subrecipient or sub-subrecipient.
- (v) To control an organization means the possession of the power to direct or cause the direction of the management and policies of an organization.
- (11) In determining whether a foreign nongovernmental organization is eligible to be a subrecipient or sub-subrecipient of assistance for family planning under this award, the action of separate nongovernmental organizations shall not be imputed to the subrecipient or sub-subrecipient, unless, in the judgment of USAID, a separate nongovernmental organization is being used as a sham to avoid the restrictions of this paragraph (e). Separate nongovernmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request USAID's approval to treat as separate the family planning activities of two or more organizations, that would not be considered separate under the preceding sentence, if the recipient believes, and provides a written justification to USAID therefor, that the family planning activities of the organizations are sufficiently distinct so as to warrant not imputing the activity of one to the other.
- (12) Assistance for family planning may be furnished under this award by a recipient, subrecipient or sub-subrecipient to a foreign government event though the government includes abortion in its family planning program, provided that no assistance may be furnished in support of the abortion activity of the government and any funds transferred to the government shall be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government.
- (13) The requirements of this paragraph are not applicable to child spacing assistance furnished to a foreign nongovernmental organization that is engaged primarily in providing health services if the objective of the assistance is to finance integrated health care services to mothers and children and child spacing is one of several health care services being provided by the organization as part of a larger child survival effort with the objective of reducing infant and child mortality.

- (f) The recipient shall insert paragraphs (a), (b), (c), (d), and (f) of this provision in all subsequent subagreements and contracts involving family planning or population activities that will be supported in whole or in part from funds under this award. Paragraph (e) shall be inserted in subagreements and sub-subagreements in accordance with the terms of paragraph (e). The term subagreement means subgrants and sub-cooperative agreements.”

II. Grants and Cooperative Agreements with Non-U.S., Nongovernmental Organizations

Paragraph (e) is replaced by the following paragraphs (e) and (f), which are to be included in the Standard Provision for grants and cooperative agreements with non-United States, nongovernmental organizations:

“(e) Ineligibility of Foreign Nongovernmental Organizations that Perform or Actively Promote Abortion as a Method of Family Planning.

- (1) The recipient certifies that it does not now and will not during the term of this award perform or actively promote abortion as a method of family planning in USAID-recipient countries or provide financial support to any other foreign nongovernmental organization that conducts such activities. For purposes of this paragraph (e), a foreign nongovernmental organization is a nongovernmental organization that is not organized under the laws of any State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.
- (2) The recipient agrees that the authorized representative of USAID may, at any reasonable time: (i) inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that describe the family planning activities of the recipient, including reports, brochures and service statistics; (ii) observe the family planning activity conducted by the recipient, (iii) consult with the family planning personnel of the recipient; and (iv) obtain a copy of the audited financial statement or report of the recipient, if there is one.
- (3) In the event USAID has reasonable cause to believe that the recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient shall make available to USAID such books and records and other information as USAID may reasonably request in order to determine whether a violation of the undertaking has occurred.
- (4) The recipient shall refund to USAID the entire amount of assistance for family planning furnished under this award in the event it is determined that the certification provided by the recipient under subparagraph (1), above, is false.
- (5) Assistance for family planning to the recipient under this award shall be terminated if the recipient violates any undertaking required by this paragraph (e), and the recipient shall refund to USAID the value of any assistance furnished under this award that is used to perform or actively promote abortion as a method of family planning.

- (6) The recipient may not furnish assistance for family planning under this award to a foreign nongovernmental organization (the subrecipient) unless: (i) the subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in USAID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities; and (ii) the recipient obtains the written agreement of the subrecipient containing the undertakings described in subparagraph (7), below.
- (7) Prior to furnishing assistance for family planning under this award to a subrecipient, the subrecipient must agree in writing that:
 - (1) The subrecipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in USAID-recipient countries or provide financial support to other nongovernmental organizations that conduct such activities.
 - (ii) The recipient and authorized representatives of USAID may, at any reasonable time: (A) inspect the documents and materials maintained or prepared by the subrecipient in the usual course of its operations that describe the family planning activities of the subrecipient, including reports, brochures and service statistics; (B) observe the family planning activity conducted by the subrecipient; (C) consult with family planning personnel of the subrecipient; and (D) obtain a copy of the audited financial statement or report of the subrecipient, if there is one.
 - (iii) In the event the recipient or USAID has reasonable cause to believe that a subrecipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient shall review the family planning program of the subrecipient to determine whether a violation of the undertaking has occurred. The subrecipient shall make available to the recipient such books and records and other information as may be reasonably requested in order to conduct the review. USAID may also review the family planning program of the subrecipient under these circumstances, and USAID shall have access to such books and records and information for inspection upon request.
 - (iv) The subrecipient shall refund to the recipient the entire amount of assistance for family planning furnished to the subrecipient under this award in the event it is determined that the certification provided by the subrecipient under subparagraph (6), above, is false.
 - (v) Assistance for family planning to the subrecipient under this award shall be terminated if the subrecipient violates any undertaking required by this paragraph (e), and the subrecipient shall refund to the recipient the value of any assistance furnished under this award that is used to perform or actively promote abortion as a method of family planning.

- (vi) The subrecipient may furnish assistance for family planning under this award to another foreign nongovernmental organization (the sub-subrecipient) only if: (A) the sub-subrecipient certifies in writing that it does not perform or actively promote abortion as a method of family planning in USAID-recipient countries and does not provide financial support to any other foreign nongovernmental organization that conducts such activities; and (B) the subrecipient obtains the written agreement of the sub-subrecipient that contains the same undertakings and obligations to the subrecipient as those provided by the subrecipient to the recipient as described in subparagraphs (7)(i)–(v), above.
- (8) Agreements with subrecipients and sub-subrecipients required under subparagraphs (6) and (7) shall contain the definitions set forth in subparagraph (13) of this paragraph (e).
- (9) The recipient shall be liable to USAID for a refund for a violation by a subrecipient relating to its certification required under subparagraph (6) or by a subrecipient or a sub-subrecipient relating to its undertakings in the agreement required under subparagraphs (6) and (7) only if: (i) the recipient knowingly furnishes assistance for family planning to a subrecipient that performs or actively promotes abortion as a method of family planning; or (ii) the certification provided by a subrecipient is false and the recipient failed to make reasonable efforts to verify the validity of the certification prior to furnishing assistance to the subrecipient; or (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a subrecipient has violated any of the undertakings required under subparagraph (7) and the recipient fails to terminate assistance for family planning to the subrecipient, or fails to require the subrecipient to terminate assistance to a sub-subrecipient that violates any undertaking of the agreement required under subparagraph 7(vi), above. If the recipient finds, in exercising its monitoring responsibility under this award, that a subrecipient or sub-subrecipient receives frequent requests for the information described in subparagraph (13)(iii)(A)(II), below, the recipient shall verify that this information is being provided properly in accordance with subparagraph 13(iii)(A)(II) and shall describe to USAID the reasons for reaching its conclusion.
- (10) In submitting a request to USAID for approval of a recipient's decision to furnish assistance for family planning to a subrecipient, the recipient shall include a description of the efforts made by the recipient to verify the validity of the certification provided by the subrecipient. USAID may request the recipient to make additional efforts to verify the validity of the certification. USAID will inform the recipient in writing when USAID is satisfied that reasonable efforts have been made. If USAID concludes that these efforts are reasonable within the meaning of subparagraph (9) above, the recipient shall not be liable to USAID for a refund in the event the subrecipient's certification is false unless the recipient knew the certification to be false or misrepresented to USAID the efforts made by the recipient to verify the validity of the certification.
- (11) It is understood that USAID may make independent inquiries, in the community served by a subrecipient or sub-subrecipient, regarding whether it performs or actively promotes abortion as a method of family planning.

- (12) A subrecipient must provide the certification required under subparagraph (6) and a sub-subrecipient must provide the certification required under subparagraph (7)(vi) each time a new agreement is executed with the subrecipient or sub-subrecipient in furnishing assistance for family planning under this award.
- (13) The following definitions apply for purposes of paragraph (e):
 - (i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest (since abortion under these circumstances is not a family planning act).
 - (ii) To perform abortions means to operate a facility where abortions are performed as a method of family planning. Excluded from this definition are clinics or hospitals that do not include abortion in their family planning programs. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.
 - (iii) To actively promote abortion means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.
- (A) This includes, but is not limited to, the following:
 - (I) Operating a family planning counseling service that includes, as part of the regular program, providing advice and information regarding the benefits and availability of abortion as a method of family planning;
 - (II) Providing advice that abortion is an available option in the event other methods of family planning are not used or are not successful or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if the question is specifically asked by a woman who is already pregnant, the woman clearly states that she has already decided to have a legal abortion, and the family planning counselor reasonably believes that the ethics of the medical profession in the country requires a response regarding where it may be obtained safely);
 - (III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and
 - (IV) Conducting a public information campaign in USAID-recipient countries regarding the benefits and/or availability of abortion as a method of family planning.
- (B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest or if the life of the mother would be endangered if the fetus were carried to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

- (C) Action by an individual acting in the individual's own capacity shall not be attributed to an organization with which the individual is associated, provided that the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent the individual is acting on behalf of the organization.
- (iv) To furnish assistance for family planning to a foreign nongovernmental organization means to provide financial support under this award to the family planning program of the organization, and includes the transfer of funds made available under this award or goods or services financed with such funds, but does not include the purchase of goods or services from an organization or the participation of an individual in the general training programs of the recipient, subrecipient or sub-subrecipient.
- (v) To control an organization means the possession of the power to direct or cause the direction of the management and policies of an organization.
- (14) In determining whether a foreign nongovernmental organization is eligible to be a recipient, subrecipient or sub-subrecipient of assistance for family planning under this award, the action of separate nongovernmental organizations shall not be imputed to the recipient, subrecipient or sub-subrecipient, unless, in the judgment of USAID, a separate nongovernmental organization is being used as a sham to avoid the restrictions of this paragraph (e). Separate nongovernmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request USAID's approval to treat as separate the family planning activities of two or more organizations, which would not be considered separate under the preceding sentence, if the recipient believes, and provides a written justification to USAID therefor, that the family planning activities of the organizations are sufficiently distinct so as to warrant not imputing the activity of one of the other.
- (15) Assistance for family planning may be furnished under this award by a recipient, subrecipient or sub-subrecipient to a foreign government even though the government includes abortion in its family planning program, provided that no assistance may be furnished in support of the abortion activity of the government and any funds transferred to the government shall be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government.
- (16) The requirements of this paragraph are not applicable to child spacing assistance furnished to a foreign nongovernmental organization that is engaged primarily in providing health services if the objective of the assistance is to finance integrated health care services to mothers and children and child spacing is one of several health care services being provided by the organization as part of a larger child survival effort with the objective of reducing infant and child mortality.

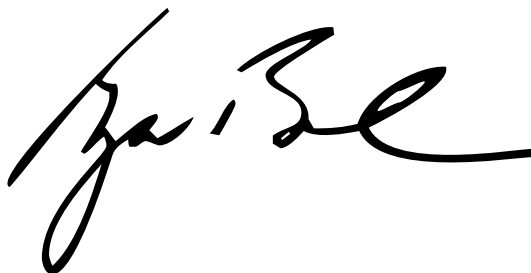
- (f) The recipient shall insert paragraphs (a), (b), (c), (d) and (f) of this provision in all subsequent subagreements and contracts involving family planning or population activities that will be supported in whole or in part from funds under this award. Paragraph (e) shall be inserted in subagreements and sub-subagreements in accordance with the terms of paragraph (e). The term subagreements means subgrants and sub-cooperative agreements."

III. Exceptions

The paragraphs set forth in sections (I) and (II) above may be omitted from the Standard Provision in the situations described below:

- (1) While the paragraphs are to be used in grants and cooperative agreements (and assistance subagreements) that provide financing for family planning activity or activities, if family planning is a component of an activity involving assistance or other purposes, such as food and nutrition, health for education, paragraph (e), "Ineligibility of Foreign Nongovernmental Organizations that Perform or Actively Promote Abortion as a Method of Family Planning," applies only to the family planning component.
- (2) When health or child survival funds are used to provide assistance for child spacing as well as health purposes, these paragraphs are applicable to such assistance unless: (a) the foreign nongovernmental organization is one that primarily provides health services; (b) the objective of the assistance is to finance integrated health care services to mothers and children; and (c) child spacing is one of several health care services being provided as part of a larger child survival effort with the objective of reducing infant and child mortality. These paragraphs need not be included in the assistance agreement if it indicates that assistance for child spacing will be provided only in this way. USAID support under these circumstances is considered a contribution to a health service delivery program and not to a family planning program. In such a case, these paragraphs need not be included in an assistance agreement.
- (3) These paragraphs need not be included in assistance agreements with United States nongovernmental organizations for family planning purposes if implementation of the activity does not involve assistance to foreign nongovernmental organizations.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, March 28, 2001.



Federal Register

**Thursday,
March 29, 2001**

Part V

The President

**Proclamation 7418—Cancer Control
Month, 2001**

**Proclamation 7419—National Child Abuse
Prevention Month, 2001**

Presidential Documents

Title 3—

Proclamation 7418 of March 28, 2001

The President

Cancer Control Month, 2001

By the President of the United States of America**A Proclamation**

In 2001, an estimated 1.2 million new cases of cancer will occur, and more than half a million individuals will die from the disease. Standing alone, the figures are discouraging. However, a recent decline in the rates of new cases, as well as cancer-related deaths, offers us hope. The 5-year survival rate has improved for all cancers, and 8.9 million Americans are cancer survivors.

Thirty years of investment in the National Cancer Program following the National Cancer Act of 1971 have accelerated the pace of cancer research. The investment in research has yielded great dividends in the areas of cancer prevention, early detection, better treatments, and improved quality of life for people with cancer. These advances are remarkable, but much remains to be done.

Healthy behavior can greatly reduce the risk of cancer. About 45 million Americans have already quit smoking, but this most preventable cause of cancer continues to damage public health. Tobacco use causes nearly all cases of lung cancer and more than one-third of all cancer deaths. Children can become addicted to tobacco in a very short time, placing a serious responsibility on adults to help young people stop smoking, or ideally, never start.

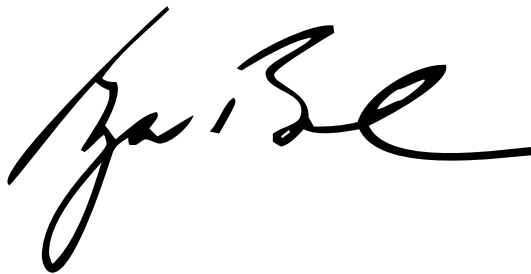
Other weapons remain formidable in the fight against cancer. Since 1991, the 5 A Day for Better Health program has spread the message that eating five or more servings of fruits and vegetables daily can improve health and prevent disease. Over the past 15 years, increasing numbers of women have been screened for breast cancer. Continued emphasis on screening for cancer, including colon cancer, can play a vital role in saving countless lives. Clinical trials of new drugs may reveal which ones are most effective in treating cancer. The Cancer Information Service, a free public service of the National Cancer Institute (NCI) and the National Institutes of Health, operates as a national resource for information about cancer. Americans may contact the organization at 1-800-4-CANCER or visit its Internet address at <http://www.cancer.gov>.

Cancer takes a terrible toll on our country. I encourage all Americans to make healthy choices in their personal behaviors. Together, we can help stop cancer and improve the odds of survival for people of all ages.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 103) requesting the President to issue an annual proclamation declaring April as “Cancer Control Month.”

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2001 as Cancer Control Month. By reaffirming the importance of controlling cancer, concerned citizens, government agencies, private industry, nonprofit organizations, and other interested groups can work toward the day when this devastating condition is finally eradicated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of March, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.

A handwritten signature in black ink, appearing to read "G. W. Bush", written in a cursive style.

[FR Doc. 01-8009

Filed 3-28-01; 11:40 am]

Billing code 3195-01-P

Presidential Documents

Proclamation 7419 of March 28, 2001

National Child Abuse Prevention Month, 2001

By the President of the United States of America

A Proclamation

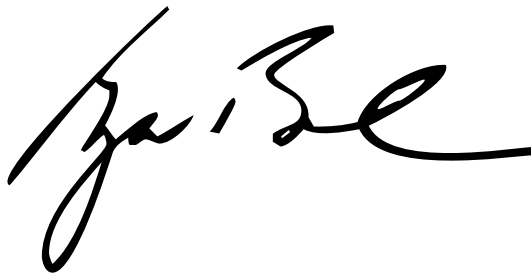
Every child deserves to live in a safe, permanent, and caring family. Regrettably, abuse and neglect continue to threaten the well-being of many young Americans. Each year, more than 800,000 confirmed incidents of maltreatment of children and more than 1,000 abuse-related child fatalities plague our country. We can, and must, do more to fight these tragedies and to protect our children from harm.

Prevention remains the best defense for our children. State Community-Based Family Resource and Support programs sponsor activities promoting public awareness about child abuse and information on how to stop it. Additional initiatives offer education and training to mothers, fathers, and other caretakers. Collaboration among schools, government agencies, faith-based organizations, businesses, community groups, and law enforcement play an important role in helping such efforts to succeed.

During the month of April, let our Nation and her people reaffirm the commitment to making a positive difference in ending child abuse and neglect. Each individual needs to help. Organize or join a community group that offers information or assistance to parents and families. Be vigilant for signs of abuse exhibited by young people in your community. Encourage trust in and support for law enforcement agencies. By speaking out against child abuse and neglect and cultivating an environment that nurtures and strengthens families, we can give boys and girls the safe, stable, and loving homes they need. They will be able to enter the classroom each day ready to learn, with improved self-esteem. They will be encouraged to reach their full potential as individuals and as members of our society.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2001, as National Child Abuse Prevention Month. I encourage all Americans to join in the vital task of protecting young people from harm, and I commend the many dedicated parents, educators, social workers, and other concerned citizens who lead by example in doing right by our children.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of March, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-fifth.

A handwritten signature in black ink, appearing to read "George W. Bush", written in a cursive style.

[FR Doc. 01-8010

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LIST OF PUBLIC LAWS

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S.J. Res. 6/P.L. 107-5

Providing for congressional disapproval of the rule submitted by the Department of Labor under chapter 8 of title 5, United States Code, relating to ergonomics. (Mar. 20, 2001; 115 Stat. 7)

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